

# Standard Terms and Conditions of Trade of DEVLTA Australia Pty Ltd (ABN 98 604 838 173) trading as Dynamic Steelform (DYS)

The following standard terms and conditions (**Standard Terms**) apply to all supplies of goods and/or services by DYS to you, unless DYS's Authorised Representative agrees (in writing) to the contrary.

## 1. QUOTATION

- 1.1 If DYS provides a quotation or price estimate (whether orally or in writing) for the Goods (**Quote**) to you, the Quote is indicative only and is an invitation to treat.
- 1.2 The Quote does not in any way bind DYS and DYS may withdraw or vary the Quote within 30 days from the Quote.

## 2. CONTRACT

By placing an order with DYS (whether through DYS's website (currently <http://dynamicsteelform.com.au>) or other means (including but not limited to purchase order, email or using any other types of communication)) (Order), you are making an offer to enter into a binding contract with DYS to purchase the Goods (**Offer**).

If DYS accepts the Offer, a legally binding contract (**Contract**) between DYS and you is formed.

The Contract comprises the following:

- (a) The Standard Terms;
  - (b) The Quotation;
  - (c) The Order.
- 2.1 If there is any inconsistency between any provision in the documents in clause 2.3, the Standard Terms will take precedence, followed by the Quotation and the Order.
- 2.2 Any terms and conditions that you include in the Order (or in any other written communications to DYS) will be of no legal effect and do not form part of the Contract, unless DYS's Authorised Representative expressly agrees in writing that your terms and conditions will override these Standard Terms.
- ## 3. PRICE
- 3.1 Subject to clause 3.3, the Price is the price of the Goods as indicated by DYS in the Quotation or in DYS's invoice to you.
- 3.2 Unless otherwise stated, the Price does not include:
- (a) GST;
  - (b) bank or credit card transaction costs;
  - (c) delivery charges.
- 3.3 The Price is based on your requirements in the Order. The Price is subject to increases at DYS's discretion in any of the following situations:
- (a) You propose to vary or change the Order;
  - (b) DYS varies the Order due to inaccurate or incomplete information or requirements that you had provided to DYS.

## 4. PAYMENT

- 4.1 DYS's terms of payment are generally as follows:
- (a) Cash on delivery; or
  - (b) Payment of a deposit (as determined by DYS) before DYS processes the Order and:
    - (i) **[Balance payment before delivery]** payment of the remainder of the Price before DYS releases the Goods for delivery; or
    - (ii) **[Balance payment after delivery]** payment of the remainder of the Price after delivery has been effected and within 14 days from the date of DYS's invoice.
- 4.2 You may pay using cash or direct deposit to DYS's nominated bank account. If DYS agrees to accept payment by credit card, you agree to bear any additional charges associated with the credit card payment. You also agree to bear any bank transaction charges (if any) that DYS incurs on the direct deposit transaction.
- 4.3 You must make all payments to DYS free from any deductions, set-off or claim of any kind whatsoever.
- 4.4 If you have a credit facility with DYS that provides for different payment terms, the terms in the credit facility will prevail to the extent of any inconsistency with this clause 4.
- 4.5 If you choose to pay by credit card and you provide your credit card details to DYS over the phone, you authorise DYS to charge the amount in DYS's invoice to your nominated credit card.

- 4.6 If any payment via your credit card or any other facility cannot be processed or DYS did not receive your payment, DYS will suspend your Order until the payment is received.

## 5. DELIVERY

- 5.1 DYS's delivery terms are on Ex-Works (DYS's premises) basis.
- 5.2 If DYS agrees to organise the delivery of the Goods with a freight carrier for you, the delivery term will still be based on Ex-Works (DYS's premises).
- 5.3 If DYS agrees to personally deliver the Goods to the Delivery Address, the risk in the Goods will pass to you from the time the Goods are handed over to you, your representative or employee.
- 5.4 If clause 5.2 or clause 5.3 applies, you authorise DYS (or the freight carrier) to leave the Goods unattended at the Delivery Address if you or your representative are not present at the time of delivery. Delivery shall be deemed to have been effected by DYS. If you request for a re-delivery and DYS agrees, you will bear any additional delivery cost or freight cost that DYS incurs.
- 5.5 If DYS assists you to load or unload the Goods, you agree not to hold DYS liable for any damage caused to the Goods.
- 5.6 You will bear all delivery and freight costs, unless DYS agrees otherwise. Additional charges will apply for deliveries outside DYS's trading hours. You also agree to pay for any additional cost that DYS incurs for any re-delivery due to your fault (for example, by providing DYS with incorrect delivery address or instructions).
- 5.7 DYS (or its freight carrier or agent) may, but is not obliged to obtain a written acknowledgement of delivery from you or your representative when that person takes delivery of the Goods. DYS may take other evidence (for example, photographs) that DYS has delivered the Goods to the Delivery Address and you agree such evidence will be conclusive evidence that DYS has effected the delivery.
- 5.8 You must inspect the Goods on delivery or within 3 days after the delivery. You must notify DYS in writing within 3 days from the date of delivery of any damage, defect or non-compliance of the Goods with the Contract. If you fail to notify DYS within the specified time, you are deemed to have accepted the Goods.
- 5.9 If the Goods do not comply with the Contract, DYS will at its sole discretion elect whether to replace or to rectify the Goods.

## 6. DELAYS

- 6.1 DYS will provide an indicative Delivery Date for the Goods after it has accepted the Order.
- 6.2 DYS will use reasonable endeavours to notify you if it becomes aware of any possible delay in the delivery of the Goods.
- 6.3 Any time or date for delivery given by DYS (including the indicative Delivery Date in clause 6.1) is intended only as an estimate, and may be subject to delays. DYS will not be liable to you for any loss or damage resulting from late delivery of the Goods. DYS's delay will not entitle you to repudiate or terminate this Contract.

## 7. DRAWINGS

- 7.1 If you require DYS to prepare Drawings for you, DYS may do so for a fee ("**Service Fee**").
- 7.2 You will pay the Service Fee in full before DYS releases the Drawings to you.
- 7.3 DYS does not warrant or represent that the Drawings are error-free, accurate or complete. DYS will use reasonable endeavours and exercise due care and skill to ensure that the Drawings are reasonably accurate and complete.
- 7.4 You agree that DYS has prepared the Drawings based on your instructions and your structural engineer's requirements. You agree to provide DYS with accurate, complete and timely instructions and requirements to enable DYS to produce the Drawings.
- 7.5 You agree to release DYS from any liability, expense, damage or loss that you suffer or incur, as a result of your reliance on the Drawings. As DYS is not a professional engineer, you must not rely on the Drawings as engineering advice or recommendations. You must seek professional advice in relation to the use of the Drawings or use of the Goods for your building and construction works. You agree not to hold DYS liable for any structural issue that arises in relation to your building and construction or in the use of the Goods.
- 7.6 You agree that the quantity of Goods that you purchase from DYS was estimated from the Drawings and the actual quantity that you require may differ. You agree that the excess quantity cannot be returned to DYS unless DYS agrees and subject to DYS's terms in clause 10.

## 8. VARIATIONS

8.1 If at any time before DYS delivers the Goods to you, you have a change of requirements or you request DYS to vary the Goods (whether as to the nature, quality or quantity of the Goods) (**Proposed Variation**), DYS may but is under no obligation to accept the Proposed Variation. If DYS agrees to consider the Proposed Variation, it will:

- (a) confirm with you whether the Proposed Variation is feasible and the effect of the Proposed Variation on the Delivery Date and the Price; or
- (b) notify you that the Proposed Variation is not feasible and DYS's reasons.

8.2 DYS is entitled to be paid the agreed amount for performing the Proposed Variation. You must comply with clause 8.1 before DYS is obliged to perform the Proposed Variation.

## 9. WARRANTY

9.1 To the extent permitted by law, you will make any warranty claim for any defective Goods with the relevant manufacturer. The warranty that you are entitled to for each Good depends on the relevant manufacturer's warranty policy. Some Goods may not come with any manufacturer's warranty. You may approach DYS for assistance if you discover any defect in the Goods but DYS will still refer your claim to the manufacturer.

9.2 The warranty in clause 9.1 do not apply in the following situations:

- (a) the defects were caused or contributed by your installation (including installation that were not carried out in accordance with industry practices or building standards);
- (b) use of the Goods for purposes that were not disclosed to DYS prior to the supply;
- (c) modification, alteration or interference with the Goods without DYS's consent;
- (d) continued use of the Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
- (e) normal wear and tear of the Goods; and
- (f) You have not fully paid for the Goods.

## 10. RETURN OF GOODS

10.1 Other than a breach of warranty by DYS under clause 9, DYS may but is under no obligation to accept the return of the Goods. To avoid doubt, DYS will not accept any return for the reason that you have changed your mind.

10.2 If DYS accepts the return of the Goods, it is conditional upon the following:

- (a) The Goods are returned to DYS's premises at your expense;
- (b) The Goods are:
  - (i) undamaged;
  - (ii) unsoiled;
  - (iii) in its original condition and appearance (including colour coating);
  - (iv) in a condition which DYS considers satisfactory for resale;
  - (v) subject to any other terms that DYS requires.
- (c) the Goods were not customised for you; and
- (d) the Goods have not been used.

10.3 If DYS accepts the return of the Goods, it will either give you the refund, a credit note or allow you to exchange the Goods for some other goods. DYS reserves the right to charge you a restocking fee of 10% of the Price of the relevant Goods.

## 11. INTELLECTUAL PROPERTY

11.1 DYS owns all Intellectual Property Rights in the Drawings.

11.2 You must not, and must not procure or permit any person to re-engineer, de-compile, reproduce, copy any of DYS's Intellectual Property that subsists in the Drawings.

## 12. TITLE

Title in the Goods passes to you from the time DYS receives full payment for the Goods from you.

## 13. LIMITATION OF LIABILITY

13.1 Subject to any warranties which are implied by law and cannot otherwise be excluded, DYS excludes all other conditions, warranties or guarantees or liability in connection with this Contract or DYS's supply of the Goods.

13.2 Subject to clause 13.1, to the extent DYS's liability cannot be excluded, DYS's liability will be limited at its option, to one or more of the following:

- (a) the replacement of the Goods or the supply of equivalent goods;
- (b) the repair of the Goods;

(c) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or

(d) the payment of the cost of having the Goods repaired.

13.3 DYS's maximum liability under this Contract (including negligence claims) is capped at the price of the specific Goods that gave rise to your loss or damage.

13.4 Under no circumstances will DYS be liable to you for any indirect losses, damage to property or injury to persons.

## 14. INDEMNITY

14.1 You will indemnify DYS against any claim, loss, damage or expense (including legal costs on a full indemnity basis) that DYS incurs or suffers directly as a result of your breach of any term or warranty in this Contract.

## 15. DEFAULT ON PAYMENT

15.1 If you fail to pay DYS in accordance with clause 4.1(b)(ii) or the terms in your credit facility with DYS, without prejudice to any other right or remedy, you will be liable for interest charges on the outstanding amount accrued daily at a rate of 5% per month from the date when the payment was due until the date of payment.

15.2 In the event of your default in payment, you further agree to the following:

- (a) You grant DYS (and DYS's employees, agents or contractors) access to your premises (or to procure access for DYS to the site where the Goods are located) to seize the unpaid Goods;
- (b) You agree that DYS may do whatever is reasonably necessary for DYS to seize the unpaid Goods (including but not limited to dismantling, disassembling or detaching the unpaid Goods from other goods or equipment to which the unpaid Goods are installed or affixed);
- (c) You agree to pay all the enforcement costs incurred by DYS and also indemnify and hold DYS harmless against any claims by any third party as a result of DYS's exercise of its right pursuant to this clause 15.2.

15.3 DYS may apply any monies received from you (including any proceeds of sale from the disposal of any Goods that DYS seized from you through enforcement actions) towards any unpaid invoice, DYS's enforcement costs or any other claims against you (e.g. indemnities) in accordance with this Contract, as DYS determines at its absolute discretion.

## 16. PRIVACY ACT

16.1 You consent to receive regular communications (whether mailers, electronic mails, electronic text messages or via any other media including social media) from DYS in relation to product information, marketing materials or information about DYS's goods and services.

*If you wish to opt out from receiving these communications, please contact DYS (please refer to DYS's website at <http://dynamicsteelform.com.au> for its contact details).*

## 17. PPSA

17.1 If DYS agrees to supply you the Goods on a retention of title arrangement, to secure your payment obligations under clause 4, you grant to DYS a Purchase Money Security Interest in the Goods (and in any other goods that DYS supplies to you from time to time). DYS's Security Interest will attach to any Proceeds or any Accessions.

17.2 DYS may register its Security Interests under this Contract pursuant to the PPSA and you consent to the Registration.

17.3 You agree that this Contract constitutes a Security Agreement for the purposes of the PPSA.

17.4 You agree to sign any documents and provide necessary assistance and information to DYS to enable DYS to perfect its Security Interest by Registration.

17.5 You waive the right to receive notice of any financing statement registered by DYS.

17.6 You must not dispose of the Goods to which DYS has a Security Interest other than in the ordinary course of your business.

17.7 While DYS retains title to the Goods, you must not subject the Goods to any person's Security Interest or to permit a third party from registering a Security Interest over the Goods, unless you have received DYS's prior written consent.

17.8 DYS may apply any amounts that you have paid under this Contract to any of your outstanding invoices in DYS's absolute discretion.

17.9 You agree to notify DYS in writing of any change to your details set out in this Contract, within 5 days from the date of such change.

## 18. TRUSTEE PROVISIONS

18.1 For the purposes of this clause 18, every reference to:

- (a) "Trustee" is a reference to each person who has entered into the Contract or the Credit Application on behalf of a trust; and

- (b) "Trust" is a reference to each trust to which the Trustee is a trustee of.
- 18.2 The Trustee enters into the Contract both in its personal capacity and as trustee of the Trust.
- 18.3 The Trustee warrants to DYS that:
- (a) it has full, complete, valid and unfettered authority and power to enter into and comply with the Contract;
  - (b) it has a right to be fully indemnified by the Trust in respect of the obligations incurred by the Trustee under the Contract and the Trust's fund and assets are sufficient to satisfy that right of indemnity;
  - (c) it is the sole trustee of the Trust and no action has been taken or proposed to remove it as Trustee or to terminate the Trust.
- 18.4 The Trustee must not without the prior written consent of the Principal permit any of the following:
- (a) any variation, replacement or limitation of the terms of the deed constituting the Trust, which may affect the Trustee's due performance of its obligations under this Contract;
  - (b) its removal as Trustee or the appointment of another trustee as trustee of the Trust; or
  - (c) any distribution, transfer or setting aside of any part of the income or capital of the Trust, which may affect the ability of the Trust to indemnify the Trustee for breach of its obligations under this Contract.

## 19. GENERAL

### 19.1 Governing Law and Jurisdiction

- (a) The Parties agree that this Contract shall be governed by and construed in accordance with the Laws of Western Australia.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of Western Australia and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Contract.

### 19.2 Notices

Any notice shall be given by sending the notice by registered mail, courier, fax or by email to the address of the Party as stated in the Contract or to such other address as such Party may have notified in writing to the other for such purposes.

### 19.3 Assignment and Subcontracting

DYS may assign or subcontract any or all rights and obligations under this Contract to another person.

### 19.4 Severability

In the event that any provision of this Contract is declared invalid or unenforceable by any court or body of competent jurisdiction or under any law, regulation or order that may be applied to the Contract as well as for any other reason, such provision shall be void and unenforceable only in this respect and the validity and enforceability of any other provision of this Contract shall not be affected.

### 19.5 Amendments

DYS may amend, vary or modify these Standard Terms at any time. Any variation will take effect from the date on which DYS gives notice of the variation to you.

### 19.6 Entire Agreement

This Contract constitutes the entire agreement and understanding of the Parties, and supersedes all prior negotiations, understandings and representations, whether written or oral, of the Parties with respect to the subject matter of this Contract.

### 19.7 Waiver

The waiver by a Party at any time, for non-compliance by the other Party with a provision of this Contract, shall never be construed as a waiver by such Party of any subsequent execution of that provision or a waiver by such Party of the execution of any other provision of the Contract.

### 19.8 Further Assurances

Each Party must do all things, and must ensure that its officers, employees or representatives do all things reasonably required of it or them by notice from another Party effectively to carry out and give full effect to this Contract and the rights and obligations of the Parties.

### 19.9 Counterparts

This Contract may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

### 19.10 Force Majeure

- (a) DYS is not liable for failure to perform the Contract during the time and to the extent that such performance is prevented, wholly or substantially, by Force Majeure.

- (b) DYS may terminate the Contract by giving a written notice to you if the Force Majeure event continues for more than 60 days. DYS is not liable to you for any loss or damage that you suffered as a result of a Force Majeure event or DYS's termination of the Contract under this clause 18.10(b).
- (c) Upon DYS's termination under clause 18.10(b), you must immediately pay for any Goods that DYS has supplied to you prior to the date of termination.

## 20. DEFINITIONS

For the purposes of this Contract, the following terms in this document have the meanings below:

**"Credit Application"** means your application for credit payment terms with DYS.

**"Delivery Address"** means the address that you nominate for the Goods to be delivered to.

**"Delivery Date"** means the date of delivery of the Goods as agreed or specified by DYS.

**"Drawings"** means any design, drawing, plan, proposal or recommendations that DYS prepares for you.

**"DYS's Authorised Representative"** means a director or manager of DYS.

**"Force Majeure"** means any event or circumstance beyond the reasonable control of a Party including but not limited to acts of God, wars, riots, strikes, lock-outs, embargos, trade disputes, labour disturbances, breakdown of plant or machinery, accidents, storm, fire, floods, difficulties in obtaining materials, unavailability of communications network or infrastructure from third party network providers, transport or labour or any other circumstances affecting the supply of the Goods.

**"Goods"** mean the goods to be supplied by DYS pursuant to this Contract.

**"Intellectual Property Rights"** means all copyright and analogous rights, all rights in relation to patents, inventions, registered and unregistered trademarks, registered designs, source code, Confidential Information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.

**"Price"** means the prices of the Goods.

**"Purchase Money Security Interest", "Proceeds", "Register", "Registration", "Security Agreement" and "Security Interest"** have the meanings given by the PPSA. **"Standard Terms"** means DYS's general terms and conditions of sale in this document.

## 21. INTERPRETATION

In this Contract, unless the context indicates a contrary intention:

- (a) Headings are for convenience only and do not affect the interpretation of this Contract;
- (b) An obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) A reference to "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) A reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) A reference to a document (including this Contract) is to that document as varied, novated, ratified or replaced from time to time;
- (f) A reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) A word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) A reference to a Party, clause, schedule, exhibit, attachment or annexure is a reference to a Party, clause, schedule, exhibit, attachment or annexure to or of this Contract, and a reference to this Contract includes all schedules, exhibits, attachments and annexures to it;
- (i) If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" in any form is not a word of limitation;
- (k) The currency for the purposes of this Contract is the Australian dollar (AUD) unless DYS's quote or proposal indicates otherwise.