

## TERMS AND CONDITIONS OF TRADE

### COMMERCIAL

These are Terms and Conditions of Quotation and Sale of all products and services supplied by **Edcon Steel Ply. Ltd.** (ACN 001 509 306) (ABN 38 001 509 306). These Terms and Conditions will apply notwithstanding any provisions, or discussions, to the contrary which may appear on any order form or other document issued, or discussed, by any customer.

#### General

1. All orders placed with **Edcon Steel Pty. Ltd.** are subject to these Terms and Conditions and **Edcon Steel Pty. Ltd.** may at any time and from time to time vary or alter these Terms and conditions. Any such variation to these Terms and Conditions will apply upon notification by **Edcon Steel Pty. Ltd.** to the customer.
2. Any representation, warranty, condition or undertaking that would be implied into these Terms and Conditions by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.
3. Specifically, we do not under any circumstances, warrant that the goods are fit for your intended purpose. It is your sole responsibility to satisfy yourself that the goods are sufficient and of the description, quality and suitability of your choosing for the application you have for the goods, products or services.
4. Nothing in these Terms and Conditions excludes, restricts or modifies any condition, warranty, right or remedy conferred on a party by the Competition and Consumer Act 2010 or any other applicable Australian law that cannot be excluded, restricted or modified by agreement.
5. Where the Customer has more than one proprietor, or where there is more than one Applicant under a Credit Application, the liability of those applicants or proprietors under these Terms and Conditions will be Joint and Several.
6. "Customer" means both the Customer in these Terms and Conditions and the applicant under the Credit Application.

#### Price

7. If there is any error or omission in the quotation contract, **Edcon Steel Pty. Ltd.** reserves the right to amend the quotation contract price.
8. This clause applies even if the quotation contract has been accepted by the customer. Unless otherwise stated, all prices quoted are GST exclusive. GST will be added in relation to delivery and supply of all goods and services.
9. All prices in **Edcon Steel Pty. Ltd.'s** current pricing systems are subject to change without notice.
10. Any copy invoice, credit note or proof of delivery required by the customer more than 90 days after issue will be subject to a \$6.00 + GST fee payable by the Customer.
11. Quotations are valid for a period of 5 business days from the date of issue, unless stated otherwise on the quotation, after which time rise and fall provisions will apply and a new quotation will need to be obtained

#### Terms of Payment

12. All goods are required to be paid for "in full" prior to customisation, manufacture or delivery.
13. A deposit of 50% of the order value will be required to commence all orders. This will be a non-refundable deposit.
14. Cheques will only be accepted as full payment by prior arrangement.
15. Goods not defective and which are in compliance with the specification and in original condition and still in undamaged packaging (if applicable) may be returned for refund or they may be returned for credit with our prior consent. In such cases a restocking fee of \$25.00 or 20% of the invoice value whichever is the greater will apply.
16. Goods not defective and which are manufactured, customised or altered by your order may not be returned for refund or credit.
17. A 30 day nett end of month credit account may be applied for. Subject to completion of an **Edcon Steel Pty Ltd** application form. Approval may be granted at the sole discretion of the Directors of **Edcon Steel Pty. Ltd.**
18. Upon establishment of credit account all payments due to **Edcon Steel Pty. Ltd.** are to be made, without retention, within thirty (30) calendar days after end of the month of the issue of the invoice to the customer by **Edcon Steel Pty. Ltd.** Payment will be considered to be made when the funds are cleared in **Edcon Steel Pty. Ltd.'s** nominated bank account.
19. If the customer fails to make payment when due **Edcon Steel Pty. Ltd.** will be entitled to :
  - a. charge default interest at the rate of 10% per annum on all overdue amounts including late payment charges and amounts other than the price calculated daily on and from the due date for payment and the parties agree that any amount so calculated is not penalty but rather an accurate pre-estimate of the damage to be incurred by **Edcon Steel Pty. Ltd.**
  - b. payments received from the customer will be credited first against any default interest, then in payment of services and then against payment of any goods, and all such charges will be payable on demand
  - c. claim from the customer, all costs relating to any action taken by **Edcon Steel Pty. Ltd.** to recover money due from the customer including any legal costs and disbursements on a solicitor-client basis;
  - d. terminate any agreement in relation to delivery of goods that have not been delivered prior to the customer's default and cease to provide further credit to the customer and
  - e. Require the payment of cash upon delivery of any further products.

## Delivery & Inspection

20. Unless stated otherwise all Prices are Ex-Works.
21. Unless we specifically agree otherwise, we reserve the right to supply and invoice a quantity plus or minus 10% of the goods ordered.
22. Delivery for orders of goods Free on Board unless stated otherwise the unloading of trucks is at the customer's cost and risk. Any delivery fees in addition of these fees must be paid by the Customer.
23. Any Customer wishing to collect their goods from **Edcon Steel Pty. Ltd.'s** warehouse is required to provide a suitable vehicle to collect such goods. A vehicle loading guide can be provided for your information.
24. Goods may be covered by warranties from the original manufacturer, where possible and agreed in writing, these warranties will be passed on to you.
25. Any date or time quoted for delivery is an estimate only and **Edcon Steel Pty. Ltd.** will endeavour to meet that estimate, but failure to do so will not confer on the customer any right of cancellation on the customer's part or render **Edcon Steel Pty. Ltd.** liable for any loss or damages directly or indirectly sustained by the customer.
26. **Edcon Steel Pty. Ltd.'s** obligation to deliver will be discharged on arrival of the products at the customer's nominated delivery destination appearing on the quotation, or the collection of the products by the customer from **Edcon Steel Pty. Ltd.**
27. The customer will examine the products immediately after delivery (or collection if applicable) and **Edcon Steel Pty. Ltd.** will not be liable for any misdelivery, shortage, defect, non-conformance, or damage unless **Edcon Steel Pty. Ltd.** receive details in writing within 7 calendar days after the date of delivery of the products.
28. Any goods returned to the warehouses of **Edcon Steel Pty. Ltd.** must be delivered by the carrier nominated by **Edcon Steel Pty. Ltd.** Charges from any other carriers will not be accepted.

## Property and Risk

29. Notwithstanding delivery of products, title in any products supplied and/or installed will remain with **Edcon Steel Pty. Ltd.** until the customer has paid and discharged any and all indebtedness to **Edcon Steel Pty. Ltd.** on any account whatsoever including all applicable sales taxes and other taxes, levies and duties. Any payment made by or on behalf of a customer that is later avoided by the application of any Statutory Provision will be deemed not to discharge the customer's indebtedness and in such an event the parties are to be restored to rights each respectively would have had if the payment had not been made.
30. The risk in any products supplied and/or installed will pass to the customer upon delivery (actual or constructive) to the customer. If the delivery of the goods is delayed due to any circumstances beyond the control of **Edcon Steel Pty. Ltd.** then the risk passes to the customer on the day on which the goods are dispatched by the purchaser's nominated carrier.
31. The customer acknowledges that if he/she/they is/are in possession of any products supplied and/or installed, he/she/they holds such, solely as a fiduciary bailee for **Edcon Steel Pty. Ltd.** until payment has been made in full to **Edcon Steel Pty. Ltd.**
32. To the extent permitted at law, **Edcon Steel Pty. Ltd.** will not be liable to the customer or any third party for liquidated damages in any form, any delay costs, consequential loss including (without limitation) any loss of profits, loss of revenue, loss of production, loss of business opportunity, loss of goodwill, loss of business reputation, economic loss or any indirect, remote and/or unforeseeable loss. The aggregate liability of **Edcon Steel Pty. Ltd.** in damages (however arising) in respect of any act or omission of **Edcon Steel Pty. Ltd. 's** in connection with its obligations under these Terms and Conditions will not exceed the amount of one hundred dollars (AUD\$100), even if **Edcon Steel Pty. Ltd.** has been advised by the customer as to the possibility of such loss being incurred.
33. As security for payment, the customer (and where applicable each Guarantor) grants to **Edcon Steel Pty. Ltd.** a Security Interest (as defined in the *Personal Property Securities Act 2009* (Cth) ("PPSA") in all products and services supplied by **Edcon Steel Pty. Ltd.** , the outstanding payments to **Edcon Steel Pty. Ltd.** and all after acquired property and an irrevocable right to register this interest against it or its property (as the case may be) on the Personal Property Securities Register established under Chapter 5 of the PPSA ("Register") including (without limitation) where applicable, as a purchase money security interest. The customer grants **Edcon Steel Pty. Ltd.** an irrevocable right to search the Register from time to time in relation to it or its property. The customer agrees for the purposes of the PPSA and to the extent permitted by law, Sections 95, 121(4) 128, 129, 130, 132(3)(d), 132(4), 135 and 143 of the PPSA have no application to these arrangements and **Edcon Steel Pty. Ltd.** is not required to give notice under section 135 of the PPSA. If **Edcon Steel Pty. Ltd.** receives any notice in relation to the customer under section 64 of the PPSA, all outstanding payments will become immediately due and payable. The customer agrees to pass such resolutions, execute and sign any documents or forms, as required from time to time to formalise, affirm or perfect the said Security Interest.

ABN 38 001 509 306

STEEL & METAL MERCHANTS &  
STEEL FABRICATORS

### Force Majeure

35. **Edcon Steel Pty. Ltd.** will not be liable for any failure or delay in supply, delivery or installation where such failure or delay is wholly or partly due to any cause or circumstances whatsoever outside the reasonable control of **Edcon Steel Pty. Ltd.** including, but not limited to war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storms or tempest, vandalism or riot, civil commotions or accidents of any kind (each an "Event of Force Majeure"). **Edcon Steel Pty. Ltd.**'s obligations will be suspended until the Event of Force Majeure ceases to cause the failure or delay (as the case may be). The customer will not be relieved of any obligation to make payment to **Edcon Steel Pty. Ltd.** regardless of any party being affected by an Event of Force Majeure.
36. The customer irrevocably grants to **Edcon Steel Pty. Ltd.** and its agents and servants an unrestricted licence, without notice, to enter premises occupied by the customer to identify and remove any of the products the property of **Edcon Steel Pty. Ltd.** or which **Edcon Steel Pty. Ltd.** has a Security Interest in, in accordance with these Terms and Conditions of Quotation and Sale without in any way being liable to the customer or any person claiming through the customer. **Edcon Steel Pty. Ltd.** will have the right to sell or dispose of any such products removed in its sole discretion and will not be liable for any loss occasioned.
37. **Edcon Steel Pty. Ltd.** licences the customer to install the products if appropriate. If the products are affixed to other materials the totality thereof will be the sole and exclusive property of **Edcon Steel Pty. Ltd.** until payment as defined in clause 18 has been made in full to **Edcon Steel Pty. Ltd.** unless the other materials or part thereof are or is the property of a party or parties other than the customers in which case the totality thereof will be deemed to be owned as tenants in common with such other party or parties in shares corresponding to the respective amounts paid or payable by the customer in respect of such other party or parties.

### Termination

38. If the customer fails to comply with any of these Terms and Conditions or the Credit Application Terms (if applicable) being a natural person or persons commits any act of bankruptcy or being a corporation passes a resolution for winding up or liquidation (other than for the purpose of reorganisation or reconstruction) or enters into any composition or arrangement with creditors or if a receiver, manager, receiver manager or administrator is appointed for any property or assets of the customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a Liquidator or Provisional Liquidator is appointed, **Edcon Steel Pty. Ltd.** may, in addition to exercising all or any of its rights against the customer, suspend any further deliveries and immediately enter premises occupied by the customer to recover possession of any products not paid for in accordance with these Terms and Conditions without in any way being liable to the customer or any person claiming through the customer.

### Governing Law & Jurisdiction

39. These Terms and Conditions will be construed according to the Laws of the State of New South Wales, Australia. Any proceedings being instituted and heard must be by an appropriate Court sitting in the State of New South Wales applying the Laws of the State of New South Wales.