

# TRIPLE X STAINLESS STEEL PTY LTD

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## STANDARD TERMS AND CONDITIONS

### 1. Application of terms and conditions

- 1.1 These are the terms on which Triple X Stainless Steel Pty Ltd agrees to supply Goods and/or Services to its customers. If Triple X Stainless Steel Pty Ltd accepts an Order to supply Goods or Services, it is subject to these Terms which bind the Customer upon acceptance of that Customer's order, regardless of whether or not they have signed in acknowledgment.
- 1.2 Triple X Stainless Steel Pty Ltd may vary these Terms from time to time in writing and such variations will be deemed accepted by the Customer and operate as a variation of these Terms by Customer placing a subsequent order for goods with Triple X Stainless Steel Pty Ltd.
- 1.3 Triple X Stainless Steel Pty Ltd may determine in its sole discretion any credit limit granted to the Customer from time to time.
- 1.4 Triple X Stainless Steel Pty Ltd may withdraw or reduce the Customer's credit limit at any time of the Customer breaches these Terms and/or Triple X Stainless Steel Pty Ltd considers, acting reasonably, that it is likely the Customer will breach these Terms. For the avoidance of doubt, Triple X Stainless Steel Pty Ltd is not obliged to give prior notice of any such withdrawal or reduction to the Customer.
- 1.5 Triple X Stainless Steel Pty Ltd does not waive any of its rights under this Agreement if it chooses to accept payment from the Customer, or refuses payment from the Customer, fails or neglects to insist on the Customer's full compliance with the Terms and Conditions of Trade as set out herein. In addition, it will not prevent Triple X Stainless Steel Pty Ltd from exercising the Terms and Conditions of Trade set out herein in the future.
- 1.6 Where the customer trades outside these Terms and Conditions of Trade, or breaches in any way the Terms and Conditions of Trade, Triple X Stainless Steel Pty Ltd may among other things, refuse to supply products to the customer as its own discretion, irrespective of whether an order has already been accepted and acknowledged previously by Triple X Stainless Steel Pty Ltd or not, and Triple X Stainless Steel Pty Ltd will not be liable for any loss or damage of any kind resulting directly or indirectly from such action taken.

### 2. Fitness for purpose

- 2.1 To the maximum extent permitted by law, the Customer agrees that it does not rely solely on the judgment, advice or recommendations made by Triple X Stainless Steel Pty Ltd, its representatives or agents in relation to the suitability of any goods for a particular purpose, use, or function. Any judgment, advice, recommendations, information or assistance provided to the Customer by Triple X Stainless Steel Pty Ltd is done so without any liability by Triple X Stainless Steel Pty Ltd whatsoever in every circumstance. It is the sole responsibility of the Customer to ensure suitability and/or compliance of any goods for any particular purpose, use, or function.

### 3. Prices

- 3.1 Where goods and/or services ordered are sold on a GST exclusive basis, the Customer must also pay Triple X Stainless Steel Pty Ltd an amount equivalent to Triple X Stainless Steel Pty Ltd's GST liability in addition to the GST exclusive purchase price payable for those goods.
- 3.2 If the Customer varies any order, Triple X Stainless Steel Pty Ltd may charge the Customer additional reasonable costs incurred by Triple X Stainless Steel Pty Ltd as a consequence of such variation.
- 3.3 Prices quoted by Triple X Stainless Steel Pty Ltd do not include delivery costs unless expressly confirmed in writing by Triple X Stainless Steel Pty Ltd and the Customer must pay Triple X Stainless Steel Pty Ltd for Triple X Stainless Steel Pty Ltd's reasonable delivery costs.
- 3.4 Triple X Stainless Steel Pty Ltd may request, at its sole discretion the Customer to pay a portion of the purchase price ("Deposit") before Triple X Stainless Steel Pty Ltd manufactures the goods.

- 3.5 The Customer acknowledges the Deposit is non-refundable and, if the Customer fails to pay the balance of the purchase price to Triple X Stainless Steel Pty Ltd in accordance with these Terms, Triple X Stainless Steel Pty Ltd will be entitled, after 7 days written notice to forfeit and apply the Deposit to any costs of expense incurred by Triple X Stainless Steel Pty Ltd in manufacturing or preparing to manufacture the goods.

#### **4. Invoices**

- 4.1 Subject to clause 4.2, Triple X Stainless Steel Pty Ltd will invoice the Customer upon the collection, delivery or installation of the goods ordered.
- 4.2 Notwithstanding clause 4.1, Triple X Stainless Steel Pty Ltd reserves the right to invoice the Customer at any time for the work in progress on any order; and/or prior to the collection, delivery or installation of goods or the performance of services.
- 4.3 Where goods or services are supplied by Triple X Stainless Steel Pty Ltd, the Customer acknowledges and agrees that any tax invoice or (where elected by Triple X Stainless Steel Pty Ltd) progress claim issued by Triple X Stainless Steel Pty Ltd will be a "payment claim" for the purposes of the *Building and Construction Industry Security of Payments Act 1999* or any equivalent legislation.

#### **5. Payment**

If Triple X Stainless Steel Pty Ltd agrees to supply goods and/or services to the Customer on credit terms:

- 5.1 The Customer must pay for goods and/or services ordered within 30 days of the invoice date or within other such period as confirmed in writing by Triple X Stainless Steel Pty Ltd.
- 5.2 If Triple X Stainless Steel Pty Ltd agrees to supply goods and/or services other than on credit terms, the Customer must pay in full before the goods will be supplied or manufactured or the services performed. This clause 5.2 is for Triple X Stainless Steel Pty Ltd's benefit and may be waived by Triple X Stainless Steel Pty Ltd, in which cause clause 5.1 applies.
- 5.3 The Customer shall pay all amounts due in full without any deduction or withholding except as required by law, and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Triple X Stainless Steel Pty Ltd in order to justify withholding payment of any such amount in whole or part.
- 5.4 Should payment owed by the Customer to Triple X Stainless Steel Pty Ltd not be received by its due date, Triple X Stainless Steel Pty Ltd may at its own discretion;
- (a) Immediately cease any extension of credit
  - (b) Immediately at its own discretion without attracting any liability withhold any pending delivery of goods and/or services to the Customer
  - (c) Charge the Customer compounding interest on monies due charged at 20% per annum calculated on a daily basis (also chargeable for dishonoured cheque/s until full payment is received in cleared funds). Interest shall accrue from the due date for payment of each invoice until the date of payment.
  - (d) Charge the Customer for all costs and expenses incurred resulting from a payment default including without limitation; legal costs, collection costs, and administration fees.

#### **6. Delivery**

- 6.1 Triple X Stainless Steel Pty Ltd is not liable for any claims for non-fulfilment, or late delivery of goods and/or services, or for any loss or damage (including consequential loss or damage) arising from delay in delivery, or failure to deliver. The Customer shall accept and pay for the goods and/or services in full notwithstanding late delivery. Time is not of the essence for the delivery
- 6.2 Triple X Stainless Steel Pty Ltd is entitled to deliver the goods and/or services in one, or more lots. Where the delivery of goods and/or services is effected by way of part delivery, Triple X Stainless Steel Pty Ltd shall be entitled to invoice the Customer in, for pro rata progress payments in respect thereof.
- 6.3 Triple X Stainless Steel Pty Ltd shall accept no liability (including without limitation, legal costs, or liquidated damages, or late fees or penalties) arising from delayed deliveries should the goods not be delivered at the time or on the date advised due to circumstance outside Triple X Stainless Steel Pty Ltd control including but not limited to; inclement weather, goods not paid for by the Customer as required by Triple X Stainless Steel Pty Ltd, lack of access on site, requests by primary contractor, or appointed builder to delay delivery at the time of delivery, breakdowns, traffic accidents.
- 6.4 The Customer shall at no time be relieved of their obligation to accept and pay for goods and/or services by reason of any delay in delivery.

- 6.5 The Customer hereby irrevocably agrees to pay for all freight costs for standard, or special deliveries including all costs for rescheduling of deliveries, or any costs resulting from multiple attempts to effect the delivery.
- 6.6 Any time given or quoted for the delivery by Triple X Stainless Steel Pty Ltd, its agents or representatives of any goods and/or services is an estimate only and shall not be binding against Triple X Stainless Steel Pty Ltd at any time.
- 6.7 Any claim by the Customer to Triple X Stainless Steel Pty Ltd for defective goods and/or services, incorrect delivery, incorrect specification, shortfall, damage or otherwise must be given to Triple X Stainless Steel Pty Ltd in writing within 48hrs from the time of delivery;
- (a) If the Customer fails to provide such written notice, then the Customer shall be deemed to have accepted the goods in accordance with the order as required and expected
- 6.8 Triple X Stainless Steel Pty Ltd reserves the right to request a reasonable charge for storage if the Customer delays delivery more than seven (7) days of originally agreed delivery date, regardless of the circumstance.
- 6.9 Goods will be delivered, or deemed to be delivered, at the time they are delivered to the delivery place nominated by the Customer in their purchase order or by way of written confirmation whether in the form of a letter or email to Triple X Stainless Steel Pty Ltd from the Customer or its authorised representative. If no such delivery address is nominated, then delivery will be deemed to have occurred at the time when the goods are ready for collection at Triple X Stainless Steel Pty Ltd's premises and will be invoiced at such time, whether collected by the Customer at the time or at a later date.
- 6.10 The Customer authorises Triple X Stainless Steel Pty Ltd to deliver goods to the place nominated by the Customer and authorises Triple X Stainless Steel Pty Ltd, or their nominated freight carrier to leave the goods at the Customer's nominated place of delivery whether or not any person is present to accept delivery. Triple X Stainless Steel Pty Ltd shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place has been executed, or after the Customer has arranged to pick-up the goods from Triple X Stainless Steel Pty Ltd's nominated pick-up address
- 6.11 Triple X Stainless Steel Pty Ltd is not obliged to obtain a signed receipt, Proof of Delivery (POD), or other acknowledgment from any person at the nominated place for delivery. If in the instance Triple X Stainless Steel Pty Ltd or their nominated freight carrier does obtain a signed receipt, Proof of Delivery (POD), or other acknowledgment is obtained from someone believed by Triple X Stainless Steel Pty Ltd or their nominated freight carrier to be authorised by the Customer to take delivery and obtains a signed receipt, Proof of Delivery (POD), or other acknowledgment, then such signed receipt or other acknowledgement shall be conclusive evidence of the Customer's acceptance of the goods delivered;
- (a) it is the sole responsibility of the Customer to ensure a suitably authorised person is at the point of delivery, at the advised estimated time and date of the delivery; and
- (b) if Triple X Stainless Steel Pty Ltd or their nominated freight carrier is unable to obtain a signed receipt, Proof of Delivery (POD), or other acknowledgment, and yet Triple X Stainless Steel Pty Ltd's nominated freight carrier can provide confirmation delivery was effected the Customer shall accept full responsibility of the possession of such goods delivered; or
- (c) in the event Triple X Stainless Steel Pty Ltd is able to obtain a signed receipt, Proof of Delivery (POD), or other acknowledgment, from any persons at the place nominated by the Customer for delivery Triple X Stainless Steel Pty Ltd or its nominated freight carrier shall understand the signee is an authorised and was nominated by the Customer to do so, and that such a signed receipt, Proof of Delivery (POD), or other acknowledgment shall be conclusive evidence that the goods were delivered and in saleable and usable condition perfectly fit for their intended use as quoted and invoiced to the Customer.
- 6.12 Triple X Stainless Steel Pty Ltd reserves the right to:

Sell or dispose of any goods:

- (a) Not collected by the Customer; or
- (b) Where the Customer refuses to accept delivery of those goods, within 60 days of Triple X Stainless Steel Pty Ltd notifying the Customer goods are available for collection and/or delivery

Recover charges for storage if the Customer fails to collect or accept delivery of any goods on time

Notwithstanding clause 6.12, any shortfall will remain a debt owed by the Customer to Triple X Stainless Steel Pty Ltd which Triple X Stainless Steel Pty Ltd will be entitled to enforce.

## **7. Cancellation**

- 7.1 If the Customer cancels an order for goods, the Customer must, within 14 days of receipt of a written notice from Triple X Stainless Steel Pty Ltd, reimburse Triple X Stainless Steel Pty Ltd for all costs incurred by Triple X Stainless Steel Pty Ltd in manufacturing or preparing to manufacture those goods.
- 7.2 Any failure by the Customer to reimburse Triple X Stainless Steel Pty Ltd in accordance with clause 7.1 of these Terms will result in a debt owed by the Customer to Triple X Stainless Steel Pty Ltd which Triple X Stainless Steel Pty Ltd will be entitled to enforce.

## **8. Inspection**

- 8.1 The customer will inspect the goods comprised in any order immediately upon collection or delivery.
- 8.2 To the maximum extent permitted by law, Triple X Stainless Steel Pty Ltd will not consider any claim for misdelivery, shortage, defect or damage to goods supplied unless such claim is in writing and received within 7 days from the date of collection or delivery of the goods.

## **9. Title & Risk**

- 9.1 The risk in the Goods (including the risk of loss or damage) shall pass to the Customer upon delivery in accordance with these Terms.
- 9.2 Title to the Goods shall not pass to the Customer until Triple X Stainless Steel Pty Ltd has received payment in full (in cash or cleared funds) for:
- (a) The Goods;
  - (b) Any other goods or services that Triple X Stainless Steel Pty Ltd has supplied to the Customer in respect of which payment has become due; and
  - (c) Any other indebtedness by the Customer to Triple X Stainless Steel Pty Ltd
- 9.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) Store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Triple X Stainless Steel Pty Ltd's property;
  - (b) Maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - (c) Notify Triple X Stainless Steel Pty Ltd immediately if it becomes subject to any Insolvency Event; and
  - (d) Give Triple X Stainless Steel Pty Ltd such information relating to the Goods as Triple X Stainless Steel Pty Ltd may require from time to time
- 9.4 The Customer hereby irrevocably grants to Triple X Stainless Steel Pty Ltd, its agents and servants an unrestricted right and licence to enter premises occupied by the Customer without notice to inspect, identify and/or remove any of the Goods to which ACR is entitled.
- 9.5 If the Customer becomes subject to any Insolvency Event before title to the Goods passes to the Customer, or Triple X Stainless Steel Pty Ltd reasonably believes that any such event is about to happen and notifies the customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Triple X Stainless Steel Pty Ltd may have, the Customer's right to re-sell, deal or otherwise dispose of the Goods may be revoked and Triple X Stainless Steel Pty Ltd may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **10. Force Majeure**

- 10.1 Triple X Stainless Steel Pty Ltd will not be liable for any loss, damage, cost or expense suffered by the Customer as a result of any delay or failure by Triple X Stainless Steel Pty Ltd to supply any goods where such delay or failure is due (whether in whole or in part) to any cause or circumstance beyond Triple X Stainless Steel Pty Ltd's control.

## **11. Means and Ability**

- 11.1 The Customer warrants that it has and will continue to have the ability to pay all of its debts as and when they fall due.

## **12. Review of Credit Account**

- 12.1 Triple X Stainless Steel Pty Ltd may, at any time and in its sole discretion, review any credit account provided to the Customer and may, at its option acting reasonably, do any one or more of the following:
- (a) Seek further information from the Customer regarding the Customer's financial position;
  - (b) Allow the continuation of the account;
  - (c) Increase or decrease the credit limit provided to the Customer;
  - (d) Amend payment terms; or
  - (e) Cancel or suspend credit to the Customer
- 12.2 If Triple X Stainless Steel Pty Ltd cancels, amends or suspends any credit account provided to the Customer, Triple X Stainless Steel Pty Ltd will inform the Customer of any such cancellation or amendment as soon as reasonably practical.
- 12.3 The Customer must promptly provide Triple X Stainless Steel Pty Ltd with any further information requested by Triple X Stainless Steel Pty Ltd in accordance with clause 12.1 (a).

## **13. No Liability for Losses**

- 13.1 Triple X Stainless Steel Pty Ltd will not be liable for any loss, damage, costs (including legal costs) and expense suffered by the Customer by reason of the operation of or the exercise by Triple X Stainless Steel Pty Ltd of any rights, benefits or concessions exercisable in accordance with these Terms.

## **14. Indemnity by Customer**

- 14.1 Customer indemnifies Triple X Stainless Steel Pty Ltd against any loss, damage, costs (including legal costs on an indemnity basis) and expense which Triple X Stainless Steel Pty Ltd suffers by reason of:
- (a) The breach by Customer of these Terms; and
  - (b) The operation of or the exercise by Triple X Stainless Steel Pty Ltd of the rights, benefits and concessions exercisable in accordance with these terms

## **15. Building and Construction Industry Security of Payments Act 1999**

- 15.1 At Triple X Stainless Steel Pty Ltd's sole discretion, if there is any dispute or claims for unpaid goods and/or services then the provisions of the Building and Construction Industry Security of Payments Act 1999 ("The Act") may apply.
- 15.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Act, except to the extent permitted by the Act.

## **16. Change to Business**

- 16.1 The Customer agrees to notify Triple X Stainless Steel Pty Ltd immediately of any current or impending changes to Customer's business (that may affect Triple X Stainless Steel Pty Ltd's access to or security of goods). Such changes may include, but are not restricted to, closure of the business, change of ownership or directors, movement of primary place of business, changes to operating hours and/or any financial action (voluntary or otherwise) such as administration, liquidation or receivership.

## **17. Governing Law and Submission to Jurisdiction**

- 17.1 These Terms will be governed by and construed according to the law of New South Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts and tribunals of that State.

## **18. Severability**

- 18.1 Any term of these Terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of these Terms is not affected.

## **19. Entire Agreement**

- 19.1 These Terms together with any application for credit, order, delivery invoice or receipt constitute the entire arrangements between the parties with respect to its subject matter and supersede all previous agreements and arrangements, whether verbal or written, between the parties with respect to that subject matter.