



# APPLICATION FOR COMMERCIAL CREDIT

This Account Application shall be in respect of Aotai (Australia) Investment and holding Pty Ltd - Fine Steel. (ABN 36 157 862 032)

## BUSINESS DETAILS

Registered name of incorporated body

 ("the Applicant")

Trading name/business name (if any)

Business name registration number (if any)

Previous trading name (if applicable)

Date business commenced

Australian Business Number (ABN)

Type of entity

- Public Company   
  Private Company   
 Australian Company Number (ACN) \_\_\_\_\_  
 Trustee   
  Partnership   
  Sole Trader   
  Government

Parent company (if any)

Parent company's ACN

Postal address

Postcode

Business address

Postcode

Telephone number

Web address

Contacts - Authorised officer

Phone/Mobile

Email address

Contacts - Accounts payable officer

Phone/Mobile

Email address

Email address for invoicing

Has the Applicant or any associated company or person traded with our companies or businesses in the past?

- Yes   
  No

If yes, under what name?

# APPLICATION FOR COMMERCIAL CREDIT

## DETAILS OF DIRECTORS, PARTNERS AND PROPRIETORS

1.	Full name	Date of birthday
	<input type="text"/>	<input type="text"/>
	Position / occupation	Drivers licence number
	<input type="text"/>	<input type="text"/>
	Residential address	Postcode
	<input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
2.	Full name	Date of birthday
	<input type="text"/>	<input type="text"/>
	Position / occupation	Drivers licence number
	<input type="text"/>	<input type="text"/>
	Residential address	Postcode
	<input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
3.	Full name	Date of birthday
	<input type="text"/>	<input type="text"/>
	Position / occupation	Drivers licence number
	<input type="text"/>	<input type="text"/>
	Residential address	Postcode
	<input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>

## BANK DETAILS

Bank	Branch	
<input type="text"/>	<input type="text"/>	
Name / title of account	BSB	Account No.
<input type="text"/>	<input type="text"/>	<input type="text"/>

## TRADE REFERENCES (MAJOR SUPPLIERS)

1.	Email	Phone
<input type="text"/>	<input type="text"/>	<input type="text"/>
2.	Email	Phone
<input type="text"/>	<input type="text"/>	<input type="text"/>
3.	Email	Phone
<input type="text"/>	<input type="text"/>	<input type="text"/>

## ANTICIPATED MONTHLY PURCHASES

\$	(this field must be completed)
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## PRIVACY STATEMENT

AOTAI (AUSTRALIA) INVESTMENT AND HOLDING PTY LTD, trading as "Fine Steel" ('the Company', 'We') are committed to protecting and maintaining the privacy, accuracy and security of all personal information held by the Company. The Company will take reasonable steps when handling personal information consistent with our obligations under both the Privacy Act 1988 (Cth) and the Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth). The Company will ensure that personal information is collected, used, held and disclosed by the Company in accordance with the 13 Australian Privacy Principles (APPs) under the Privacy Act 1988. This policy applies to any person, or their nominated representative, who has provided the Company with their personal information for the purpose of buying, selling or otherwise dealing with the Company.

### 1. The kinds of personal and sensitive information that the Company collects and holds

The Company collects personal information directly from the subject or their representative. Personal information is any information about an individual, whether true or not, where the individual can reasonably be identified. Personal information may be gathered by a variety of ways, including but not limited to order forms, telephone, email or face to face meetings. The kinds of personal information the Company may collect and hold, includes but is not limited to:

- Name; Address; Contact details; Identity documents
- Australian Business Number (ABN)
- Credit card and details of other payment instrument
- Financial and billing information (including but not limited to bank account details)
- Order records
- Country of origin

This information may be held because, you or the entity you work for or act on behalf of, have engaged the Company for a service or create certain commercial relationship with the Company, where we have requested it (either directly from you or the entity that you work for or act on behalf of) ..

By signing on this document, you agree to provide your consent for us to collect and hold your information. If you provide us with third party personal information, you warrant to us that you hold the third party's consent to provide their personal information to us under this Privacy Statement.

### 2. The purposes for which personal information is collected, held, used and disclosed

The Company will only collect information if it is necessary to carry out the Company's functions and activities. This collection and storage will be by lawful and fair means.

We may use and disclose your personal information for a variety of reasons. These reasons include, but are not limited to:

- providing the service you wish to use;
- Supplying the goods you ordered;
- providing any technical or after sales support to you;
- processing the payments from you for our goods and services;
- checking and verifying the information you have provided, and the personal information located from other sources is correct;
- to communicate with you, our customer;
- to understand the needs of our customers and continuously develop and improve our products and services;
- to protect against fraud or other misuse or loss of data;
- improving our internal management purposes;
- When liaising with affiliated and non-affiliated entities both domestically and internationally;
- for any other purpose permitted by law or with your further consent.

The data and all personal information collected and held by us may also be used as part of our internal processes such as audits and quality controls.

### 3. Circumstances that personal information may be disclosed by the Company

We will endeavour to only use and disclose personal information for the primary purpose of conducting our functions and activities. However, there may be circumstances where personal information is disclosed for purposes other than the Company's primary purpose. We may disclose personal information to:

- Credit reporting agencies and courts, tribunals and regulatory authorities where our customers fail to pay for goods or services provided by us to them;
- Courts, tribunals, regulatory authorities and law enforcement officers as required by law, or in connection with any actual or prospective legal proceedings, or in order to establish, exercise or defend our legal rights;
- Government agencies, such as the Australian Taxation Office, Federal Police or other police force, AUSTRAC, corporate regulators such as Australian Securities and Investments Commission and other government agencies or regulatory bodies, if the Company is required to do so under law or by order; and
- Third parties, including agents or sub-contractors, who assist us in providing information, goods/products, services or direct marketing to you. This may include parties located, or that store data, inside or outside of Australia.

If there is a change of control of our business or a sale or transfer of the whole or part of the business assets, we reserve the right to transfer to the extent permissible by law our user

databases, together with any personal information and non-personal information contained within these databases. This information may be disclosed to a potential Purchaser. We would seek to only disclose information in good faith.

### 4. The quality of the information collected, used, held and disclosed

The Company will take reasonable steps to ensure that the personal information it collects, uses, holds or discloses is accurate, complete and up to date. All staff with access to, and required to deal with, personal information will be trained in the need for confidentiality in order to protect the privacy and personal information of individuals.'

### 5. The security of the information collected, used, held and disclosed

In order to ensure the integrity of all information the Company will take all reasonable steps to hold personal information in a manner which is secure and protected from unauthorised access. These 'reasonable steps' will include mechanisms such as password protection, physical restrictions and staff training in order to ensure no information is incorrectly modified, disclosed, misused or lost.

The information will be held in either a physical or electronic form. Any unsolicited personal information received by the Company will be destroyed as soon as practicable if it is lawful and reasonable to do so.

Personal information stored by us may be destroyed by the intentional act of the Company or not..

Secure disposal of electronic records will include:

- Overwriting records before they are deleted;
- Deleting backup files;
- Physically destroying drives and backup files

Secure disposal of paper based records will include:

- Shredding of paper files; and
- Contacting an authorised disposal company for secure disposal.

### 6. Access and correction of personal information

The Company will provide access to information within a reasonable period of time. Reasonable steps will be taken to provide access and if access to information is refused the Company will provide reasons for this refusal in writing. The mechanisms to complain about the refusal will be provided upon request.

You can ask for information to be corrected if it is inaccurate, out of date, incomplete, irrelevant or misleading. If the Company is satisfied this is the case, reasonable steps will be taken in order to correct the information. Requests for personal information must be in writing and all requests will be responded to within 30 calendar days.

Whilst employee records are exempt from the Privacy Act 1988 (Cth) and the Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth), the Company will still ensure that information held on current and former employees is kept confidential. Any information that the Company holds on prospective candidates for employment will be destroyed in accordance with clause 1.4 of this policy.

To seek access to, or correction of, your personal information please contact the Company as follows:

- By email: [admin@finesteel.com.au](mailto:admin@finesteel.com.au)
- By mail: 271 Edgar Street Condell Park NSW 2200

### 7. Cross Border data flows

The Company may on occasion be required to transfer or store personal information with/ to a person or related body corporate in a foreign country. This transfer will take place if the information is subject to a law, binding scheme, or contract which treats information with a substantially similar integrity as the Australian Privacy Principles. The Company will take reasonable steps and conduct sufficient enquiry in order to ensure this is the case.

In some cases, your personal information may be required to be disclosed to organisations pursuant to foreign law, and we will disclose the information only when it is necessary to do so.

### 8. Complaint Process

Complaints regarding the information that the Company collects, uses, holds or discloses should be made in writing to The Manager. If a company or individual believes there is a breach of this policy or the Privacy Legislation, a written complaint should be made to The Manager. All complaints will be dealt with confidentially and promptly.

### 9. Policy Revision

The Company may revise or update this policy at any time by posting a revised policy on our website. Please note that our use of your personal information will be based on the privacy policy in effect at the time the information is used.

## TERMS & CONDITIONS OF CONTRACT SUPPLY OF GOODS AND SERVICES

### 1. Definitions

#### A. In these terms and conditions:

- I. **Amount** payable means, at any time, all amounts payable by the Purchaser to Fine Steel at that time (whether or not those amounts have become due for payment under any provision of these terms and conditions) in connection with Goods, Services and/or a contract, (including without limitation any invoiced amount, interest, fees, costs or expenses);
  - II. **Contract** means the contract created in accordance with clause 3; and any other contract to which these Terms and Conditions are expressed to form part;
  - III. **Contract Price** means the price list of the Goods attached with the Contract and forms part of the Contract.
  - IV. **Contract Sum** means for Goods where the Contract provides:
    - i. a lump sum, the lump sum; and
    - ii. agreed rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of Goods actually carried out in the Contract by the rate accepted by the Purchaser in the Quotation for that section or item;
    - iii. a lump sum and rates, the aggregate of the sums referred to in paragraphs (i) and (ii), adjusted by any additions or deductions made pursuant to this Contract. If the Contract is silent, (ii) shall apply;
  - V. **Order** means a request for a delivery of Goods issued by the Purchaser to Fine Steel;
  - VI. **Delivery Order** means the upon the acceptance of the Purchaser's Order, Fine Steel agrees to deliver the goods to the location nominated by the Purchaser, which must be within Great Sydney Region in the manner sets out in the Contract
  - VII. **Goods** means goods, materials and any related services supplied by Fine Steel under a Contract;
  - VIII. **Goods in Process** means those goods which is in process of becoming part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass, in order to be produced to the Goods ordered by the Purchaser pursuant to this Contract;
  - IX. **Purchaser** means the person, or entity that agrees to purchase the goods and/or services by entering into the Contract with Fine Steel;
  - X. **Quotation** means the pricing list for Goods and/or Services with specification and details of the goods marked as "Quotation" (which may or may not be attached to these Terms and Conditions) issued from Fine Steel to the Purchaser;
  - XI. **Quote Acceptance** means communication by the Purchaser of acceptance of the terms of a Quotation (including these terms and conditions) by either:
    - i. the Purchaser signing and returning to the Fine Steel these Terms and Conditions;
    - ii. the Purchaser communicating that it accepts the terms of the Quotation, either in writing, orally or by conduct;
    - iii. the Purchaser directing the Fine Steel to deliver the Goods after it receives the Quotation;
  - XII. **Relevant Information** includes all specifications relating to the Goods or Services, the application of the Goods or Services, Site Details, and other matters that may affect the Fine Steel's ability to supply the Goods in a manner that conforms to the Purchaser's requirements as to performance or compliance with a standard communicated to the Fine Steel by the Purchaser or with which the Purchaser ought reasonably to be aware that the Fine Steel will be bound by Contract, Law, custom or usage to conform
  - XIII. **Fine Steel** means Aotai (Australia) Investment and Holding Pty Ltd ABN 36 157 862 032 trading as Fine Steel, its associated companies, related bodies corporate (as that term is defined in the Corporations Act 2001), successors and assigns or any person acting on behalf of and with the authority of the Fine Steel, and any person or entity claiming under or through the Fine Steel;
  - XIV. **Site Details** includes all relevant details concerning gradients, substructures, surface conditions, and obstructions (including gates), width of access ways, footpath and pavement strengths at on or under the delivery site and any Laws that regulate or affect the time or manner of safe, timely and lawful delivery to the site.
  - XV. **Working Documents** means architectural drawings, structural drawings, constructions drawings, specifications and reinforcement schedules or other documents together with any variation or site instruction;
  - XVI. **Service** means any labour performed and/or services provided by Fine Steel under the Contract, or associated with the goods under the Contract (whether or not a fee is charged for such labour and/or services), including by not limited to estimating, scheduling, re- scheduling, detailing, re-detailing, design, re-design, prefabrication, project management, steel fixing and administrative services;
  - XVII. **Delivered** means when the Goods are delivered to the Purchaser in accordance with clause 12 B or 12 C;
  - XVIII. **Excluded Items** means (unless expressly stated in the Quotation to be provided):
    - ii. tire wire, bar chairs, threading and/or screwing, saw cutting, mechanical splices, welding of any nature, blacksmithing, press work, butt welding, assembly of Goods, supply and location of lifting hooks, slings and cradles; supply of bars exceeding lengths of 12 metres or exceeding diameter of 36mm; delivery of oversized loads or provision of vehicle escorts; brickwork reinforcing and holding down bolts; galvanizing; on-site scheduling; product containers; steel fixing; on-site accommodation; provision of traffic control; or such other items specified in the Quotation as being excluded;
    - iii. where the Quotation states that prefabricated elements, such as reinforcing elements or cages, engineered manufactured items and steel fixing are included, the Quotation includes the cost of welding of those items unless otherwise stated in the Quotation. The Quotation does not include the cost of or associated with lifting or lowering to position on site; site scaffolding; supply and welding of lifting points; or site welding
  - XIX. **Variation** means a change to the Goods arising from:
    - i. the Contract;
    - ii. a change in method or process for, or the sequence of, the carrying out of the Goods including Delivery of the Goods;
    - iii. an alteration to the specification for the Goods;
    - iv. changes in levels, dimensions, or set out for Goods;
    - v. the Fine Steel performing any of the services identified at clause 23;
    - vi. printing in accordance with clause 24C.
  - XX. **Commercial Credit Account** means a trading account granted in writing by the Fine Steel to the Purchaser;
  - XXI. **Consequential Loss** includes any direct or indirect loss, any loss of profit or opportunity, expectation loss, delay loss, loss of use, loss of business or any from of consequential, special, punitive or exemplary loss or damages, regardless of whether a party foresaw or could foresee the other party suffering a loss of that kind and howsoever it arises or is claimed (including as a result of negligence or by the operation of Law);
  - XXII. **Writing** includes an electronic transmission;
- B. A reference to an Act includes regulations and other instruments made under it, and consolidations, amendments, re-enactments or replacements of any of them from time to time.

### 2. Quotations and pricing

- A. Fine Steel may at any time and at its absolute discretion to provide a quotation on request of Purchaser.
- B. The Purchaser acknowledges that any quotation provided by Fine Steel shall be treated as an invitation to trade and not as an offer. Acceptance

## TERMS & CONDITIONS OF CONTRACT SUPPLY OF GOODS AND SERVICES

of a quotation itself does not create any binding contract between Fine Steel and the Purchaser.

- C. A quotation is valid for a period of 20 days from the date of the quotation subject to change and variation, unless Fine Steel specifies otherwise in writing. Any quotation may be withdrawn at any time by notice from Fine Steel at its absolute discretion.
- D. Fine Steel reserves the right to change the pricing in the contract for the whole or any part of the contract if:
- I. Supply of the quoted goods and/or works does not proceed in accordance with the construction program indicated at the time the order is accepted;
  - II. Supply under the contract is stopped or suspended for more than 30 days; or
  - III. Supply under the contract is changed in any way before, during or after commencement of supply, including but not limited to re-design of the project, the start date of supply, the completion date of supply and the agreed rate of supply of the goods and/or services; or
  - IV. Supply under the contract has not been completed within twelve months of the date of the quotation.
- E. The Quotation is provided to the Purchaser based on the quantity of the goods and services described in the Purchaser's enquiry. The Quotation is subject to change and variations should the Purchaser orders the Goods and services in different kinds and quantity.
- F. All amounts shown in Fine Steel Quotations and invoices may be rounded up or down to the nearest multiple of 10 cents.
- A. The Quotation or the Contract Price is calculated and estimated by Fine Steel as at the date of the Contract. Therefore, during the term of the Contract, Fine Steel may vary the Contract Price of the Goods and/or services where it incurs extra costs (including the increase of Fine Steel's costs in the course of the transaction or due to change of law) in supplying the Goods and/or Services.
- B. The Purchaser acknowledges that Fine Steel is entitled to serve a price Variation in writing to the Purchaser by email if the circumstance provided in clause 4.A occurs.
- C. The Purchaser agrees that the price Variation served by Fine Steel under clause 4.B will be taken to be automatically accepted and approved by the Purchaser after 5 business days from the date of the email sent by Fine Steel under clause 4.B, and in this regard, the Purchaser irrevocably authorised Fine Steel to proceed the Contract with the Variation of the Contract price or the Contract Quotation.
- D. The Purchaser agrees and acknowledges that they must not raise any objection, make enquiry or claims against, or request to terminate the Contract if the Price Variation is less than 5% of the Contract Price.
- E. If the Price Variation exceed 5% of the Contract Price, the Purchaser may terminate this Contract by giving Fine Steel a written notice to that effect within 5 business days of receiving the Price variation from Fine Steel pursuant to this subclause.
- F. If the Purchaser elect to terminate this Contract under clause 4.E, the Purchaser must pay to Fine Steel for the Goods and Services supplied by Fine Steel to the date of the Termination, including the Goods in Process and the cost of materials ordered from suppliers for purpose of producing the Purchaser's order that are non-refundable.
- G. If the Purchaser ask for a variation of the Goods or services, Fine Steel must reply in writing for the variation as soon as is reasonable.
- H. Fine Steel's reply under clause 4.G is to be either:

### 3. The Contract

- A. An Order or offer to purchase Goods and/or services must be made by the Purchaser in writing;
- B. An order or offer made by the Purchaser does not constitute a binding contract until Fine Steel accepts such order or offer. Upon the acceptance, this terms and conditions shall incorporate forming part of the Contract between Fine Steel and the Purchaser.
- C. An order or offer made by a Purchaser is accepted by Fine Steel only if Fine Steel:
- I. Formally accepts the order by in writing; or
  - II. Delivers the ordered Goods and/or Services described in the order, whichever occurs first
- D. Once the Contract is formed between Fine Steel and the Purchaser, subject to clause 4 of this Terms and Conditions, the contract cannot be changed or varied, nevertheless it is requested by the Purchaser or not, as to the quality, quantity, specifications, details and nature of the Purchaser's order without a written consent from Fine Steel.
- E. The Contract, when created is wholly documented by (in descending order of precedence):
- I. Any specific terms agreed by the parties in accordance with clause 6;
  - II. The Quotation and/or the Contract Price (if applicable);
  - III. These terms and conditions;
  - IV. The relevant Working Documents
  - V. The applicable Delivery Order
  - VI. The credit terms applying to the Purchaser (if applicable).
- F. Previous dealings between Fine Steel and the Purchaser have no effect on this contract.
- G. Trade custom and/or trade usage is superseded by the Contract and is not applicable in interpretation of the Contract.
- H. The Contract constitutes the entire agreement between Fine Steel and the Purchaser with respect to the goods supplied or services provided under the Contract and all prior negotiations, proposals and correspondence are superseded by this Contract.
- I. Unless agreed otherwise in writing, Fine Steel may, by written notice, terminate the Contract 12 months after the date of first delivery of the Goods and/or Services.

### 4. Price variation

- a. A new Contract price list for the goods and service after variation; and  
Any extension of time for the goods and services to be supplied as result of the variation.(if applicable). or
- b. A refusal to the variation, and Fine Steel does not have to give any reasons for the refusal of the Variation.

### 5. Quantities

- A. Generally the steel mass of steel reinforcing goods supplied will be within the tolerances permitted by Australian Standards AS/NZS4671, AS3600, AS5100, AS2870, AS2327 AND AS/NZS1100.
- B. When calculating the mass of steel reinforcing Goods, Fine Steel will make calculations of nominal mass on a per metre basis in accordance with AS/NZ4671. Fine Steel will increase the nominal mass of steel reinforcing Goods (calculated pursuant to AS/NZ4671) sold by it by a percentage to be set by Fine Steel from time to time, taking into account factors including manufacturing variations, but the percentage will not exceed 5%.
- C. Calculations with respect to the length of steel reinforcing will be made in accordance with AS/NZS1100 part 501.
- D. Unless the Contract states the price is a lump sum, the price in the Contract or Contract quotation is based on indicative quantities of goods and services as applicable and, unless the price is a lump sum, the Purchaser is liable to pay for the actual quantity of goods supplied and the quantum of the services necessary for Fine Steel to perform its obligations. Other than with a lump sum price, any adjustment in the actual price compared to the quoted price will reflect the change of the goods and/or services actually supplied or provided.
- E. Quantities included in quotations, other than for a lump sum price, are indicative only and are not guaranteed by Fine Steel irrespective of their source.
- F. Any goods supplied at the Purchaser's request (whether verbally or in writing) that are not listed on the Contract or a quotation, whether verbal or in writing, will be invoiced at Fine Steel prevailing list rates.

### 6. Variations

- A. No variation of the contract is effective unless it is agreed to by both parties in writing.

## TERMS & CONDITIONS OF CONTRACT SUPPLY OF GOODS AND SERVICES

### 7. Warranties and limitation of liability

- A. To the extent permitted by law, all implied conditions and warranties are excluded. To the extent that any implied conditions and warranties cannot be excluded, the Purchaser's sole and exclusive remedy for any loss or damage (whether direct, indirect, liquidated, special or consequential and including loss or damage arising as a result of death or personal injury to the Purchaser or any other person) however arising (including by reason of any breach of contract, condition or warranty in contract (whether express or implied)) is, where permitted at law, limited to any one of the following as determined by Fine Steel
- I. In the case of any goods supplied by Fine Steel are defected pursuant to the contract, :
    - i. The replacement of the relevant goods or supply of equivalent goods; or
    - ii. The repair of the goods; or
    - iii. After negotiation between Fine Steel and the Purchaser, payment of the cost of replacing or repairing or having the goods replaced or repaired; or
    - iv. Reimbursement of some or all amounts paid by the Purchaser in respect of the goods.
  - II. In the case of any service supplied by Fine Steel is not performed in a satisfactory standard pursuant to the Contract:
    - i. The provision of the services again; or
    - ii. Payment of the cost of having the relevant services provided again; or
    - iii. Reimbursement of some or all amounts paid by the Purchaser in respect of the services.
- B. Goods which are not manufactured by Fine Steel are subject solely to the warranties (if any) specified by the manufacturers or the third party suppliers to Fine Steel and the Purchaser acknowledges that, to the extent permitted by law, Fine Steel gives no warranties beyond such manufacturer's or suppliers' warranties.
- C. The Purchaser acknowledges that Fine Steel makes no representations or warranties as to the fitness or suitability for any purpose of any of the goods or services described in the quotation or contract.
- D. Except as required by law, Fine Steel is not obliged to accept goods returned for any reason.
- E. Fine Steel is not liable for the design, lifting and/or position of any pre-fabricated elements at the Purchaser's site, including but not limited to manually tied and/or welded components.
- F. Subject to clause 7.A And part va of the trade practices act 1974 (cth), the Fine Steel is not liable to the Purchaser for any loss or damage, whether direct, indirect, liquidated, special or consequential and including loss or damage arising as a result of death or personal injury, however caused (including negligent or reckless conduct or omission) which the Purchaser or any other person may suffer or incur and which may, without limiting the generality of the foregoing, arise directly or indirectly in respect of the goods and/or services, any defects in the goods and/or services or in respect of any failure or omission by Fine Steel or any of its officers, agents or employees to comply with the contract or any obligation imposed by law.

### 8. Invoicing and payment

- A. Where the Purchaser has an established and approved commercial credit account with Fine Steel, the Purchaser must comply with the terms and conditions of that commercial credit account. Fine Steel reserves the right to charge an administration fee as determined

from time to time to cover credit card merchant fees and Fine Steel associated overhead charges.

- B. If the Purchaser has a commercial credit account with Fine Steel then, unless otherwise agreed in writing:
- I. Fine Steel may issue invoices for goods and services either:
    - i. On despatch of such goods and/or services; or
    - ii. When such goods and/or services are delivered; or
    - iii. When such goods and/or services are deemed delivered in accordance with clause 12; and
  - II. The Purchaser must pay all invoices in full and without set-off by the last business day of the month following the month in which the invoice was issued.
- C. If the Purchaser does not have a commercial credit account with Fine Steel then the Purchaser must pay Fine Steel for the goods and/or services at the time it places an order for such goods and/or services with Fine Steel.
- D. Fine Steel reserves the right to charge additional administration fees (such as commercial credit account keeping fees) as determined by Fine Steel from time to time.
- E. If Fine Steel delivers only part of an order, then it may invoice, and the Purchaser must pay for, that part of the goods and/or services delivered, unless otherwise agreed in writing between the parties.
- F. The Purchaser is not entitled to, and must not demand or hold, any sum on account of retention for completion of the contract to be performed by Fine Steel or against any pending or unsecured claim against Fine Steel. If the Purchaser withholds any money as retention money, Fine Steel reserves the right to withhold further supply under the contract or any other contract between Fine Steel and the Purchaser.
- G. The granting of credit does not oblige Fine Steel to extend any particular amount of credit to the Purchaser and Fine Steel may withdraw, refuse, suspend or limit credit to the Purchaser at any time, in its absolute discretion, without notice or providing any reason.
- H. The Purchaser must notify Fine Steel in writing if there is any change in the shareholding or ownership of the Purchaser or any change in the Purchaser's financial position.

### 9. Default and termination

- A. If:
- I. The Purchaser refuses or fails to pay any amounts when due under the contract; or
  - II. The Purchaser defaults in performing any of its obligations under the contract; or
  - III. In Fine Steel reasonable opinion, the Purchaser is insolvent or suffering from financial issues including but not limited to, if the Purchaser is an individual, the Purchaser commits an act of bankruptcy, or, if the Purchaser is a company, it becomes an externally-administered body corporate or passes a resolution to wind up; or
  - IV. The Purchaser is in breach of contract, then in addition to and without prejudice to any other rights it has by law, Fine Steel:
    - V. Is entitled to treat the whole of the contract as repudiated;
    - VI. May refuse to supply the goods or provide the services to the Purchaser;
    - VII. Is entitled to treat any other contract between Fine Steel and the Purchaser as repudiated; and
    - VIII. Is entitled to claim return of any goods in possession of the Purchaser where title has not passed to the Purchaser.
- B. The Purchaser is not entitled to terminate suspend or cancel part or all of the contract for any reason (including for convenience) except if Fine Steel has failed to remedy its breach of the contract within

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a reasonable period after the Purchaser gives it written notice of such breach. If the Purchaser purports to wrongly terminate or rescind part or the entire contract or refuses to take delivery of any goods delivered in accordance with the contract, Fine Steel may recover from the Purchaser the total amount of the order placed on Fine Steel, less any amounts already paid by the Purchaser.

### 10. Money owing

- A. A statement in writing as to any amount owing under the contract by the Purchaser on the date mentioned in such statement is prima facie evidence that such amount is owing.

### 11. Tax

- A. Unless otherwise agreed in writing or required by law, all amounts stated in a quotation or payable under the contract are calculated or expressed exclusive of GST. If GST is payable, the amount of GST will be specified separately in the relevant documentation
- B. If GST is or becomes payable by a supplier in relation to a supply under the contract, the recipient of that supply must pay to that supplier an amount equal to the GST. An amount payable under this clause 11 must be paid:
- I. At the same time as the payment of the amount in respect of that supply is due; and
  - II. In addition to the amount payable under the contract.
- C. The Purchaser is not obliged to pay any GST unless a valid tax invoice has been issued.
- D. If the Purchaser fails to pay such GST when due, Fine Steel may recover it from the Purchaser as debt under the contract.
- E. Any party that becomes aware of the occurrence of any adjustment event in connection with the contract must notify the other party as soon as possible. The parties must then take whatever steps are necessary and make whatever adjustments are required to ensure that any additional GST or refund of GST, on that supply is paid no later than 20 business days after the parties first become aware of the adjustment event.
- F. For the purposes of this clause 11, terms used in this clause 11 which are defined in the a new tax system (goods and services tax) act 1999 (cth) have the meaning given to them in the act.

### 12. Delivery

- A. Delivery of goods will be in accordance with the applicable Delivery Order. It is the Purchaser's obligation to ensure that it complies with and observes the terms and conditions of the Delivery Order. Fine Steel may deliver the goods in any number of instalments.
- B. If Fine Steel quotes the price as "ex works", the Purchaser must collect the goods from Fine Steel nominated location at the time notified by Fine Steel to the Purchaser.
- C. If Fine Steel quotes the price as "delivered", it will deliver the goods to the Purchaser's nominated location and the Purchaser must:
- I. Nominate the location for delivery in writing to Fine Steel at least one clear business day prior to the delivery;
  - II. Ensure that a receiving area is available which complies with all applicable occupational health, safety and welfare legislation;
  - III. Ensure that its representative is available at the time of delivery to acknowledge delivery by signing a delivery receipt.
  - IV. Offload the Goods immediately on arrival of the delivery; and
  - V. Notify Fine Steel any shortage or non-compliance of the Goods delivered from Purchaser's order within 24 hours

from the time of delivery.

- D. If Fine Steel obligation is to deliver the goods and the Purchaser or its representative is not in attendance when the goods are delivered at the Purchaser's nominated site, Fine Steel reserves the right to unload the goods.
- E. Where the Purchaser does not accept delivery of goods or allow performance of the services which it has ordered from Fine Steel when such goods and/or services are ready for delivery or performance, the Purchaser is liable for any additional charges that Fine Steel may incur for storage and/or double handling, and any labour costs for re-loading (if applicable) at Fine Steel then current rates.
- F. If goods are to be despatched "ex works" they are deemed delivered at the premises of Fine Steel when Fine Steel notifies the Purchaser that the goods are ready for collection.
- G. If goods are to be delivered by Fine Steel, they are deemed to be delivered:
- I. If the parties agree that the Purchaser or the Purchaser's representative will unload the goods, when Fine Steel delivers the goods on a truck to a site adjacent to the Purchaser's nominated site; or
  - II. When Fine Steel has, on request of the Purchaser or the Purchaser's representative, unloaded the goods at or adjacent to the Purchaser's site to a flat, ground level area.
- H. If goods are to be delivered by Fine Steel then, unless otherwise agreed in the contract or unless otherwise provided in the delivery offer, the Purchaser must at its cost unload the goods.
- I. Fine Steel will make all reasonable efforts to have the goods delivered to the Purchaser as agreed between the parties but Fine Steel is not liable for:
- I. Any failure or delay in delivery of part or all of the contract for any reason; or
  - II. Any damage or loss due to unloading or packaging; or
  - III. Damage to property cause upon entering premises to deliver the goods.

### 13. Risk

- A. Risk in the goods passes to the Purchaser on:
- i. If it is Delivery Order, Delivery of the goods to the location nominated by the Purchaser; or
  - ii. Deemed delivery of the goods to the Purchaser in accordance with clause 12, whichever occurs first.
- B. It is agreed that the Purchaser is responsible for offloading the Goods nevertheless it is a Delivery Order or not, thus Fine Steel will not be responsible for any claim from the Purchaser arising out of or in connection with offloading of the Goods.
- C. If Fine Steel officers, agents or employees access to any property at the expressed or implied request of the Purchaser, the Purchaser acknowledges that Fine Steel accepts no responsibility for any damage suffered by the Purchaser or the Purchaser's officers, agents or employees or to the Purchaser's property as a result of or in connection with Fine Steel officers, agents or employees accessing such property, and the Purchaser shall indemnify loss and damage suffered by Fine Steel or its officers, agents or employees directly or indirectly as a result of such access
- D. If a vehicle engaged in the delivery of goods to the Purchaser's property is disabled or damaged due to the condition of the Purchaser's property, the Purchaser is liable for the cost of salvage of, or repair to the vehicle. The Purchaser indemnifies Fine Steel and keeps Fine Steel indemnified against any loss or damage suffered by Fine Steel, or as a consequence of Fine Steel becoming liable to any third party, directly or indirectly as a result of Fine Steel officers, agents or employees entering any property at the actual or implied request of the Purchaser or unloading the goods.

## TERMS & CONDITIONS OF CONTRACT SUPPLY OF GOODS AND SERVICES

### 14. Legal title and related matters

- A. The legal and equitable title to the goods will only be transferred from Fine Steel to the Purchaser when the amount payable has been reduced to zero.
- B. Until the amount payable has been reduced to zero:
- I. The Purchaser holds the goods as bailee for Fine Steel and that a fiduciary relationship exists between the Purchaser and Fine Steel.
  - II. The Purchaser must keep the goods separate and in good condition as a fiduciary of Fine Steel, clearly showing Fine Steel ownership of the goods, and must keep books recording Fine Steel ownership of the goods and the Purchaser's sale or otherwise of them in accordance with clauses 14.D and 14.E. The Purchaser, if required, must deliver up the goods to Fine Steel.
- C. If the Purchaser defaults, in addition to Fine Steel rights under clause 9, Fine Steel may take possession of the goods wherever the goods are located and the Purchaser agrees that representatives of Fine Steel may enter upon the Purchaser's premises for that purpose.
- D. Despite clause 14.A But subject to clause 15, the Purchaser may sell as fiduciary agent for Fine Steel the goods to a third party in the normal course of the Purchaser's business provided that where the Purchaser is paid by that third party, the Purchaser holds the proceeds of sale, to the extend the amount payable on trust for Fine Steel. The Purchaser must keep those proceeds separate on trust for Fine Steel and not mix those proceeds with any other monies.
- E. Unless expressly agreed in writing, Fine Steel will allocate and apply amounts received from the Purchaser in the following order:
- I. In or towards payment of any part of the amount payable which is not part of the purchase price of any goods, in the order in which those amounts were incurred;
  - II. Secondly, in or towards payment of the purchase price of goods in the order in which those goods were invoiced.
- This order of allocation and application will apply notwithstanding any instruction, request or appropriation of the Purchaser as to the way in which a payment made by it should be applied by Fine Steel, or any condition attached by the Purchaser to any payment made by it.
- F. If the Purchaser uses the goods in some manufacturing or construction process of its own or some third party, then the Purchaser holds such part of the proceeds of such manufacturing or construction processes as related to the goods on trust for Fine Steel. Such part is deemed to equal in dollar terms the amount owing by the Purchaser to Fine Steel at the time of the receipt of such proceeds. The Purchaser must keep that part of the proceeds separate on trust for Fine Steel and not mix those proceeds with any other monies.
- G. Notwithstanding the above, the Purchaser is still required to pay Fine Steel for goods already delivered and for the goods manufactured or ordered to specification and not yet delivered.

### 15. Charge

- A. The Purchaser hereby charges with payment of any indebtedness to the Fine Steel all beneficial interest (freehold and leasehold) in land and personal property held now or in the future by the Purchaser. The Purchaser agrees that if demand is made by the supplier, the Purchaser receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required, and against the event that the Purchaser fails to do so within a reasonable time of being so requested, the Purchaser hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by the supplier to be its

true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto the supplier may lodge a caveat noting the interest given by this charge on the title of any property of the Purchaser whenever it so wishes.

### 16. Resales

- A. The Purchaser agrees that it will not re-supply the goods supplied to it by the supplier without the supplier's prior written consent which the supplier may withhold at its absolute discretion.

### 17. Security Interest an Notices

The Purchaser (Grantor) has agrees to grant a security interest to Fine Steel as Security Party to secure all money payable by the Purchaser under this Contract or its Money Owing pursuant to clause 10 in the Collateral. To the extent any Collateral is not transferable, the charge granted by the Purchaser is a floating charge over Revolving Assets and a fixed charge over all Other Property.

#### A. Definition

- I. Collateral means all the Grantor's present and after<sup>2</sup> acquired property. It includes anything in respect of which the Grantor has at any time a sufficient right, interest or power to grant a security interest.
- II. Control Event means, in respect of any Collateral that is, or would have been a Revolving Asset:
  - i. the Grantor breaches, or attempts to breach clause 17B.i (Restricted dealings) in respect of the Collateral or takes any step which would result in it doing so;
  - ii. a person takes a step (including signing a notice or direction) which may result in a Tax, or an amount owing to a Governmental Agency, ranking ahead of the Security in the Collateral under this document;
  - iii. distress is levied or a judgment, order or Security is enforced or a creditor takes any step to levy distress or enforce a judgment, order or Security, over the Collateral;
  - iv. the Secured Party gives a notice to the Grantor that the Collateral is not a Revolving Asset if it reasonably considers that it is necessary to do so to protect its rights under this Agreement; in respect of all Collateral that is or would have been Revolving Assets:
    - a. a voluntary administrator, liquidator or provisional liquidator is appointed in respect of the Grantor or the winding up of the Grantor begins; or
    - b. a receiver, receiver and manager or controller is appointed to any of the Grantor's property; or
    - c. something having a substantially similar effect to paragraph i or ii of this subclause happens under any law.
- III. Grantor means the Purchaser, who has agreed to give the security interest to Fine Steel under this Clause.
- IV. PPSA means the Personal Property Securities Act 2009 (Cth),
- V. PPS Register (PPSR) means the Personal Property Securities Register established under section 147 (Personal Property Securities Register) of the PPSA.
- VI. Revolving Asset means any Collateral, subject to clause 17B. d), which is:

## TERMS & CONDITIONS OF CONTRACT SUPPLY OF GOODS AND SERVICES

- i. Inventory;
- ii. a negotiable instrument;
- iii. machinery, plant, or equipment which is not inventory;
- iv. money (including money withdrawn or transferred to a third party from an account of the Grantor with a bank or other financial institution);
- v. other Property

VII. Security Interest means the Secured Party's interest on the Collateral given by the Grantor under this Contract.

VIII. Secured Party means Aotai (Australia) Investment and Holding Pty Ltd (ABN 36 157 862 032) trading as Fine Steel;

### B. Dealing with Collateral

#### I. Restricted dealings

The Grantor must not do, or agree to do, any of the following unless it is permitted to do so by clause 17B.ii) ("Permitted dealings") or agreed by the Secured Party in writing:

- i. create or allow another interest in any Collateral; or
- ii. dispose, or part with possession, of any Collateral.

#### II. Permitted dealings

The Grantor may do any of the following in the ordinary course of the Grantor's ordinary business unless it is prohibited from doing so by provision in this Agreement:

- i. create or allow another interest in, or dispose or part with possession of, any Collateral which is a Revolving Asset; or
- ii. withdraw or transfer money from an account with a bank or other financial institution.

#### III. Revolving Assets

If a Control Event occurs in respect of any Collateral then automatically:

- i. that Collateral is not (and immediately ceases to be) a Revolving Asset;
- ii. any floating charge over that Collateral immediately operates as a fixed charge; and
- iii. the Grantor may no longer deal with the Collateral under relevant provisions.

#### IV. Conversion to Revolving Assets

If any Collateral is not, or ceases to be, a Revolving Asset, and becomes subject to a fixed charge or transfer under this subclause 17B, the Secured Party may give the Grantor a notice stating that, from a date specified in the notice, the Collateral specified in the notice is a Revolving Asset or becomes subject to a floating charge or is transferred back to the Grantor. This may occur any number of times.

#### IV. Fixed charge

The charge granted by the Grantor pursuant to this clause constitutes a fixed and specific charge over all the Other Property.

For purposes of this subclause, Other Property means:

- i. Real property owned by the Grantor;
- ii. Property which is not personal property as defined in the PPSA; and
- iii. Property which is no longer a Revolving Assets.
- iv. Inventory

Any inventory which is not, or ceases to be, a Revolving

Asset is specifically appropriated to a security interest under this clause. The Grantor may not remove it without obtaining the specific and express authority of the Secured Party to do so.

### C. Statutory powers and notices

#### I. Exclusion of PPSA Provisions

- i. To the extent the law permits:
  - a. For the purposes of sections 115(1) and 115(7) of the PPSA:
    - The Secured Party need not comply with the following sections of the PPSA 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
    - Section 142 and 143 of the PPSA are excluded;
  - b. For the purposes of section 115(7) of the PPSA, the Secured Party need not comply with sections 132 and 137(3) of the PPSA;
- ii. if the PPSA is amended after the date of this Agreement to permit the Grantor and the Secured Party to agree to not comply with or to exclude other provisions of the PPSA, the Secured Party may notify the Grantor that any of these provisions is excluded, or that the Secured Party need not comply with any of these provisions, as notified to the Grantor by the Secured Party; and
- iii. the Grantor agrees not to:
  - a. Exercise its rights to make any request of the Secured Party under section 275 of the PPSA;
  - b. Authorise the disclosure of any information under that section; or
  - c. Waive any duty of confidence that would otherwise permit non-disclosure under that section.

#### II. Exercise of rights by Secured Party

Any right, power or remedy exercised by the Secured Party in connection with this clause, is not an exercise of a right, power or remedy under the PPSA unless:

- i. The Secured Party states that it is at the time of exercise; or
- ii. The right, power or remedy can only be exercised under the PPSA.
- iii. Stay, postpone, or otherwise prevent, or prejudicially affect the exercise of any right, power or remedy of the Secured Party conferred by this clause.

#### III. Status

- i. To the extent the law permits, the provisions of all statutes and regulations at any time operating directly or indirectly to:
  - a. lessen, modify or affect the obligations of the Grantor to the Secured Party under this clause; or
  - b. stay, postpone, or otherwise prevent, or prejudicially affect the exercise of any right, power or remedy of the Secured Party conferred by this clause, are negated and excluded from and will not apply to this Agreement.
- ii. Any power, right and remedy conferred on the Secured Party or any Receiver by law, in equity or by any statute will be in addition to those contained in this clause.

## TERMS & CONDITIONS OF CONTRACT SUPPLY OF GOODS AND SERVICES

- IV. No notice required unless mandatory
- i. To the extent the law permits, the Grantor waives:
    - a. Its rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement); or any other law before a secured party, receiver or receiver manager exercises a right, power or remedy; and
    - b. any time period that must otherwise lapse under any law before a secured party or controller exercises a right, power or remedy.
  - ii. To extent the law permits, neither the Secured Party nor any receiver need give any notice or demand or allow a lapse of time to the Grantor before exercising a right, power or remedy conferred by this clause or law.
  - iii. If the law stipulates that notice or lapse of time must be given, in the absence of a prescribed notice or lapse of time period, one day will be fixed as the requisite period.
  - iv. Nothing in this clause prohibits the Secured Party or any receiver from giving a notice under the PPSA or any other law.

V. PPS Registration

If the Secured Party chooses to do so, the Grantor agrees to do anything (such as obtaining consents, signing and producing documents, procuring documents to be completed and signed and supplying information) which the Secured Party requests and considers necessary for the purposes of:

- i. Effectiveness - ensuring that the Security Interest is enforceable, perfected (including where possible, by control in addition to registration) and otherwise effective;
- ii. Priority - enabling the Secured Party to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the Secured Party; or
- iii. Rights - enabling the Secured Party to exercise rights in connection with the Security Interest.

D. Indemnity

- I. The Grantor must indemnify the Secured Party against any Loss which they incur in connection with:
  - i. Grantor's default under clause 17;
  - ii. the exercise, non-exercise or purported exercise of any power, right or remedy of the Secured Party contained in or implied by this clause and this Contract;
  - iii. any Tax payable in respect of the Collateral (excluding any Tax which is imposed on, or calculated by reference to, the net income received or receivable by the Secured Party);
  - iv. any liability to any Governmental Agency in respect of the Collateral;
  - v. use by any person of or their presence on the Collateral;
  - vi. any actual or assumed obligation of the Secured Party (whether solely or jointly with the Grantor or any other person) to pay any money or do anything in relation to the Collateral; or
  - vii. any act, omission or default by a Receiver, except if it is due to fraud, gross negligence or willful

misconduct of the Receiver or any of its agents or delegates.

- II. The indemnities in this clause are continuing obligations, independent of other obligations of the Grantor under this Contract and Service after this Contract ends.

### 18. Force majeure

- A. If Fine Steel is prevented (directly or indirectly) from supplying the goods or providing the services or any part thereof by reason of acts of god, strikes, lockouts, trade disputes, fire, floods, breakdowns, delay in the manufacture of the goods for any reason whatsoever, interruption of transport, government action, non-delivery of raw material or products, refusal or failure of Fine Steel own suppliers to deliver to Fine Steel any Goods or components of goods, or any other cause whatsoever outside its control (whether or not of a like nature to those specified above), Fine Steel is under no liability whatsoever to the Purchaser and is entitled, at its discretion to give notice to the Purchaser, either to cancel the Contract or to extend the time for its performance.

### 19. Shortages, defects and inaccuracies, failure of, or delay in, supply

- A. The Purchaser must check and closely examine all Goods within 24 hours of Delivering and in any event before the Purchaser (or its employees or agents) use the Goods.
- B. Claims will only be recognized if the Purchaser advises the delivery docket number/schedule number and bar mark in the case of processed steel and the Purchaser must notify the Fine Steel of any defect, damage or non-conformance of the Goods within the earlier of:
  - I. 48 hours the time they are Delivered; or
  - II. the Purchaser dealing with the Goods.
- C. Upon providing the notification required in clause 19 B the Purchaser must allow the Fine Steel to inspect the Goods.
- D. Fine Steel will endeavour to rectify inaccuracies or short supply with forty- eight (48) hours of notification but will not be responsible for any loss or damage (including consequential loss) however caused arising out of or resulting from such inaccuracies or short supply.
- E. If, due to any cause whatsoever, Fine Steel is unable to supply any part of the contract by the nominated delivery date or at all, it is entitled, at its option:
  - I. To supply to the Purchaser similar Goods and/or services which in the opinion of Fine Steel are an appropriate substitute without prior reference to the Purchaser; or
  - II. Not to supply part or all of the Goods and/or Services; or
  - III. Delay supply of part or all of the Goods and/or Services.

### 20. Dispute resolution

- A. If there is a dispute or disagreement between Fine Steel and the Purchaser arising in any way from or in relation to the contract, then Fine Steel and the Purchaser must use all reasonable endeavours and reasonably appropriate alternative dispute resolution procedures as soon as possible before resorting to litigation.
- B. Nothing in this clause 20 prevents a party seeking urgent interlocutory relief from a court or requires that party to participate in informal resolution processes for longer than 30 days after a dispute has arisen.

### 21. Confidentiality

- A. Fine Steel and the Purchaser agree that a contract and any other information furnished by one party to the other pursuant to the

## TERMS & CONDITIONS OF CONTRACT SUPPLY OF GOODS AND SERVICES

contract is and remains confidential between the parties and the parties must not disclose the same, or permit or cause the same to be disclosed, either directly or indirectly, to any third party unless:

- I. Prior approval in writing has been obtained from the other party; or
- II. Disclosure is required by law or;
- III. The information is in the public domain prior to the disclosure by the party.

B. The expression "any third party" does not include the financial or legal advisers of a party or a related body corporate of a party.

### 22. Extras

- A. Unless noted in the quotation, the price quoted does not include items such as: tie wire; bar chairs; threading and/or screwing; saw cutting; mechanical splices; welding of any nature; blacksmithing; press work; butt welding; assembly of goods; supply and location of lifting hooks, slings and cradles; supply of bars exceeding lengths of ten metres or exceeding diameter of 36mm; delivery of oversized loads or provision of vehicle escorts; brickwork reinforcing and holding down bolts; galvanizing; on-site scheduling; product containers; steel fixing; on-site accommodation; provision of traffic control; or such other items as specified in the quotation as being excluded.
- B. Where the quotation states that prefabricated elements such as reinforcing elements or cages, engineered manufactured items and steel fixing are included unless expressly stated otherwise the quoted price does not include the cost of or associated with lifting or lowering positions on site; site scaffolding; supply and welding of lifting points; or site welding.
- C. The Purchaser is responsible for the design and location of any required lifting and/or support items at the Purchaser's site.

### 23. Services

- A. Unless expressly stated in a quotation, the prices, fees or rates quoted do not include any services.
- B. Fine Steel reserves the right to charge for any or all services provided.
- C. Where Fine Steel has agreed to provide services, the Purchaser must pay Fine Steel fees for such services, if applicable, when such services have been performed.
- D. Fine Steel will use all reasonable endeavours to perform services in a competent, proper and workmanlike manner and exercising a reasonable standard of skill and diligence, but is not liable for any inaccuracy, error or omission arising from performance of the services.
- E. Where a quotation expressly includes steelfixing and/or prefabrication as part of the services, the Purchaser must give Fine Steel sufficient notice to arrange such steelfixing and/or prefabrication and meet associated health and safety requirements.

### 24. Working documents

- A. Fine Steel accepts no responsibility for the correctness of Working Documents prepared by the Purchaser or third party.
- B. Unless otherwise agreed, the Purchaser must deliver all Working Documents without charge to Fine Steel prior to commencement of the services.
- C. Where the Purchaser submits electronic copies of Working Documents to Fine Steel, then Fine Steel reserves the right to charge for the printing costs associated with those working documents.
- D. Should errors occur as a result of Working Documents supplied by the Purchaser or a third party appointed by the Purchaser the Purchaser is liable for the cost of rectification and shall indemnify

other costs and loss and damage of Fine Steel occurred as result of the errors and inaccuracy in the Working Documents supplied by the Purchaser.

- E. All Working Documents will remain in the custody and control of Fine Steel.
- F. A quotation does not include any fee for design, re-design, detailing, re- detailing, scheduling or re-scheduling of Working Documents to be prepared by Fine Steel unless stated in the quotation. The Purchaser must pay Fine Steel fees for such services, if applicable, when such Working Documents are prepared.
- G. Fine Steel will provide only two copies of material processing supply schedules and associated installation location plans.
- H. Fine Steel reserves the right to supply distribution steel:
  - I. As detailed in the working documents; or
  - II. In stock lengths where not detailed in the working documents; or
  - III. As otherwise agreed in writing.
- I. Unless authorised in writing, neither the Purchaser nor any third party is authorised to reproduce, adapt or use in any manner whether part or whole any Working Documents prepared by Fine Steel (whether prepared on a fee-paying basis or not). Any unauthorised reproduction, adaption or use may be, among other things, a breach of copyright and actionable by Fine Steel.
- J. The Purchaser indemnifies Fine Steel against all claims and all costs, liabilities and expenses incurred by Fine Steel as a result of or related to:
  - I. Any inaccuracy, omission or error in the Working Documents prepared by the Purchaser or a third party; or
  - II. Working documents, or any other documents provided by the Purchaser to Fine Steel for the purposes of or in the course of the supply of goods or performance of services, breaching a third party's intellectual property rights.

This clause survives termination or expiry of the contract.

- K. The Purchaser may not use any trade mark or other intellectual property of Fine Steel, unless it receives the prior written consent of Fine Steel (which consent may be given, withheld or withdrawn, or given subject to conditions, at Fine Steel's discretion).

### 25. Costs

- A. The Purchaser must pay Fine Steel all costs and expenses incurred by Fine Steel in connection with the contract including legal expenses (on a full indemnity basis), stamp duty (including fines and penalties) and costs incurred and payable by Fine Steel in connection with registering, maintaining or releasing any security interest, charge, mortgage or caveat in connection with a contract, or the recovery of the amount payable or in otherwise enforcing Fine Steel rights against the Purchaser under a contract.

### 26. Default interest

- A. Fine Steel may charge interest on any overdue amount at a rate equivalent to 2.0% P.A. Above the business overdraft interest rate of its principal banker, as determined and calculated by Fine Steel. Such interest will be payable on demand by Fine Steel and for so long as it remains unpaid will compound on a monthly basis.

### 27. Miscellaneous

- A. A notice under the contract can only be in writing and can only be given to a party:
  - I. Personally;
  - II. By registered post to the last known place of business or residence or registered office. Such notice is deemed to be



## TERMS & CONDITIONS OF CONTRACT SUPPLY OF GOODS AND SERVICES

- received at the time at which the letter is delivered in the ordinary course of post;
  - III. By facsimile transmission to the last known facsimile number. Such notice is deemed to be received when the sending machine confirms notice has been sent; and By electronic transmission to the last known email address. Such notice is deemed to be received when the sending machine confirms notice has been sent.
  - B. The contract is governed by the laws in the state of new south wales and the courts of that jurisdiction have exclusive jurisdiction in connection with the contract.
  - C. A party must not assign its benefits or obligations under the contract without the prior consent in writing of the other party and such other party must not unreasonably withhold its consent to an assignment.
  - D. A party waives a right under the contract only by written notice that it waives that right.
  - E. If a provision of these terms and conditions is unenforceable or invalid then::
    - I. The provision must be read down to the extent necessary to avoid that result; and
    - II. If the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of the contract.
- 28. Privacy**
- A. Privacy policy is available from Fine Steel and [www.finesteel.com.au](http://www.finesteel.com.au).

Goods are supplied on the following Terms and Conditions, unless varied and authorised in writing by the Supplier. These Terms and Conditions replace and supersede all previous agreements between the Purchaser and the Supplier entered prior to the date of issue.

**The Applicant acknowledges that he/she has received a copy of the Fine Steel Terms and Conditions prior to his/her signing this Application.**

The person(s) signing this Application hereby warrants that he/she/they has/have read and fully understands the nature and effect of Fine Steel Terms and Conditions and:

- a. He/She/They have authority to sign on behalf of and to bind the Applicant;
- b. The information provided is true and correct in every detail;
- c. He/She/They agree(s) to provide such updated and regular financial and trading information as Fine Steel may reasonably require from time to time;
- d. He/She/They have obtained/have been given sufficient opportunity to seek independent legal advice regarding the Fine Steel Terms and Conditions, and He/She/They is/are freely and voluntarily signed this Application.
- e. The Applicant, and signatories on behalf of the Applicant in their personal capacity, agree to the terms of the Privacy Statement pursuant to the Privacy Act 1988
- f. (as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012) contained in this document.

### SIGNED FOR THE APPLICANT BY

Print name and title	Signature	Date / /
Print name and title	Signature	Date / /
Print name and title	Signature	Date / /

## DEED OF GUARANTEE, INDEMNITY AND CHARGE

In this Deed ("**Guarantee**"):

"**Contract**" means the CONTRACT SUPPLY OF GOODS AND SERVICES entered into by Fine Steel and the Customer on the same date with this Deed.

"**Customer**" means the "Purchaser" or the entity defined by the terms and conditions of the Contract attached with the Application For Commercial Credit.

"**General Secured Property**" means all of the Guarantor's real properties held by the Guarantor now or in the future and other undertaking property and personal assets of the Guarantor that includes but not limited to:

- a. Whole and any part of the General Secured Property;
- b. Any property held any time by the Guarantor as trustee of the Trust;
- c. All income and other money or benefits derived from the General Secured Property (including any proceeds as defined in PPS Law)

"**Guarantor**" means the person(s) listed below as guarantor, whose liability under this Guarantee is jointly and severally;

"**Fine Steel**" means Aotai (Australia) Investment and Holding Pty Ltd (ABN 36 157 862 032) trading as Fine Steel;

"**Secured Money**" means all money (and any part of that money) which the Customer directly, indirectly, contingently, or otherwise at any time are or may become liable at any time (presently, prospectively or contingently, whether alone or not and in any capacity) to pay to or for the account of Fine Steel or any person with whom Fine Steel has entered into a contract for supply of goods and services in connection with the Contract, under or in connection with the Contract, for any reason and includes any money due:

- a. Pursuant to the Contract;
- b. because of anything by which Fine Steel or any person with whom Fine Steel has entered into a commercial arrangement or a contract for supply of goods or services in connection with the Contract is or becomes in any manner a debtor; and
- c. arising from anything done or omitted to be done by the Customer which gives rise to a payment, expense, or loss by Fine Steel in connection with the Contract;
- d. Unless otherwise stated, terms used or defined in the Terms and Conditions of the Contract have the same meaning in the Guarantee.

### 1. Guarantee

The Guarantor hereby covenants, represents and acknowledges Fine Steel that each of the matters in clause 2 below, are true and correct, and will remain true and correct at all times until:

- a. the payment in full of the Secured Money to Fine Steel under the Contract between Fine Steel and the Customer;
- b. other amount and disbursements owed to Fine Steel in relation to the Contract, the invoices or generated by works conducted by Fine Steel associated under the Contract are fully paid.

### 2. The Guarantor

The Guarantor:

- a. in exchange for the consideration of Fine Steel entering into the Contract, enters into this Deed (Guarantee) under his/her own desire and acknowledges that the Customer has its Contractual obligation to pay Fine Steel the Security Money pursuant to the Contract and this Guarantee;
- b. enters into this Guarantee freely and voluntarily;
- c. has acknowledged the nature of the Contract and the Guarantee, and fully understood all the terms and conditions in the Contract and this Guarantee;
- d. in providing the Guarantee, the Guarantor has not relied on any promise, representation, statement or information of any kind, given or offered by, or on behalf of Fine Steel, whether in answer to any enquiry by, on behalf of Fine Steel or not;
- e. has been allowed and had the opportunity to obtain independent legal advice as to the obligations created or imposed by this Guarantee; and the obligations imposed by the Contract upon the Customer;
- f. acknowledges that before giving this Guarantee, the Guarantor:
  - i. was able to negotiate for the alteration or amendment of any of the provisions of this Guarantee; and was not subject to any material inequality in his/her bargaining power with Fine Steel as to the provision of this Guarantee;
  - ii. has obtained all necessary authorities, consents, permissions and ratifications from any person, including the spouse, relatives, any partner, director, shareholder or beneficiary, necessary to allow the

Guarantor to agree to this Guarantee as a binding obligation;

- iii. has not breached any Legislation or any other law or any obligation to any Person by agreeing to provide this Guarantee, or to execute this Guarantee;
- iv. has fully disclosed to Fine Steel, and not withheld from Fine Steel any information relevant to Fine Steel's consideration of its risks in accepting this Guarantee;
- v. was aware that Fine Steel relied on and will continue to rely upon the warranties, acknowledgements and representations made by the Guarantor to Fine Steel as to Fine Steel:
  - agreeing to enter into the Contract with the Customer;
  - engaging the rights and obligations of the Contract with the Customer;
  - providing credit, goods and services to the Customer.

### 3. Indemnify and Charge

The Guarantor agree, with all of its personal assets and properties, to guarantee to Fine Steel and indemnify Fine Steel:

- a. on any default by the Customer, the Guarantor shall forthwith on demand by Fine Steel to pay such Secured Monies to Fine Steel without the necessity of any prior demand having been made on the Customer or any other steps being taken against the Customer or its assets to enforce payment; and
- b. from and against all losses, costs, charges and expenses (including Fine Steel's legal costs on indemnity basis) that Fine Steel may suffer or incur by reason of the failure or default of the Customer's obligations to pay or to perform under the Contract; and
- c. from any liability incurred by Fine Steel in the exercise, non-exercise, or purported exercise of any of its powers, rights, and privileges contained in or implied by this Guarantee whether or not Fine Steel acted negligently or was guilty of laches or waiver.

By operation of this Guarantee, the Guarantor agrees that Fine Steel have a charge and security interest in all of the Guarantor's real properties held now or in the future for all Secured Money owed by the Customer. Any amount due under this clause will form part of the Secured Money.

### 4. Power of Attorney

- a. The Guarantor for valuable consideration hereby irrevocably appoints the Fine Steel and Fine Steel's directors, secretaries, and representatives, from time to time jointly and severally its attorney to:
- b. sign anything and do anything on behalf of and in the name of the Guarantor to perfect this Guarantee;
- c. delegate its powers to any person and revoke any delegation;
- d. at any time after an Event of Default occurs to sign anything and to do anything in relation to the General Security Property and any contracts or rights relating to the General Security Property the attorney thinks fit; and
- e. immediately following the occurrence of any breach of the Contract (as determined by the Lender in its absolute discretion) to execute and lodge mortgages, caveats, or any other documents, forms, deeds or instruments over any General Security Property to secure the Secured Money and Guarantor's obligations under the Contract and this Guarantee.

### 5. Liability Unaffected

The liability of the Guarantor under this Guarantee is not affected by:

- a. the granting of time or any other indulgence to the Customer and/or Guarantee;
- b. the release, waiver or variation of the Contract, this Guarantee or any of Fine Steel's rights against the Customer and/or Guarantor or any neglect or omission to enforce such rights;
- c. any other things which under the law relating to sureties would or might but for this provision release the Guarantor in whole or in part from the obligations under this Guarantee;
- d. the release of any one or more Guarantor by Fine Steel;
- e. amendment of the Contract;
- f. the act of the Customer;
- g. being an individual committing an act of bankruptcy or becoming an insolvent under administration;
- h. being a body corporate becoming an externally- administered body corporate or having an application for winding up filed against it;
- i. the Customer's obligations for payment becoming illegal, void, voidable or unenforceable in whole or in part;

## DEED OF GUARANTEE, INDEMNITY AND CHARGE

- j. payment by the Customer to Fine Steel to the extent that payment might be void or voidable for any reason (including under the Bankruptcy Act 1966 or the Corporations Act 2001);
  - k. failure to give notice of any matter to the Guarantor (including notice of default by the Customer);
  - l. the Guarantor ceasing to be an officer of the Customer;
  - m. the termination of any agreement between Fine Steel and the Customer; or
  - n. the withdrawal of or any variation to the credit provided by Fine Steel to the Customer;
  - o. This Guarantee and all indemnities in it are continuing obligations and remain binding and effective on all Guarantors even where one or more of them asset some form of unconscionability, disability, voidability or other conduct sufficient to render this Guarantee and indemnity void or voidable.
  - p. Notwithstanding that this Guarantee may be intended or expressed to be executed and given by more than one person it shall, in fact, be valid and effectual as a guarantee and indemnity binding upon and enforceable against any person or persons that has executed it forthwith upon their execution and shall continue to be binding and enforceable against any person that has executed it notwithstanding the fact that any proposed or contemplated party shall not subsequently execute this Guarantee.
6. **Waiver of Rights**  
The Guarantor waives any rights as surety or indemnifier (legal, equitable, statutory or otherwise) which may at any time be inconsistent with any provisions of the Guarantee.
7. **Continuing Obligation**  
The Guarantee is a continuing security and remains in force until the Secured Money have been fully paid.
8. **Costs**  
The Guarantor must pay Fine Steel all costs and expenses incurred by Fine

Steel in connection with the Guarantee, including legal costs (on a solicitor-client basis), stamp duty and costs incurred in the recovery of money owing by the Customer to Fine Steel or in otherwise enforcing Fine Steel's rights against the Customer under the Terms and Conditions or the Guarantor under the Guarantee.

9. **Severance**  
If a provision of the Guarantee, would but for this clause be unenforceable: (a) the provision must be read down to the extent necessary to avoid that result; if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of this Guarantee.
10. **Applicable Law**  
This document is governed by the law of the State or Territory applicable to the relevant Terms and Conditions and the courts of that State or Territory have non-exclusive jurisdiction in connection with this document.
11. **Fine Steel May Assign**  
Without notice to the Guarantor or the Customer, Fine Steel may assign to any person (a) the whole or any part of a debt comprised in the Secured Money; and/or this Guarantee including the benefit of any indemnity in this Guarantee.
12. **Final Discharge**  
Even when the Guarantor does not owe any money to Fine Steel, Fine Steel is not obliged to discharge the Guarantee if in Fine Steel's reasonable opinion: (a) within a reasonable time the Guarantor might owe money to Fine Steel; a payment made to Fine Steel might be void or voidable for any reason (including under the Bankruptcy Act 1966 or the Corporations Act 2001).

**The Guarantor acknowledges that it has read and understood this Guarantee and, prior to its execution, has had the opportunity to obtain independent legal and/or financial advice**

### EXECUTED AS A DEED

\_\_\_\_\_  
Name of Customer (Full Legal Entity Name)

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Name of Guarantor

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
Address of Guarantor

\_\_\_\_\_  
Address of Guarantor

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date