

Subcontract Terms & Conditions

1. Definitions

Unless otherwise stated, capitalised and italicised terms in this *Subcontract* have the following meaning:

Business Day means a day that is not a Saturday, Sunday or a public holiday.

Completion means the date that *Steel-Line* completes the *Works*.

Customer means the building contractor identified as the 'Customer' in the *Quotation*.

Futile Trip Fee means a charge of \$75 (plus GST).

Installation Date means the 'estimated installation date' stated in the *Quotation*, or any rescheduled installation date.

Installation Period means the 'estimated installation period' stated in the *Quotation*, as adjusted under this *Subcontract*.

Price means the total price stated in the *Quotation*, as adjusted under this *Subcontract*.

Products means the products described in the *Quotation*.

Quotation means the quotation accepted by the *Customer*.

Services means the services described in the *Quotation*.

Site means the 'site address' specified in the *Quotation*.

Steel-Line means Steel-Line Installations Australia Pty Ltd ACN 128 107 344.

Subcontract means the *Quotation* and these terms and conditions.

Works means the supply of *Products* and/or *Services*.

2. Collection of Products

(a) If *Products* are to be collected, the *Customer* must collect the *Products* within 3 *Business Days* of notice by *Steel-Line* that the *Products* are available for collection.

(b) If the *Customer* fails to collect the *Products* within the timeframe specified in clause 2(a), *Steel-Line* may, at its discretion:

- (i) arrange for the *Products* to be made available for collection at an alternative location notified to the *Customer*;
- (ii) store uncollected *Products* and invoice the *Customer* for any associated transportation and storage costs;
- (iii) dispose of the uncollected *Products* after giving the *Customer* at least 5 *Business Days* written notice of its intention to do so.

3. Delivery of Products

(a) The *Customer* is deemed to have specified the *Site*.

(b) Any delivery dates provided by *Steel-Line* are estimates only and are subject to the availability of the *Products* and the ability of *Steel-Line* to deliver on the nominated date.

(c) A failure by *Steel-Line* to deliver *Products* on an estimated delivery date does not entitle the *Customer* to:

- (i) withhold or delay payment for the *Products*; or
- (ii) cancel supply of the *Products*.

(d) Delivery is deemed to occur at the *Site*, regardless of whether the *Customer* or a representative of the *Customer* is present to accept delivery.

4. Rejection of Products

(a) The *Customer* must inspect the *Products* at the time of collection or delivery.

(b) The *Customer* may not reject *Products* because of damage (including deterioration) unless a written claim is submitted to *Steel-Line* within 2 *Business Days* of the date of:

- (i) collection or delivery; or
 - (ii) installation by *Steel-Line*,
- whichever first occurs.

(c) The *Customer's* right to reject *Products* for damage is conditional upon the damage having not occurred after collection, delivery or installation due to any cause unrelated to the condition of the *Products* at the time they were supplied or installed.

5. Return of Products

(a) *Steel-Line* is not obliged to accept the return of *Products* or to allow any credit for *Products* returned unless all the following conditions are met:

- (i) the *Customer* submits a written claim to *Steel-Line* within 2 *Business Days* of the date of collection or installation by *Steel-Line* of the *Products*;
- (ii) the returned *Products* are accompanied by *Steel-Line's* quote or order number;
- (iii) the *Products* are returned in the same condition in which they were delivered or collected; and
- (iv) *Steel-Line*, in its absolute discretion, agrees in writing to accept the return of the *Products*.

(b) Nothing in this clause excludes, restricts or modifies any right or obligation relating to the return of the *Products* that cannot be excluded, restricted or modified by law, including under the Australian Consumer Law.

6. Steel-Line's Obligations

(a) *Steel-Line* must:

- (i) start the *Works* at the *Site* on the *Installation Date*;
- (ii) carry out the *Works* in accordance with this *Subcontract*; and
- (iii) bring the *Works* to completion within the *Installation Period*.

7. Access & Power

(a) The *Customer* must, at its own cost:

- (i) provide *Steel-Line* with all-weather and unrestricted access to the *Site*; and
- (ii) supply *Steel-Line* with any power, water or other service reasonably required for the performance of the *Works*.

(b) A *Futile Trip Fee* may be added to the *Price* if the *Customer* fails to comply with clause 7(a).

(c) The *Customer* must not obstruct, interfere with or hinder the carrying out of the *Works* including by failing to comply with clause 7(a).

8. Variations

(a) Either party may request a variation to the *Works* at any time prior to *Completion*. *Steel-Line* may, at its absolute discretion refuse to carry out any variation requested by the *Customer*. The *Customer* must not unreasonably refuse a variation requested by *Steel-Line*.

(b) Any agreement to vary the *Works* must be recorded in a written document signed by *Steel-Line* and the *Customer* which:

- (i) describes the variation and states the date of the request for the variation;
- (ii) states the price of the variation or the method for calculating the price; and
- (iii) states *Steel-Line's* estimate of any delay or change to *Installation Period* which may result from the variation.

(c) The price of a variation is to be:

- (i) calculated:
 - (A) using the rates (if any) stated in the *Quotation*; or
 - (B) using reasonable market rates as determined by *Steel-Line* in its sole discretion;
- (ii) added to the *Price* and paid to *Steel-Line* in accordance with the payment terms stated in the *Quotation*.

- (d) In the event that a variation is required due to the unavailability of *Products* or materials:
 - (i) *Steel-Line* will select a like-for-like alternative and provide details of that alternative product or material to the *Customer* for consideration;
 - (ii) the *Customer* must either accept the like-for-like alternative proposed by *Steel-Line* or propose a different product or material which must be readily available and fit for purpose within 5 *Business Days*; and
 - (iii) upon agreement regarding the alternative material to be used, the variation will be recorded in accordance with clause 8(b).
- (e) *Steel-Line* may, at its absolute discretion, suspend the *Works* if a variation requested by *Steel-Line* is unreasonably refused.

9. Delays

- (a) *Steel-Line* must give written notice to the *Customer* claiming a reasonable extension to the *Installation Period* within 10 *Business Days* of becoming aware of the cause and extent of the delay if the *Installation Period* is required to be extended:
 - (i) for a cause not reasonably foreseeable and beyond the reasonable control of *Steel-Line*;
 - (ii) because of delay caused by the *Customer*; or
 - (iii) because of a variation recorded in accordance with clause 8(b).
- (b) Within 2 *Business Days* of receipt of a claim under clause 9(a), the *Customer* must notify *Steel-Line* whether the *Customer* approves or rejects the claim.
- (c) If the extension of time claim is approved, the *Installation Period* shall be adjusted by the delay period approved.
- (d) The *Customer*:
 - (i) has no entitlement to damages, liquidated or unliquidated, consequent upon delay beyond *Steel-Line*'s reasonable control in completing the *Works*; and
 - (ii) agrees that any liability of *Steel-Line* consequent upon its failure to complete the *Works* within the *Installation Period* for a cause within the reasonable control of *Steel-Line* shall be limited to 2.5% of the *Price*.

10. Customer Acknowledgements

- (a) The *Customer* acknowledges and agrees that:
 - (i) *Steel-Line* may sub-subcontract all or any part of *Services*.
 - (ii) cancellation of an order for *Products* requiring fabrication will not relieve the *Customer* of the obligation to pay the full price of those *Products* once fabrication has commenced.
 - (iii) risk of loss of, or damage to, *Products* passes to the *Customer* on collection or delivery by *Steel-Line* to the *Site*.
 - (iv) title to *Products* remains with *Steel-Line* and does not pass to the *Customer* until *Steel-Line* has received full payment for the *Products*.
 - (v) unless listed inclusions, the *Products* and *Services* do not include:
 - (A) work or materials to create solid fixing points;
 - (B) supply or installation of steel fixing plates for mounting supplied brackets;
 - (C) angles, posts, flashings or trims or any nature to create or finish door openings;
 - (D) work outside of the hours of 7.30 a.m. to 4.30 p.m. on *Business Days*;
 - (E) structural steel work or bulkheads;
 - (F) flashings or weather seals except for a weather seal attached to the bottom closing surface of doors;
 - (G) provision of power points or any work required to be carried out by a licenced electrician;
 - (H) removal or relocation of obstructions including pipes, fittings and service conduits;
 - (I) the provision of lifting equipment (including forklifts and cranes) at the *Site*;
 - (J) the supply of skips or bins or removal of packing materials from the *Site*; or
 - (K) the provision of materials (including wrappings) to protect installed products.
 - (L) items supplied as garage door accessories.
 - (vi) *Steel-Line* or its agents may touch up *Products* at the *Site*.
 - (vii) the colour, sheen or finish of replacement components including slats and panels may differ to existing components.

11. Site Security

- (a) *Steel-Line* shall not be responsible for the security of the *Site*, including but not limited to the protection of buildings, equipment, materials, or personnel. The responsibility for securing the *Site*, including implementing and maintaining appropriate security measures, rests solely with the *Customer*. *Steel-Line* shall not be liable for any loss, damage, theft, or unauthorised access occurring on or in connection with the *Site*, whether during or after the performance of the *Works*.

12. Taxes

- (a) The *Price* is inclusive of goods and services tax ("GST").
- (b) If an event occurs in relation to a supply that results in the GST amount differing from the amount included in the *Price*, *Steel-Line* may recover from the *Customer* any shortfall and must refund any overpayment, as applicable.
- (c) If, due to a change in the imposition or calculation of GST, or due to the introduction, variation, or abolition of any other taxes (excluding income tax), *Steel-Line*'s costs of making a supply (excluding GST) increase, *Steel-Line* may increase the *Price* proportionally to reflect the increase in costs.
- (d) Any rebates, discounts, allowances, or other price reductions to which the *Customer* is entitled, or which are granted by *Steel-Line*, will be calculated on the base price, exclusive of any GST payable by *Steel-Line* on the relevant supply.

13. Retention Amounts / Set-Off

- (a) No amount may be:
 - (i) withheld from payment of the *Price* as security for *Steel-Line*'s performance of this *Subcontract*; or
 - (ii) set-off against the *Price*.

14. Payment

- (a) Subject to clause 14(d), the *Customer* must pay the *Price* in full in accordance with the payment terms stated in the *Quotation* notwithstanding:
 - (i) any delay in delivery of *Products* or performance of *Services*; or
 - (ii) title to *Products* remaining with *Steel-Line* in accordance with clause 15.
- (b) If the *Customer* fails to pay the *Price* to *Steel-Line* in accordance with clause 14(a):
 - (i) the *Customer* must pay:
 - (A) interest on the outstanding amount at the rate of 21% per annum, calculated daily;
 - (B) all debt collection costs, including legal fees on a solicitor and own client basis, incurred in recovering or attempting to recover the outstanding amount; and
 - (ii) *Steel-Line* may enter on to the *Site* and remove *Products* without notice or obligation to repair or reinstate building elements, penetrations or painted surfaces.
- (c) The *Customer* acknowledges and agrees that the interest rate specified in clause 14(b)(i)(A) represents a genuine pre-estimate of loss incurred by *Steel-Line* in the event of late payment.
- (d) If a genuine dispute arises in relation to:
 - (i) non-delivery, quality, or quantity of *Products*;
 - (ii) non-completion or quality of *Services*; or
 - (iii) *Products* that are the subject of a claim made in accordance with clause 4(b),
 then, subject to the *Customer*'s continued compliance with clause 7(a), the *Customer* may withhold the disputed portion of the *Price* until *Steel-Line* (acting reasonably) gives written notice that the grounds for the dispute no longer exist.

15. Retention of Title

- (a) Until the *Customer* has paid the *Price* in full:
 - (i) title to *Products* remains with *Steel-Line*;
 - (ii) the *Customer* holds the *Products* as a fiduciary and bailee for *Steel-Line*; and
 - (iii) the *Customer* must store the *Products* in a manner that clearly identifies them as the property of *Steel-Line*.
- (b) The *Customer* acknowledges that the installation of *Products* does not render them fixtures and the parties intend that the *Products* remain personal property capable of removal by *Steel-Line* until title passes to the *Customer*.

16. Termination

- (a) *Steel-Line* may, at its discretion, terminate this *Subcontract* by giving written notice to the *Customer* if:
 - (i) any amount payable under this *Subcontract* is not paid by the due date for payment;
 - (ii) the *Customer* fails to comply with clause 7(a); or
 - (iii) if a variation requested by *Steel-Line* under clause 8 is unreasonably refused.
- (b) The *Customer* agrees that if this *Subcontract* is terminated under clause 16(a), *Steel-Line*'s liability is limited to refunding any amount paid in advance for unperformed *Works*, less all reasonable costs incurred by *Steel-Line* in attempting to perform the *Works*.
- (c) The parties agree that clauses 11, 13, 14, 15, 17 and 18 survive termination of this *Subcontract*.

17. Indemnity

- (a) The *Customer* shall indemnify and hold harmless *Steel-Line* from and against all claims, liabilities, losses, damages, costs, and expenses (including legal costs on a full indemnity basis) arising from or in connection with any personal injury, death, or loss or damage to property occurring at the *Site*, to the extent caused by any act or omission of the *Customer*, whether arising from negligence, breach of statutory duty, or otherwise.

18. Limitation of Liability

- (a) *Steel-Line*, and *Steel-Line*'s officers and employees, shall not be liable for any losses, costs or damages with respect to existing property on or about the *Site*, whether as a result of negligence, breach of statutory duty or otherwise, arising out of the performance of the *Works* by *Steel-Line* or any subcontractor.
- (b) Subject to any right or obligation that cannot be excluded, restricted or modified by law, including under the Australian Consumer Law, in addition to the limitations provided elsewhere in this *Subcontract*, *Steel-Line*'s total liability to the *Customer* in connection with this *Subcontract*, including for breach of contract or negligence, is limited to:
 - (i) an amount not exceeding \$100.00, and excludes all indirect, special, incidental, or consequential losses or damages, including but not limited to loss of profit or revenue, loss of production, loss of opportunity, or loss of use of *Products*; or
 - (ii) an amount exceeding \$100.00 that *Steel-Line*, in its sole discretion:
 - (A) authorises the *Customer* in writing to incur; or
 - (B) accepts liability in writing for.

19. Miscellaneous

- (a) To the extent permitted by law, *Steel-Line* provides no warranty for the *Works* until the *Price* is paid in full.
- (b) All payments must be made in Australian dollars.
- (c) This *Subcontract* contains the whole of the agreement between the parties for the *Works*.
- (d) To the extent of any inconsistency between these terms and conditions and the terms and conditions governing any trade credit facility held by the *Customer* with *Steel-Line*, the terms and conditions of the facility shall prevail.