



LIBERTY RECYCLING STANDARD CONTRACT TERMS – Effective 1 SEPTEMBER 2017

These terms form part of each agreement between **OneSteel Recycling Pty Ltd ABN 28 002 707 262 (Liberty Recycling)** and the Customer for the sale of Goods or services or both by Liberty Recycling.

1. AGREEMENT

- (a) Liberty Recycling agrees to supply to the Customer and the Customer agrees to acquire from Liberty Recycling the Goods for the Price.
- (b) This agreement may not be varied except by an agreement in clear terms expressly approved by duly authorised representatives of the parties.
- (c) These terms prevail despite any variation proposed by an order or other document submitted by the Customer.

2. INTERPRETATION AND DEFINITIONS

- (a) The singular includes the plural and vice versa.
- (b) A reference to a person includes a corporation and a reference to a gender includes all other genders.
- (c) Headings are for convenience and do not affect interpretation.
“**Event of Default**” means any one or more of the following events:
 - (i) the Customer fails to pay for the Goods;
 - (ii) the Customer is in breach of this agreement;
 - (iii) if the Customer is a company:
 - an order is made or a resolution is effectively passed for winding up of a company;
 - the company resolves to appoint a receiver or provisional liquidator or an administrator, or if a receiver or provisional liquidator or an administrator is appointed;
 - the company goes into liquidation or makes an assignment or an arrangement or composition with its creditors;
 - the company stops payment or is deemed unable to pay its debts within the meaning of the Corporations Act;
 - (iv) if the Customer is a natural person, an order is made for the Customer’s bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs or an order is applied for or made to place the assets and affairs of the Customer under administration;
 - (v) the Customer ceases or threatens to cease carrying on business.

“**Goods**” means all goods and/or materials supplied by Liberty Recycling to the Customer as the content may require.

“**Price**” means the Rate per tonne agreed between Liberty Recycling and the Customer for the supply of the Goods multiplied by the quantity in weight of the Goods supplied to the Customer.

“**Rate**” means the amount per tonne agreed between Liberty Recycling and the Customer for the supply of the Goods to the Customer.

3. ADDITIONAL CHARGES

The following are not included in the Price and are payable by the Customer –

- (a) delivery and insurance charges;
- (b) any sales, goods or services taxes, stamp duty and any other taxes, fees or other government levies or charges which may be imposed with respect to this agreement or the Goods but excluding any income tax payable by Liberty Recycling on its own income;
- (c) any additional costs incurred by Liberty Recycling for the Customer in fulfilling this agreement.

4. PAYMENT

- (a) The Customer agrees to pay Liberty Recycling in cash or by bank cheque on delivery of Goods for performance of Services unless other arrangements are made.
- (b) If Liberty Recycling extends credit to the Customer, payment must be made within thirty days of the end of the month in which delivery occurs.
- (c) If the Customer defaults in making payment under this agreement, Liberty Recycling may charge interest on outstanding amounts at the rate which is 4% per annum above the Commonwealth Bank of Australia’s Corporate Overdraft Reference Rate as published in the Australian Financial Review for the period of default. Interest is calculated on daily balances.
- (d) A payment by cheque is not treated as received by Liberty Recycling until the cheque has been honoured on presentation.
- (e) The Customer may not assert or exercise any right of set off against monies payable by it to Liberty Recycling under this agreement.
- (f) (iv) The Customer agrees to reimburse Liberty Recycling for payments made by Liberty Recycling to a collection agency to recover amounts not paid by the Customer when due.
- (g) If the Customer fails to pay for the Goods in accordance with this agreement, Liberty Recycling retains the right to suspend deliveries of Goods until all outstanding invoices have been paid without deduction.

5. DELIVERY

- (a) Delivery of Goods occurs when they are dispatched from Liberty Recycling premises.
- (b) Delivery dates are estimates only. Liberty Recycling will notify the Customer when Goods are available for delivery.
- (c) Delivery may be made by instalments. Each instalment will be treated as a separate delivery with the Price being payable in accordance with the quantity of Goods delivered.

6. ACCEPTANCE

- (a) The Customer must within two working days after delivery inspect the Goods and give Liberty Recycling written notice of damage, shortages or anything else not in accordance with this agreement.
- (b) The Customer agrees to keep goods referred to in a notice given under this clause (and in the case of shortages the remainder of the Goods delivered) in the condition in which they

were delivered until Liberty Recycling has inspected them. Liberty Recycling agrees to inspect them as soon as reasonably practicable after receipt of the notice.

- (c) Goods are taken to be as ordered if –
- (d) The Customer does not give the notice referred to in this clause; or
- (e) The Goods referred to in a notice are used or damaged after delivery. The Customer must then accept and pay for them.
- (f) If Liberty Recycling delivers less than the full quantity of Goods the Customer may not reject those delivered.
- (g) If Liberty Recycling delivers extra or different goods the Customer may reject only the extra or different goods.

7. CANCELLATION

Liberty Recycling is not bound to accept cancellation of an order nor the return of Goods except by prior arrangement. If arrangements have been made the following apply –

- (a) the Goods must be returned within 7 days of delivery;
- (b) outward and inward freight and transport charges are the responsibility of the Customer. If not prepaid by the Customer they will be deducted from any credit.

8. CREDIT

Liberty Recycling may extend credit to the Customer with or without additional conditions. Liberty Recycling may withhold credit even if there are existing credit arrangements.

9. RISK

The risk of damage to or loss of the Goods passes to the Customer on delivery unless this agreement provides expressly to the contrary.

10. RETENTION OF TITLE

- (a) Neither ownership of nor the property in Goods sold by Liberty Recycling passes until the Customer has paid to Liberty Recycling all moneys owing by the Customer on any account.
- (b) Until payment of all moneys owed by the Customer to Liberty Recycling on any account, the Customer holds the Goods as fiduciary bailee and agent for Liberty Recycling and must keep the Goods physically separate from all other goods purchased or owned by it, and clearly identified as owned by Liberty Recycling until they have been paid in full.
- (c) If an Event of Default occurs, then without prejudice to Liberty Recycling’s other rights, Liberty Recycling may lawfully and without notice to the Customer enter any premises occupied by the Customer or any other place where the Goods may be and retake possession of them. If the Customer sells any of the Goods while money is owed to Liberty Recycling, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- (d) If the Customer mixes the Goods with other Goods, so that the Goods are no longer separately identifiable, the Customer and Liberty Recycling will be owners in common of the mixed Goods.
- (e) If the Goods are resold, or products manufactured using the Goods are resold, proceeds received by the Customer on any such sale will be held in trust for Liberty Recycling to the extent of the amount owed by the Customer to Liberty Recycling at the time of the receipt of such proceeds.

11. LIABILITY OF LIBERTY RECYCLING

- (a) If under any law terms which apply to the supply of Goods or Services under this agreement cannot legally be excluded, restricted or modified then those terms apply to the extent required by that law.
- (b) All terms which would otherwise be implied are excluded except as stated in this agreement.
- (c) To the extent permitted by law Liberty Recycling’s sole liability in respect of the Goods supplied for any breach of any term is limited to any one of the following as determined by Liberty Recycling:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
 - (iv) the payment of the cost of having the Goods repaired;
- (d) The Customer does not rely on any representation, warranty or other term made by or on behalf of Liberty Recycling which is not repeated in this agreement in clear terms.
- (e) Except as stated above Liberty Recycling hereby excludes all liability for any loss or damage arising from the reprocessing or other use of the Goods or any other loss or damage whatsoever, whether resulting from Liberty Recycling’s negligence or not.
- (f) The Goods may contain deleterious matter and the Customer should satisfy itself of their condition before processing or other use for any purpose whatsoever.

12. LIMITATION

Liberty Recycling is not liable for any damage, economic loss or loss of profits whether direct, indirect, general, special or consequential -

- (a) arising out of breach of an implied or express term; or
- (b) suffered as a result of the negligence of Liberty Recycling or its employees or agents apart from liability as set out in the previous clause.

13. UNFORESEEN EVENTS

Except for any payment obligations, neither party is liable for any delay or failure to perform any of its obligations under this agreement to the extent that the delay or failure is caused by an event beyond that party’s reasonable control. Liberty Recycling may terminate this agreement at any time during the delay.

14. TERMINATION

In addition to any other right of termination, Liberty Recycling may terminate this agreement forthwith if an Event of Default occurs.

15. GOODS AND SERVICES TAX

In addition to the Price, if Goods and Services Tax (GST) is payable on any supply of goods by Liberty Recycling to the Customer under this agreement, Liberty Recycling will be entitled to recover from the Customer the amount of the GST payable on the supply of the Goods and Liberty Recycling will issue to the Customer a tax invoice or an adjustment note as defined in the A New Tax System (Goods and Services Tax) Act, 1999.

16. PROPER LAW

This and all other agreements made between Liberty Recycling and the Customer for the supply of Goods shall be construed and governed in accordance with the laws of New South Wales.