Conditions of Sale
Effective 1 September 2017

1 Quotations, Orders and Contract

1.1 A written quotation issued by ARC to the Customer is an invitation to the Customer to offer to purchase and order the Goods pursuant to the relevant quotation. A written quotation expires on the date specified as an expiry date. If no expiry date is specified, the written quotation expires 30 days after the date of the written quotation.

1.2 ARC may withdraw, revoke or vary a written quotation at any time prior to the Customer submitting and ARC accepting an offer (which may be by way of an order) in response to the invitation to purchase comprised by ARC’s written quotation.

1.3 A contract for the supply of Goods is made when ARC communicates (by writing or conduct) its acceptance of the Customer’s offer.

1.4 An order from the Customer on terms which are inconsistent with the terms of a written quotation is an offer by the Customer to buy Goods from ARC. In those circumstances, a contract for the supply of Goods is made if:

(a) ARC communicates that it has prepared to supply the ordered Goods only on the terms of these Conditions; or
(b) the Customer accepts delivery of the ordered Goods in which case the contract is deemed to have been made as at the date of the Customer’s order.

1.5 A contract made pursuant to clauses 1.3 or 1.4 is wholly documented by any specific terms agreed by ARC and the Customer in writing including, without limitation, in a quotation and these Conditions.

1.6 To the extent that any inconsistency arises between the terms of a quotation and any clause of these Conditions, the terms of the quotation prevail to the extent of the inconsistency.

1.7 Where in the period between acceptance of a quotation and delivery of the relevant Goods, ARC incurs an increase in the cost of producing and/or delivering the Goods, ARC reserves the right to increase the quoted price of these Goods at any time prior to delivery (a “price escalation”), provided that the Customer may, if it does not agree to the price escalation, terminate part or all of the contract within 7 days after receiving notice of such price escalation.

1.8 These Conditions of Sale apply to the exclusion of any terms and conditions of trade of the Customer whether or not any inconsistency arises, and bind the Customer both personally and as trustee in respect of any trusts of which the Customer is a trustee.

Specification and Working Documentation

2.1 If the Customer’s order refers to a Specification or Working Documentation then:

(a) the Customer represents and warrants to ARC that any such Specification or Working Documentation does not and any Goods produced by ARC pursuant to such Specification or Working Documentation will not breach or infringe upon the rights or property of any third party including, without limitation, patent, design, copyright or other intellectual property rights and the Customer indemnifies ARC and must hold it harmless from and against any loss, damage, liability or cost suffered or incurred by ARC arising out of a breach by the Customer of the representations and warranties made by it pursuant to this clause;

(b) the Customer releases ARC from and waives any rights or causes of action it may at any time have had against ARC but for this release in relation to any fault or defect in any Goods made by the Customer in violation of the Customer’s Specification or Working Documentation, arising, whether directly or indirectly, out of the terms of the Specification or Working Documentation provided by the Customer to ARC; and

(c) the Customer indemnifies ARC and must hold it harmless from and against any loss, damage, liability or cost suffered or incurred by ARC attributable, whether directly or indirectly, to the terms of any Specification or Working Documentation provided by the Customer to ARC.

2.2 Subject to clause 10.1, unless otherwise stated on a quotation, Goods will be supplied by ARC within the tolerances in regard to quantity, weight, dimension and chemical composition as specified in the relevant order or, if not specified, as consistent with usual industry practice. Where the total mass or length of any item supplied includes a fraction of a tonne, the Customer must pay for that fraction on a pro rata basis.

2.3 Notwithstanding any other provision of these Conditions, it is a term of the contract that ARC has discretion to refuse to supply Goods or Services to the Customer (without liability to the Customer) where:

(a) Goods or Services are unavailable or insufficient for any reason whatsoever;
(b) the Customer has failed to comply with terms on which ARC has agreed to provide credit to the Customer;
(c) the Customer or a Related Corporation of it has breached a contract with ARC or a Related Corporation of it, including these Conditions.

2.4 The Customer agrees that it does not rely on the skill or judgement of ARC in relation to the suitability of any of the Goods for a particular purpose.

3 Delivery and Risk

3.1 ARC’s delivery obligations are subject always to the Customer providing ARC with:

(a) a 28 day Delivery Programme, updated weekly; and
(b) Working Documentation no later than the Lead Times for the corresponding Goods; unless ARC agrees otherwise in writing.

3.2 Subject to clause 3.1, ARC will deliver Goods to the Customer as follows:

(a) ARC reserves the right to arrange transport at the Customer’s discretion; (b) delivery will be made during Working Hours to the location agreed (delivery point) for the purpose of clause 1.5; and
(c) ARC or its transport contractor will deliver the Goods as close (Drop Spot) to the delivery point as, in the opinion of ARC or its transport contractor, it is safe or prudent to do so and delivery occurs and risk in the Goods passes to the Customer when ARC’s or its transport contractor’s delivery vehicle arrives at the Drop Spot;

(d) the unloading of Goods at a Drop Spot is the Customer’s responsibility at its own cost and risk but ARC or its transport contractor may, without liability to the Customer, unload the Goods at the Drop Spot if the Customer requests ARC to do so or is absent from the Drop Spot at the time ARC or its transport contractor wishes to unload and the Customer releases and discharges ARC and its transport contractor from and against any claim, cause of action or liability arising out of the unloading of Goods at the Drop Spot;

(e) where the Customer attends ARC’s premises to acquire Goods, ARC may, in its discretion:

(1) deliver the Goods into or onto the Customer’s vehicle in which case risk in the Goods passes to the Customer and delivery is effected when the Goods are set down alongside the Customer’s vehicle; or

(2) deliver the Goods by setting them down alongside the Customer’s vehicle in which case risk in the Goods passes to the Customer and delivery is effected when the Goods are set down alongside the Customer’s vehicle notwithstanding any ARC’s staff may, on request, assist the Customer to load the Goods into or onto the Customer’s vehicle.

3.3 Where ARC or its transport contractor enters the Customer’s premises or the premises of a third party nominated by the Customer as a delivery point, the Customer releases ARC from any claim the Customer may at any time have had against ARC but for this release in respect of damage occasioned to the Customer’s premises or injury to persons arising out of the delivery by ARC or its transport contractor of Goods to such premises.

3.4 A statement on an invoice or delivery docket given to the Customer by ARC as to the quantity, description, date and place of delivery of Goods will be conclusive statement and bind the Customer for all purposes.

3.5 If the Customer does not advise ARC in writing of any fault, damage or defect in Goods or failure of goods to comply with the terms of a contract made pursuant to these Conditions within 48 hours of delivery:

(a) the Customer is deemed to have accepted the Goods and is deemed to agree that the Goods are not faulty, damaged or defective and in compliance and any fault may not be claimed by the Customer;

(b) the Customer releases and discharges ARC from and against any claims, actions, loss or liability relating to any fault, damage or defect in Goods or failure of Goods to comply with a contract made pursuant to these Conditions.

3.6 If the Customer advises ARC in writing of a fault, damage or defect in Goods or a failure of Goods to comply with the terms of a contract made pursuant to these Conditions within 48 hours of delivery then ARC will, if in its opinion the Customer’s advice is reasonable and the Customer has not used the Goods, replace the Goods that appear to be faulty, damaged or defective or not in compliance with the terms of a contract made pursuant to these Conditions and ARC will have no additional liability to the Customer.

3.7 Goods are not damaged or defective by reason only of the presence of rust, millscale or rolling seams except as provided for in AS3600.

3.8 Unless otherwise agreed by ARC and the Customer in writing, ARC will bundle or package Goods the subject of an order in its discretion and the Customer releases and discharges ARC from and against any liability or claim arising out of such bundling or packaging by ARC.

3.9 ARC will be liable for any loss incurred as a result of delay or failure to make any supply of Goods or Services or to observe any of these Conditions due directly or indirectly to an event of force majeure, being any cause or circumstance beyond ARC’s reasonable control, including but not limited to, any lack of production capacity or raw materials, strikes, lockouts, labour disputes, fires, floods, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-government authorities or embargoes. During the continuance of an event of force majeure ARC’s obligations under these Conditions will be suspended. In these circumstances, ARC has no liability whatsoever to the Customer and if the force majeure event continues for 28 days or longer, either party may terminate the contract for convenience.

4 Retention of Title

4.1 The Customer agrees that legal and equitable title to the Goods is retained by ARC until the Amount Payable has been paid in full in accordance with these Conditions and ARC will have no additional liability to the Customer.

4.2 The Customer hereby agrees to accept this appointment as bailee and fiduciary agent of ARC.

4.3 The Customer may only sell or affix the Goods to other goods (so that they become an Accessory) but only if those other goods bear some-use or use permit the Goods to be manufactured, processed, assembled, commodified or otherwise dealt with in such a separate identifiable account as the beneficial property of ARC and the Customer must keep an account of ARC on demand.

4.4 For purposes of this clause 4, “such part” means an amount equal in dollar terms to the amount owing by the Customer to ARC at the time the Goods are used in the manufacture of, or incorporated into, the Processed Goods or Accessory.

4.5 Notwithstanding any other provision to the contrary, ARC reserves the following rights in relation to the Goods until the Amount Payable has been paid in full in the Customer in respect of the Goods and all other goods and services supplied to the Customer at any time:

(a) to take possession of the Goods or any part of Goods or Services or any part of, or incorporated into, the Processed Goods or Accessory;
(b) to take possession of the Goods; and
(c) to keep or resell any of the Goods repossessed.

4.6 In the event of a breach of contract by the Customer including, without limitation, failure by the Customer to pay any Amount Payable by the required date, the Customer must return to ARC.
the Goods to ARC immediately on demand. If the Customer does not return the Goods to ARC on demand, ARChas been issued (without notice) to:
(a) enter upon the Customer’s premises at any time to do all things necessary to recover the Goods or any Processed Goods;
(b) take possession of the Goods or any Processed Goods wherever located;
(c) take possession of any Goods which have become an Accession, wherever located; and/or
(d) appoint a person to be a receiver of all or any of the Goods, Accessions, Processed Goods or any other property the subject of the security interests created by the contract.

4.8 The Customer hereby grants full leave and irrevocable licence to ARC and any person authorised by ARC to enter upon any premises where the Goods, Processed Goods or Accessions are located for the time being or stored for the purpose of retaining possession of those Goods, Processed Goods or Accessions.

4.9 The Customer:
(a) must pay ARC all costs and expenses incurred or payable by ARC for registering, maintaining or releasing any security interest; charge, mortgage or caveat in connection with the contract, or recovery of the Amount Payable or in otherwise enforcing ARC’s rights under these Conditions;
(b) must pay the costs of registering any PPSA financing statement and such costs may be invoiced or debited against the Customer’s credit account; and
(c) indemnify ARC for all costs or charges incurred or suffered as a result of any and all prosecution, actions, claims or proceedings brought by or against ARC in connection with the retention possession of the Goods or the exercise of ARC’s rights under these Conditions, and the Customer shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.

4.10 The Customer acknowledges and agrees that the contract between the parties comprises a security agreement and that ARC is entitled to register a financing statement in respect of the security interests given under that contract.

5 Price and GST

5.1 The price of Goods or Services or both will be ARC prevailing price at the time of delivery unless otherwise specially stated or otherwise agreed to in writing.

5.2 Where a party to these Conditions (Supplier) makes a Taxable Supply (within the meaning of the GST Act) under or in connection with these Conditions to another party to these Conditions (Recipient) and the consideration payable for the Taxable Supply is not specifically stated to include GST, the Supplier will be entitled to recover from the Recipient as an additional amount the amount of any GST payable on the Taxable Supply, and the Recipient must pay such GST at the same time that the consideration for the Taxable Supply is payable.

5.3 The amount of any cost recovery or compensation for costs under or in connection with these Conditions shall be reduced by the amount of any Input Tax Credits (within the meaning of the GST Act) available in respect of those costs.

5.4 A party to these Conditions will not be obliged to pay any amount in respect of GST to the other party unless and until a Tax Invoice (within the meaning of the GST Act) has been issued in respect of that GST.

5.5 In addition to paying the price for Goods, the Customer is responsible for and ARC may recover from the Customer:
(a) taxes (other than income tax), stamp duty or other statutory charges or levies whether payable by the Supplier or a Recipient in respect of the supply of the Goods;
(b) the cost of delivery of Goods including, without limitation, costs relating to long loads, wide loads, escorted loads, drop trailers, crane trucks (including associated personnel), palletising, crating and dunnage (including early delivery, if applicable around 7:00 am), delivery loads of less than 10 tonnes, delivery to non-metropolitan sites;
(c) the cost of providing materials necessary to manufacture Goods in accordance with a specification or Working Documentation where such materials are not indicated on the specification or Working Documentation including, without limitation, hurdles, chairs, ladders and bracing;
(d) costs incurred by ARC arising out of late notification by the Customer of a change to an agreed delivery schedule with such costs to include, without limitation, costs of double handling, storage of material, trailer hire and scheduling of production and delivery;
(e) storage charges where Goods are not collected immediately upon being made available to the Customer in accordance with ARC’s terms and conditions;
(f) demurrage costs or charges incurred by ARC for attendance at a delivery point after the expiration of the first three quarters of an hour such charges to be calculated at master carrier rates;
(g) legal and collection costs and disbursements on an indemnity basis incurred by ARC in connection with the collection of any amounts payable under these Conditions by the Customer; and
(h) all costs, charges, expenses or any other outgoings incurred by ARC with respect to any Variation by the Customer;
(i) all costs or charges incurred by ARC with respect to the recovery or return of Goods from the Customer (including re-stocking charges) whether or not such recovery or return of Goods occurs in relation to any breach of these Conditions; and
(j) the cost of any testing or Inspection of Goods, or testing or inspection of products or other materials required by the Customer to be used in connection with the manufacture of Goods.

6 Payment and Credit Terms

6.1 Unless ARC has agreed to extend credit to the Customer for payment of Goods must be made by the Customer in immediately available funds on or immediately prior to delivery of the Goods.

6.2 Unless otherwise agreed by the Customer and ARC, ARC will be entitled to deliver the Goods in one or more instalments. Where delivery of the Goods is effected by way of part delivery, ARC will be entitled to invoice the Customer for pro-rata progress payments in respect of Goods delivered.

6.3 Where ARC has agreed to extend credit to the Customer, ARC will submit an invoice to the Customer for Goods or Services or both supplied to the Customer (including without limitation all other costs or conditions relating to the subject Matter of these Conditions, whether implied by use, statute or otherwise, are expressly excluded).

7 PPSA

7.1 The Customer:
(a) waives its rights under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement registered in a security interest ranking in priority behind any other security interest.
(b) waives its right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement registered in a security interest ranking in priority behind any other security interest.

7.2 To the fullest extent permitted by the PPSA, the parties agree to contract out of the following provisions of the PPSA: sections 124(2) (with all references to the words "section")(section 126(2)), sections 129(3), 130, 132(3)(d), 132(4), 142 and 143, which sections (or parts of sections) do not apply to the contracts between the Customer and ARC.

8 Accruing Liabilities

8.1 These Conditions set out the entire agreement between the parties in relation to their subject matter. The terms of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention) or all other laws, treaties or conditions in relation to the subject Matter of these Conditions, whether implied by use, statute or otherwise, are expressly excluded.

8.2 No solicitor’s or recommendation made or advice, supervision or assistance given by ARC, its employees, agents, transporters or representatives whether oral or written must be construed as or constitutes a warranty or representation by ARC or a waiver of any clause in these Conditions. ARC’s entire responsibility is limited to the performance of the agreement or act or omission to act arising directly or indirectly from any such recommendations, advice, supervision or assistance.
8.3 Subject to clauses 3.6 and 8.4, ARC is not liable for any loss or damage, however caused (including, but not limited to, by the negligence of ARC), suffered by the Customer in connection with a supply of Goods or Services under these Conditions.  
8.4. If the Customer is in default in any respect, or otherwise in breach of any of the relevant provisions of these Conditions in respect of goods or services supplied, and ARC’s liability for breach of that condition or warranty may not be excluded but may be limited, clause 8.3 does not apply to that liability and instead ARC’s liability for any breach of that condition or warranty is limited to:

(a) replacing the Goods or supplying equivalent goods;  
(b) repairing the Goods;  
(c) paying the cost of replacing the Goods or of acquiring equivalent goods;  
(d) paying the cost of having the Goods repaired; or  
(e) in the case of a supply of Services, ARC doing either or both of the following (at its election):
   (A) supplying the Services again;  
   (B) paying the cost of having the Services supplied again.

8.5 Notwithstanding any other provision of these Conditions, ARC is not liable to the Customer for any indirect, special or consequential loss or damage suffered or incurred by the Customer arising out of a breach by ARC of a contract made pursuant to these Conditions or a breach of any warranty or guarantee, whether written or implied by law or by the Special Conditions at www.arcreo.com.au/trading. The phrase “indirect, special or consequential loss or damage” is deemed to include the following:

(a) economic loss, losses of opportunity, loss of profit or revenue, loss or damage in connection with claims against the Customer by third parties, liquidated sums or liquidated damages.

9 Consumers  

9.1 Where and only to the extent that the supply of Goods is to a “consumer” (as that term is defined by the ACL) then, in respect of that supply:

9.1.1 the Special Conditions at www.arcreo.com.au/trading terms are incorporated into and form part of these Conditions, and apply as part of the contract between the Customer and ARC;  
9.1.2 clause 8 does not apply and, except as stated otherwise in the Special Conditions, nothing in these Conditions excludes, restricts or modifies any Consumer Guarantee applying under the ACL.

10 Miscellaneous

10.1 Nothing in these Conditions is intended to exclude, restrict or modify rights which the Customer may have under the CCA or any other legislation which may not be excluded, restricted or modified by agreement.

10.2 For the purpose of these Conditions and any transaction effected pursuant to these Conditions, mass of steel reinforcing bars will be calculated on the basis of mass per metre as determined by ARC from time to time.

10.3 A party waives a right under these Conditions only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of a term of these Conditions does not operate as a waiver of another breach of the same term or any other term.

10.4 If a provision in these Conditions is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to that extent, and any other part of the provision, be treated as deleted from these Conditions. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.

10.5 ARC may assign or otherwise deal with the benefit of any contract made pursuant to these Conditions without the consent of the Customer. The Customer may not assign its rights under a contract or lease, licence or loan the Goods to any third party or grant a security interest in the Goods without prior notice to and written consent from ARC.

10.6 The Customer must not disclose ARC’s Confidential Information unless the Customer receives the prior written consent of ARC, such information enters the public domain (other than as a result of a breach by the Customer) or its use or disclosure is required by law. The Customer may not use any trade mark or other intellectual property of ARC, unless it receives the prior written consent of ARC (which consent may be given, withheld or withdrawn, or given subject to conditions, at ARC’s discretion).

11 Jurisdiction

The law of the state or territory in which ARC delivers Goods to the Customer is the proper law of these Conditions. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria.

12 Privacy

(a) Where the Customer provides ARC with personal information (as defined in the Privacy Act 1988) about any individual (including the Customer where applicable), the Customer must have that individual’s consent to provide that information to ARC having regard to and for the purposes set out in this clause 12 and in Liberty OneSteel’s Privacy Policy. This policy is available on request or via www.libertyonesteel.com, and contains more information about ARC’s handling of personal information, types of information collected, types of service providers used, countries to which personal information is likely to be disclosed, accessing and correcting personal information, privacy complaints, the credit reporting bodies used, information shared with those bodies and individuals’ rights in relation to their information held by those bodies.

(b) ARC may collect, use and disclose that personal information for purposes relating to any contract with the Customer and to the Customer’s credit application and account. This includes assessing the Customer’s application, monitoring the value of and enforcing the security interests created by a contract, reviewing credit arrangements on a periodic basis, or in connection with changes (e.g. credit limit) as though assessing a new application, order fulfilment and delivery, market research, planning, business development, debt collection and customer relationship management. ARC may also disclose personal information to employees, agents, contractors, guarantors and representatives of ARC (including due diligence checks on the Customer where the Customer is an individual), and deal with personal information in connection with any acquisition or potential acquisition of any part of ARC’s business. Without the personal information sought, ARC may not be able to do the foregoing things, including fulfilling its credit application.

(c) ARC may provide marketing communications to the Customer by email and other means on an ongoing basis, unless the Customer opts out by contacting ARC or legal restrictions apply.

ARC may exchange personal information with ARC’s Related Corporations, the Customer guarantors and prospective guarantors (e.g. for the purpose of determining whether to act as guarantor), the Customer’s representatives and ARC’s service providers. ARC may also exchange that information with other credit providers for purposes including: assess a credit or guarantor application; determine credit/default status; and assess or comment on credit worthiness. Some of these third parties may be located in other countries. While these parties outside Australia will often be subject to privacy and confidentiality obligations, ARC may not be accountable for the third party under the Privacy Act or for the overseas recipient’s storage, use or disclosure of the information; (c) individuals may not be able to seek redress under the Privacy Act for that disclosure or for the acts or omissions of the overseas recipient of the information; and (d) the third party may be subject to foreign laws which might compel further disclosures of personal information (e.g. to government authorities).

13 Interpretation

In these Conditions:

Accessed means any Goods which are installed or in affixed to other goods;  
ACL means the Australian Consumer Law in Schedule 2 of the CAA;  
ARC means The Australian Steel Company (Operations) Pty Ltd ABN 89 069 426 955;  
Amount Payable means all amounts payable by the Customer at any time to ARC and/or ARC’s Related Corporations;  
CC means Consumer Credit;  
CC Act means the Australian Consumer Credit Protection Act 2000;  
GST Act means the A New Tax System (Goods and Services) Act 1999 and any related legislation;  
GST includes all amounts payable by the Customer at any time to ARC and/or ARC’s Related Corporations;  
GTC means the General Trading Conditions;  
Interpretation means any modification, amendment or change to the terms of an order submitted under these Conditions;  
in connection with a supply of Goods or Services under these Conditions.

13.2 For the purposes of this clause 13:

(1) “affected person” means a “consumer” in relation to their personal information;  
(2) “personal information” means information about an individual (including, but not limited to, by the negligence of ARC), suffered by the Customer in connection with a supply of Goods or Services under these Conditions.

13.3 Some of these third parties may be located in other countries. While these parties outside Australia will often be subject to privacy and confidentiality obligations, ARC may not be accountable for the third party under the Privacy Act or for the overseas recipient’s storage, use or disclosure of the information; (c) individuals may not be able to seek redress under the Privacy Act for that disclosure or for the acts or omissions of the overseas recipient of the information; and (d) the third party may be subject to foreign laws which might compel further disclosures of personal information (e.g. to government authorities).

In addition, the following terms have the same meanings given to them in the PPSPA:

(a) financing statement;  
(b) proceeds;  
(c) purchase money security interest;  
(d) security agreement;  
(e) security interest; and  
(f) verification statement.