

## STANDARD CONDITIONS OF SALE (THE "CONDITIONS")

1. In these Conditions:
  - (a) "Collateral" has the meaning given in clause 24;
  - (b) "Company" means Omega Steel and Alloy Pty Ltd. (ABN 38 066 805 070) which is the seller of the Goods. References to the Company include references to the successors and permitted assigns of the Company;
  - (c) "Contract" means these Conditions and the Sales Contracts taken together;
  - (d) "Purchaser" means the buyer of the Goods as specified in this Contract;
  - (e) "PPS Act" means the *Personal Property Securities Act 2009* (Cth);
  - (f) "Goods" means the products and, if any, services specified in this Contract.If a term used in these Conditions has a particular meaning in the PPS Act, it has the same meaning in these Conditions.
2. These Conditions (which shall only be waived by notice in writing signed by the Company to the Purchaser) shall prevail over any and all conditions (whosoever contained) imposed or sought to be imposed by the Purchaser in relation to the supply of the Goods by the Company to the Purchaser. A Contract is formed and the Purchaser will be taken to have accepted and be bound by these Conditions if the Company accepts an order for the Goods by issuing a Contract or supplying the Goods to the Purchaser or the Purchaser accepts delivery of the Goods, makes any payment under this Contract or performs any of these Conditions.
3. The purchase price for the Goods specified in this Contract shall be held firm for the period stated or where no period is so stated, for a period of seven (7) days from the date this Contract is issued. The Company shall be under no obligation to be bound to supply the Goods to the Purchaser unless this Contract is counter-signed by the Purchaser provided that the Company shall nevertheless be entitled to cancel this Contract within seven (7) days of such receipt. In accordance with clause 2 above the Purchaser will be deemed to be bound by these Conditions irrespective of whether the front page of this Contract is counter-signed by the Purchaser. The purchase price is stated in Australian dollars, unless specified otherwise.
4. By providing the Purchaser with a quotation, the Company is not making the Purchaser an offer. The Company may withdraw or alter the quotation without giving the Purchaser notice. If the Company does not withdraw the quotation, it is valid for the period stated on the quotation. If no period is stated on the quotation, it is valid for seven (7) days from the date the quotation was given. The Purchaser agrees to keep all quotations provided by the Company to the Purchaser strictly confidential.
5. Unless otherwise specified in this Contract, any price quoted by the Company to the Purchaser for the Goods is a net price exclusive of sales or any other taxes, levies or imports whatsoever. Prices quoted by the Company for the Goods are those applicable at the date of the quotation and any alterations before acceptance of or during the currency of the contract constituted by this Contract, shall be for the Purchaser's account.
6. The Purchaser shall:
  - (a) pay any sales tax in respect of the Goods or, where applicable, quote to the Company its sales tax registration number or a sales tax exemption declaration each in the manner approved by the Australian Taxation Office, in respect of the Goods; and
  - (b) indemnify and hold harmless the Company from any sales tax, customs duty, excise, import, withholding or other tax whatsoever (other than income tax) penalties for late payment or failure to pay any of them, imposed on the Company in respect of the Goods.
7. (a) The Purchaser must pay to the Company any amount ("GST Amount") which is payable by the Company on account of goods and services tax, value added tax or any other like tax ("GST") as a result of the making of a supply under or otherwise in connection with this Contract. The GST Amount will be calculated using the prevailing rate of GST.  
(b) If at any time an adjustment is made or required to be made on account of any GST paid or payable in connection with this Contract, the GST Amount will be amended accordingly and any corresponding payment necessary to give effect to the adjustment must be made by the Purchaser or Company, as the case may be.
8. Unless otherwise specified in this Contract the purchase price in relation to the Goods and any GST Amount shall be payable net cash in full on the due date shown on the Company's commercial invoice free and clear of any deduction, set-off or counterclaim whatsoever by bank cheque delivered to the Company or in immediately available funds to the account specified by the Company from time to time by 11am on the due date.
9. If requested by the Company, the Purchaser shall pay any freight, delivery, customs clearing, warehousing, storage or other costs, expenses or disbursements incurred by the Company in respect of the Goods within seven (7) days from the date of such request.
10. If the Purchaser does not pay any amount owed by the due date, then, without prejudice to any other right or remedy available to the Company:
  - (a) the Company may charge and the Purchaser will pay interest at the rate of six percent (6%) per month above the rate set by the Westpac Banking Corporation from time to time as its indicated lending rate on bank overdrafts on daily balances in respect of any moneys as may from time to time be over-due until such moneys together with interest are paid in full;
  - (b) the Company reserves the right to cancel the Contract or suspend further deliveries until payment has been made.
11. All expenses, costs or disbursements incurred in recovering any outstanding monies including debt collection fees and solicitors costs on a full indemnity basis will be paid by the Purchaser.
12. The date for delivery (if any) shown herein is the estimated date for delivery only and to the extent permitted by law the Company shall be under no liability for any loss (including loss of profits or consequential loss), damage (including concealed damage, deterioration, contamination or evaporation) or delay occasioned to the Purchaser or its customers arising from late delivery or non-delivery of the Goods or late provision of any services. The Purchaser must still accept and pay for the Goods even if the Company delivers late. The Purchaser takes delivery of the Goods at the Company's nominated delivery address.
13. Risk in the Goods passes to the Buyer when delivery is taken to occur. The Company shall not be liable for any loss of or damage to Goods in the Company's possession whether caused by the negligence, wrongful act or omission or default of any of the Company's servants, agents or employees or any other cause whatsoever.
14. If the performance or observance of the Company's obligations under this Contract is prevented, restricted or affected by a force majeure event including without limitation industrial dispute, strikes, war or riot, lockouts, raw material shortage, breakdown of plant, transport or equipment, act of God, or any other circumstances whatsoever whether ejusdem generis to the above causes or not beyond the reasonable control of the Company, the Company may give prompt notice of such cause to the Purchaser and will be relieved of performance of the affected obligation for the duration of the delay. If the Company is still unable to perform the affected obligations after 90 days from the receipt by the Purchaser of the Company's notice of delay, either party may terminate the Contract without penalty.
15. The Company will notify the Purchaser of any applicable manufacturers' warranty in relation to the Goods and to the extent possible will pass on to the Purchaser the benefit of any such warranties. Manufacturer warranties and representations are in substitution for all other terms, conditions, warranties and representations, implied by statute or otherwise which the Company makes no representation whatsoever in relation to the Goods.
16. Notwithstanding anything herein contained the Company shall continue to be subject to any implied warranty provided by the Competition and Consumer Act 2010 (as amended) or any other Commonwealth or State legislation if and to the extent that the said Act is applicable to this Contract and prevents the exclusion, restriction or modification of that warranty. If those statutory provisions apply, to the extent to which the Company is entitled to do so, its liability will be limited at its option to:
  - (a) in the case of goods, the replacement of the goods or resupply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or acquiring equivalent goods, or the payment of the cost of having the goods repaired; and
  - (b) in the case of services, the supply of the services again, or the payment of the cost of having the services supplied again.
17. The Company does not promise that repair facilities or parts will be available in respect of the Goods.
18. The Company will under no circumstances be liable to the Purchaser for any loss, damage, expense, injury or death sustained or incurred by the Purchaser or any other party, direct, indirect, consequential or otherwise, including any loss of profits, resulting directly or indirectly from any negligence, wrongful act or omission or default of the Company, the supply, performance or use of any Goods or out of any breach by the Company of these Conditions or delay in delivery of the Goods or non-delivery where such is due to causes beyond the Company's reasonable control including events of force majeure.
19. The Company's liability in contract, tort or otherwise will be reduced by the extent to which the Purchaser contributed to the loss or to which any of the Purchaser's warranties contained herein are incorrect, inaccurate or incomplete.
20. The Purchaser shall not be entitled to cancel or amend this Contract except with the prior written consent of the Company and then only on terms which ensure that the Company is indemnified against any losses incurred by it as a result of such cancellation or amendment.
21. Where delivery is deferred by agreement with the Company the date from which delivery is deferred shall be deemed to be the date on which delivery is made for the purposes of this Contract. From that date until the date of actual delivery the Purchaser shall pay to the Company a warehousing fee as nominated by the Company.
22. This Contract shall be construed according to the laws of the Victoria and the parties accept the non-exclusive jurisdiction of Courts exercising jurisdiction in that State. The Purchaser and the Company agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
23. The Company retains title to the Goods, and title to the Goods does not pass from the Company to the Purchaser, until the Purchaser pays in full the purchase price and all other amounts that are payable, owing but not payable, or that otherwise remain unpaid by the Purchaser to the Company on any account at any time. This is so even if the Purchaser has taken possession of the Goods, or has enhanced or changed the Goods or performed work on them.
24. The Goods, proceeds and any product or mass that the Goods may be or become part of are referred to in this clause collectively as the "Collateral".
25. Until the Purchaser pays in full the purchase price and all other amounts that are payable, owing but not payable, or that otherwise remain unpaid by the Purchaser to the Company on any account at any time, the Purchaser must:
  - (a) store the Collateral properly and separately and mark the Collateral to identify it as being subject to the Company's security interest and as included in a particular invoice or delivery; and
  - (b) fully insure the Collateral against loss or damage, ensuring that the Company's interest in the Goods as a secured party is noted on the policy, and promptly give the Company upon request a copy of the policy and evidence of its currency.
26. The Purchaser acknowledges that the Company may register a financing statement in relation to its security interest in the Goods. The Purchaser waives its right under section 157 of the PPS Act to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.
27. The Purchaser undertakes, if it disposes of any Collateral, that it will receive proceeds at least equal to the market value of the Collateral, and that it will not allow any other security interest to exist over those proceeds if that security interest could rank ahead of the Company's security interest. If such a security interest does arise despite the previous sentence, the Purchaser must ensure that it receives cash proceeds for the Collateral at least equal to the market value of the proceeds, and must immediately pay those proceeds to the Company in reduction of the amount owing.
28. The Company can apply amounts it receives from the Purchaser, towards amounts owing to it in such order as the Company chooses.
29. The Company and the Purchaser agree not to disclose information of the kind mentioned in section 275(1) of the PPS Act, except in the circumstances required by sections 275(7)(b) to (e) of the PPS Act. The Purchaser agrees that it will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if the Company approves. Nothing in this clause will prevent any disclosure by the Company that it believes is necessary to comply with its other obligations under the PPS Act.
30. To the extent that it is not inconsistent with the above clause constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPS Act, the Purchaser agrees that the Company may disclose information of the kind mentioned in section 275(1) of the PPS Act to the extent that the Company is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPS Act) pursuant to section 275(1) of the PPS Act.
31. If:
  - (a) the Purchaser defaults in the timely performance of any obligation owed to the Company; or
  - (b) an insolvency event occurs in respect of the Purchaser; or
  - (c) the Company may repossess the Collateral and otherwise enforce its security interest in the Collateral. The Company, for that purpose, may enter any premises occupied by the Purchaser and remove the Collateral, including by detaching the Goods from any other products to which they may be attached, or by detaching Goods from any land to which they may be fixed.
32. To the extent that Chapter 4 of the PPS Act would otherwise apply to an enforcement by the Company of its security interest in the Collateral, the Purchaser and the Company agree that the following provisions of the PPS Act do not apply, to the extent the PPS Act allows them to be excluded:
  - (a) (enforcement methods) sections 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral), 136(3) and 136(4) (Retaining collateral free of interests), 137 (Persons entitled to notice may object to proposal) and 138X(4) (Seizure and disposal or retention of crops);
  - (b) (notice) sections 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets - notice to higher priority parties and grantor), 127 (Seizure by higher priority parties - notice), 130 (Notice of disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and
  - (c) (rights to remedy) sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).
33. The Purchaser must promptly do anything the Company requires to ensure that its security interest is a perfected security interest and has priority over all other security interests.
34. Without creating any legal obligation, the parties intend that any Purchaser claims, demands or controversies arising out of or in relation to this Contract or any breach, termination or invalidity thereof will be referred to the Australian Commercial Disputes Centre ("ACDC") for assistance. Any such claim, demand or controversy may also be submitted for arbitration to be administered by ACDC if the parties agree to do so. Any meeting organised by ACDC shall be held in Victoria or such other place as may be agreed by the parties. The parties agree to pay an equal share of the costs of conciliation by ACDC and agree to pay the costs of arbitration by ACDC as directed by ACDC.
35. The Purchaser expressly warrants and acknowledges that:
  - (a) the Company is entitled to presume that any person purporting to have the authority to bind the Purchaser to a contract for the purchase of Goods has the authority they claim;
  - (b) if the Purchaser is a trustee, the directors warrant that they have the authority and power to enter into this Contract and personally guarantee the performance of all of the trust's obligations under this Contract;
  - (c) if the Purchaser is a company, the person who signed this Contract warrants that they have authority and power to enter into this Contract;
  - (d) it has relied on its own inquiries as to the fitness of the Goods for its purpose, use or application by the Purchaser or its customer and agrees the Goods are fit and correct for such; and
  - (e) the Purchaser has read and understands and agrees to the terms and conditions contained in this Contract.
36. The Purchaser must take all reasonable action to mitigate any loss suffered for which a claim under this Contract could be made including first claiming under its insurance policy and diligently pursuing the insurer to obtain an appropriate remedy for that claim before making any claim against the Company, and any sum recovered will reduce the amount of that claim.
37. Any claim for loss or damage must be notified in writing to the Company within 7 days of delivery of the Goods or the date upon which the Goods should have been delivered. The Company shall be discharged from all liability howsoever arising unless suit is brought and notice thereof given to the Company within 4 months after delivery of the Goods or the date upon which the Goods should have been delivered.
38. The Company may send out emails with details of promotions and/or other marketing material which the Company believes may be of interest to the Purchaser. The Purchaser consents to receiving these emails. The Purchaser can unsubscribe from these emails at any time.
39. The Purchaser authorises the Company to make credit enquiries about the Purchaser of any third party. The Purchaser authorises all such third parties to respond fully to all credit enquiries made by the Company and to provide all information about the Purchaser as requested by the Company. The Purchaser waives any claims against those third parties for provision of such information. The Purchaser authorises the Company to hold, collect and use information about the Purchaser for the purposes of assessing the Purchaser's credit worthiness, enforcing any rights against the Purchaser, marketing the Company's products and services and to supply that information to any credit reporting agency or to any person to facilitate collection of debts from the Purchaser. The information collected by the Company will be held securely at the Company's head office. The information will be accessible to any of the Company's employees and agents who need access to it for the administration of the Company's business. The Purchaser may request access to and correction of any information about the Purchaser held by the Company at any time. The Company may charge reasonable costs for providing access to that information.
40. Prices and other charges and discounts offered are subject to alteration without notice. Should an order be received by the Company requesting supply on non-current pricing terms, the Company has the right to amend the prices, charges and discounts to reflect prevailing pricing terms.
41. This Contract shall be binding upon the Purchaser, its successors, executors, administrators and permitted assigns and shall inure to the benefit of the Company, its successors and assigns.
42. This Contract may not be assigned by the Purchaser without the prior written consent of the Company. Any provision of these Conditions which is unenforceable or partially unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.
43. A notice, consent or other communication under the Conditions is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax. If it is sent by mail, it is taken to have been received three working days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form. A person's address and fax number are those set out in the quotation. The Company may send a notice to the Purchaser's last known address.
44. A right of the Company may only be waived in writing, signed by the Company. No other conduct of the Company (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right. A waiver of a right by the Company on one or more occasions does not operate as a waiver of that right if it arises again. The exercise of a right by the Company does not prevent any further exercise of that right or of any other right. Any right that the Company may have under these terms of sale is in addition to, and does not replace or limit, any other right that the Company may have.