



## ATLAS STEELS TERMS AND CONDITIONS OF SALE – New Zealand

These are the entire Terms and Conditions of Sale of all goods, materials and services ("the Goods") supplied by ATLAS STEELS – A DIVISION OF ATLAS SPECIALTY METALS LIMITED (Reg No AK524015) or any of its related entities or subsidiaries (the "Company") to any person, firm or company placing an order with the Company ("Customer").

### GENERAL

1. Any quotation by the Company is not an offer to sell or to provide Goods. The Company will not be bound by any order unless it has been accepted in writing by a duly authorised officer of the Company.
2. All orders accepted by the Company are deemed to include these Terms and Conditions of Sale. The Company may at any time alter these Terms and Conditions of Sale and the altered Terms and Conditions of Sale will apply to all further orders after notification by the Company to the Customer.
3. Any terms or conditions contained in any order, offer, acceptance or other document of the Customer and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not included in these Terms and Conditions of Sale are expressly excluded to the maximum extent permitted by law.

### PRICES

4. Prices are those referred to in the invoice issued by the Company and/or arrangements current at the date of issue. Prices are subject to change without notice.
5. Prices are quoted Ex Works in the relevant city in Australia or New Zealand.
6. Unless otherwise agreed in writing, all prices are strictly net of any taxes or delivery charges. Goods and Services Tax ("GST") or any other applicable tax or duty payable must be paid by or reimbursed by the Customer to the Company on demand and the Customer must indemnify and keep the Company indemnified in respect of all taxes and duties (including GST) arising out of any sale of Goods or the subsequent use of Goods after sale to the Customer.

### TERMS OF PAYMENT

7. Unless otherwise agreed in writing, the Customer must make payment within 30 days after the end of the month in which the Goods are invoiced. The provision of credit is at the Company's sole discretion.
8. The Customer must not withhold payment of any account by reason of any account query, dispute, set off or technical investigation. The Customer agrees to pay the Company's administration and handling fees in respect of any copies of documents required or other processing involved in the conduct of the account.

### DELIVERY

9. The Customer is responsible for the cost of delivery and the Customer must pay the delivery charges stipulated by the Company from time to time. The Company may, in its absolute discretion, determine the method of transport.
10. Any date or time quoted for delivery is an estimate only. The Company will endeavour to effect delivery at the time or times required by the Customer. However, failure to do so does not confer on the Customer any right to cancel the order or refuse delivery or render the Company liable for any loss or damages directly or indirectly

sustained by the Customer as a result of any difference between the estimated time and actual date of delivery.

11. The Company's obligation to deliver is discharged upon arrival of the Goods at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice whichever occurs first. The Customer must unload the Goods upon delivery, provided that if the Customer is unable or unwilling to accept physical delivery of the Goods when the Goods are ready for delivery, the Company is entitled to charge a fee for any delay, or arrange for the storage of the Goods at the risk and cost of the Customer including all transportation, storage and other consequential costs. The Company may, at its sole discretion, make and invoice partial deliveries and each partial delivery will be treated as a separate sale pursuant to these Terms and Conditions of Sale.

### INSPECTION

12. The Customer must examine the Goods immediately after delivery. The Company is not liable for any misdelivery, shortage, defect or damage unless the Company receives details in writing within 7 days of the date of delivery of the Goods.

### PROPERTY AND RISK

13. Risk in the Goods supplied to the Customer by the Company passes to the Customer on delivery. Title to and property in the Goods will not pass to the Customer until payment is made in full for all Goods supplied to the Customer by the Company at any time for which payment remains outstanding.
14. Prior to title passing to the Customer, the Customer holds the Goods as fiduciary agent and bailee of the Company and, pending resale or utilisation in any manufacturing or construction process, must keep the Goods separate from its own, properly stored, protected, readily identifiable and insured.
15. The Customer may resell the Goods before title passing, provided that any such resale is at arms length and on market terms. The Customer will receive all proceeds of any dealing with such Goods on trust for the Company and will keep such proceeds in a separate account until all liability to the Company has been discharged.
16. The Company is to have power to appropriate payments to such Goods and accounts as it thinks fit notwithstanding any appropriation by the Customer to the contrary.
17. In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer will hold:
  - a) such part of the product of such manufacturing or construction process as relates to the Goods; and
  - b) such part of the proceeds of such manufacturing or construction process as relates to the Goods,

in trust for the Company. For the purpose of this paragraph, the expression "such part"

means an amount equal in dollar terms to the amount owing by the Customer to the Company at the time of manufacture or construction, or the receipt of such proceeds (as the case may be).

18. The right to resell, use in manufacture or construction, on-sell, deal or otherwise dispose of the Goods in the normal course of trade may be revoked at any time by the Company and automatically ceases if an Insolvency Event occurs.

### DEFAULT

19. If the Customer fails to make payment in accordance with Clause 7, or fails in any material respect to comply with these Terms and Conditions of Sale, or an Insolvency Event occurs, then all amounts owed to the Company by the Customer are immediately due and payable (including any interest charges), time is of the essence and the Company may, in its absolute discretion:
  - a) cease all further deliveries or require the payment of cash upon delivery of any further Goods;
  - b) terminate any agreement in relation to Goods that have not been delivered including participation in any special deals, discounts, bonus payments, redemptions, rebates or other incentive programs;
  - c) charge an interest charge at a rate of 2% per month on all overdue amounts (including transport and other costs) calculated on a daily basis on any monies due but unpaid. The interest charge will be calculated from the due date for payment AND the parties agree that such interest charge is not a penalty but is a true measure of damages incurred by the Company. Any payments received from the Customer will be credited first against any interest charge and then against the oldest amount outstanding;
  - d) claim from the Customer all costs, expenses and charges incurred on any account whatsoever including but not limited to the cost of any action taken by the Company to recover the Goods or any monies due from the Customer including but not limited to any collection agent costs, legal costs and disbursements each on a full indemnity basis; and
  - e) retake (without notice) possession of all Goods supplied to the Customer by the Company which remain the property of the Company pursuant to clause 13 and the Customer hereby authorises and allows the Company or its representatives, servants, agents or employees to enter the premises upon which the Goods are stored for the purpose of retaking possession of those Goods and the Company will not be liable for any costs, losses, damages, expenses or any other monies or losses suffered by the Customer as result of the Company retaking possession of the Goods. The Customer hereby indemnifies the Company against prosecution and claims for damages resulting from seizure of the Goods.

### PERSONAL PROPERTY SECURITIES ACT 1999

20. Until full payment has been received in respect of the Goods supplied, the Customer acknowledges and agrees that:

- a) these terms and conditions constitute a security agreement for the purposes of section 36 of the Personal Property Securities Act 1999;
  - b) a security interest is taken in all goods previously supplied by the Company to the Customer (if any) and all Goods that will be supplied in the future by the Company to the Customer during the continuance of the parties relationship.
21. The Customer undertakes to:
- a) sign any further document and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");
  - b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged thereby;
  - c) not register a financing change statement (in accordance with Regulation 9) or a change demand (in accordance with Regulation 10) without the prior written consent of the Company;
  - d) give the Company not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice); and
  - e) immediately advise the Company of any material change in its business practices of selling the Goods, which would result in a change in the nature of proceeds derived from such sales
22. Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
23. The Customer acknowledges that it is the intention of the parties that part 9 of the PPSA will not apply to this Agreement.

#### WARRANTY

24. Subject to payment in full being made in accordance with clause 7, the Company will use its best endeavours to pass on to the Customer the benefit of any warranties or guarantees it receives in respect of Goods supplied to the Customer.
25. The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires goods or services from the Company for the purposes of a business in terms of section 2 and 43 of that Act.

#### LIMITATION OF LIABILITY

26. Except as otherwise provided by statute:
- a) the Company is not liable for any loss or damage of any kind whatsoever whether suffered or incurred by the Customer or another person whether such loss or damage arises directly or indirectly from the Goods or advice provided by the Company to the Customer and without limiting the generality of the foregoing of this clause the Company will not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and
  - b) notwithstanding the terms of this contract the Company will not be liable in contract, or in tort,

- or otherwise for any loss, damage, or injury beyond the value of the Goods provided by the Company to the Customer; and
  - c) the Customer indemnifies the Company against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of the Company or otherwise, brought by any person in connection with any matter, act, omission, or error by the Company its agents or employees in connection with the Goods.
27. No representation, condition, warranty or premise expressed or implied by law or otherwise applies to goods except where Goods are supplied pursuant to the Consumer Guarantees Act 1993 or except where expressly provided to the Customer at the time of sale however no warranty shall exceed that given by the manufacturer.
28. The Company does not provide any warranty that the Goods are fit and suitable for the purpose for which they are required. The Customer agrees that it does not rely on the skill or judgement of the Company in relation to the suitability of any of the Goods for a particular purpose unless it has indicated that purpose in writing to the Company and the Company has acknowledged in writing that the Goods will be fit for the particular purpose.

#### FORCE MAJEURE

29. In addition to clause 10, the Company is not liable for any failure or delay in supply or delivery of the Goods where such failure or delay is wholly or partly due to Force Majeure. The Company may in its absolute discretion elect to cancel any order affected by Force Majeure by providing written notice to the Customer or continue to fulfil such order in which case the Customer is not relieved of any obligation to accept or pay for such Goods.

#### CANCELLATIONS AND RETURNS

30. If a Customer cancels or alters (with the prior written agreement of the Company) an order or any part of any order after the Company has accepted the order, the Company may invoice the Customer as a debt due for all costs and expenses reasonably incurred by the Company in relation to the order and its cancellation or alteration including the cost of any materials, labour, tooling or transport.
31. The Company does not accept returned Goods. However, it may in its absolute discretion accept the return of Goods in special circumstances with the prior written approval of a duly authorised representative of the Company. Goods returned for credit pursuant to this clause will be subject to a handling and administration charge equivalent to 20% of the invoiced value of the returned Goods. Return freight and other expenses must be paid for by the Customer.

#### GOVERNING LAW, NOTICE, PROOF OF DEBT

32. These Terms and Conditions of Sale are governed by and shall be construed according to the laws of New Zealand. The parties consent to any proceedings arising out of or in connection with these Terms and Conditions of Sale being instituted and heard by the Courts of New Zealand.
33. The Customer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of the Customer.
34. A certificate signed by a Director or Secretary

of the Company is prima facie evidence of the amount of indebtedness of the Customer to the Company at that time.

#### DEFINED TERMS

35. The following terms used in these Terms and Conditions of Sale have the meanings as set out below:

"Force Majeure" means any cause, event or circumstance whatsoever outside the reasonable control of a party including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, accidents to machinery, restrictions or intervention imposed by any laws, regulations, governments or government agencies, transport delays, fire, flood, act of God, breakdown of plant, transport delays, shortages or unavailability of materials or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

"Insolvency Event" means in relation to a Customer:

- (a) if the Customer is a corporation, the Customer passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or calls a meeting of, or enters into any arrangement or composition with creditors or if a receiver or manager or administrator or controller is appointed for any property or assets of the Customer or the Customer becomes subject to winding up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator or administrator is appointed; or
- (b) if the Customer is a natural person, the Customer commits any act of bankruptcy or a similar, or equivalent act in any jurisdiction