



ATLAS STEELS TERMS AND CONDITIONS OF SALE – Australia

These are the entire Terms and Conditions of Sale of all goods, materials and services including all metal, metal products and related products ("the Goods") supplied by ATLAS STEELS – A DIVISION OF ATLAS SPECIALTY METALS PTY LTD (ABN 13 004 496 128) or any of its Related Bodies Corporate as defined in the *Corporations Act 2001* (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. Such notification may occur through posting the updated terms and conditions on the Company's website.
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"), sales tax 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. Where credit is approved for a Customer, unless otherwise agreed in writing, the Customer must make payment by the last working day of the month following the month in which the Goods are invoiced. The provision of credit is at the Company's sole discretion. The Company can revoke credit immediately at its 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. If at any time the Company does unload the Goods this is at the Customer's risk and the Customer indemnifies the Company for any loss, injury or property damage arising.

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 parties agree that clauses 13 to 17 are not intended to create a charge or any other form of security interest and that if and to the extent that, as a matter of law, this clause creates a charge or any other form of security interest, the clause is deemed to be amended so that this is not the case.

19. 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.

PERSONAL PROPERTY SECURITIES ACT 2009

20. The retention of title contained in these Terms and Conditions give rise to a security interest as defined in the Personal Properties Securities Act 2009 ("PPSA") in all present and goods acquired after the execution of these Terms and Conditions.
21. The Customer acknowledges that the Company will register a financing statement on the Personal Properties Security Register ("PPSR").
22. The Customer agrees to do all things and execute or arrange execution of all documents the Company requires to perfect a first ranking security interest in the Goods including registering a statement of the PPSR.
23. The Customer will give the Company 14 days prior written notice of any change in the Customer's name, address, contact details or any other change to Customer's detail.

DEFAULT

24. 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 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..

PRODUCT WARRANTY

25. 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.

LIMITATION OF LIABILITY

26. These Terms and Conditions of Sale do not exclude, restrict or modify the application of any applicable laws of the Commonwealth, State or Territory which cannot be excluded, restricted or modified.
27. The Customer represents and warrants the suitability and accuracy of any specification and working documentation supplied to the Company and further warrants that such specification, working documentation and resultant goods will not infringe any third party intellectual property rights. The Customer waives any rights or action it might have had, and indemnifies the Company for any loss or damage that it or the Company incurs or may incur but for this release, in respect of goods made pursuant to the specification or working documentation.

28. Sales to Non-Consumers

- a) In the case of Goods supplied by the Company to a Customer who is not a "Consumer" (as

defined in the Competition and Consumer Act 2010 as amended from time to time ("the Act"), if the Goods do not correspond with the description of them on the invoice or are defective, then provided that the Goods are preserved intact and made available for inspection by a representative of the Company and at the Company's request are returned to the Company in the same order and condition as that in which they were delivered, the Company may at its option repair or replace those Goods or reimburse the Customer for the amount of the purchase price paid for them, but any claim in this respect must be made in writing within 7 days of the date of delivery of those Goods.

- b) Should the Customer seek indemnity from the Company in respect of any claim by a consumer against the Customer as a result of a breach of condition or warranty implied by the Act in a contract for the supply of Goods by the Customer to that consumer, clause 28(a) will not apply in respect of Goods that are of a kind ordinarily acquired for personal, domestic or household use or consumption ("Consumer Goods") and the Company's liability is limited to the minimum liability to the Customer in accordance with the Act, or limited to a liability to pay to the Customer an amount equal to the cost of replacing the Goods or the cost of obtaining equivalent Goods or the cost of having the Goods repaired, whichever is the lesser amount.

29. Sales to Consumers

- a) In the case of Goods supplied by the Company to a Consumer, if the Goods are not of a kind ordinarily acquired for personal domestic or household consumption, and unless the Customer establishes that reliance on this provision would not be fair and reasonable, the liability for breach of a condition or warranty implied into this contract by the Act (other than a condition implied by Section 69) is limited:

- i) in the case of goods, to any one of the following as determined by the Company: (a) the replacement of the Goods; or (b) the supply of equivalent Goods; or (c) the repair of the Goods; or (d) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or (e) the payment of the costs of having the Goods repaired;

- ii) in the case of services, to any one of the following as determined by the Company: (a) the supplying of the services again; or (b) the payment of the cost of having the services supplied again.

- b) If the supply is one which the Unfair Contracts provisions of the Act applies, then where the Company exercises a right under Clause 2 or 9 (or any other clause that may be invalid by that legislation) the Consumer shall have a right to cancel that part of the order to which the variation applies.

30. Except for those conditions and warranties implied by the Act or other sale of goods or consumer protection legislation which may not be excluded, the Customer agrees that:

- a) it has not relied on any inducement, recommendation, advice, representation,

assistance or statement made by or on behalf of the Company in purchasing the Goods and there are no implied conditions or warranties herein and no collateral contracts in connection herewith (except such as may be in writing and signed by a duly authorised representative of the Company); and

- b) clauses 267 to 29 (as applicable) set out the entire liability of the Company in respect of its liability under the Act or otherwise. Notwithstanding anything contained in these Terms and Conditions of Sale, the Company will not be liable for any loss, damage, or injury beyond the value of the Goods provided by the Company to the Customer. In no circumstances will the Company have any liability in respect of or arising out of or in connection with any special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred by the Customer.

FORCE MAJEURE

31. 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

32. 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.

33. Other than in respect of the Company's obligations pursuant to clauses 28 and 29 of these Terms and Conditions of Sale, 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

34. These Terms and Conditions of Sale are governed by the laws of Victoria and the parties agree to submit to the non exclusive jurisdiction of the Courts of Victoria.

35. The Customer agrees that service of any notices or Court documents may be effected by sending them by pre-paid post or facsimile to the last known address of the Customer.

36. 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

37. 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 any equivalent act in another jurisdiction.

PRIVACY POLICY

38. Please refer to the current Privacy Policy on the Atlas website www.atlassteels.com.au/site/pages/privacy.php