



## ATLAS STEELS TERMS AND CONDITIONS OF SALE

These are the entire Terms and Conditions of Sale ("Terms and Conditions") 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 a duly authorised officer of the Company has accepted it in writing.
2. All orders accepted by the Company are deemed to include these Terms and Conditions. The Company may at any time alter these Terms and Conditions and the updated Terms and Conditions will apply to all further orders. Up to date Terms and Conditions are published 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 are expressly excluded to the maximum extent permitted by law.

### PRICES

4. Prices are set out in the invoice issued by the Company and/or arrangements current at the date of issue. Prices are subject to change by the Company without notice. Prices are quoted Ex Works in the relevant city in Australia.
5. 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

6. 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.
7. All payments required to be made by the Customer to the Company under these Terms and Conditions will be made free of any set-off, or counterclaim and without deduction or withholding. Any amount due to the Company from time to time may be deducted from any monies which may be or may become payable to the Customer by the Company.

### DELIVERY

8. 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 determine the method of transport, in its absolute discretion.
9. 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. The Customer has no right to cancel any order or refuse delivery or claim any loss or damage from the Company as a result of any difference between the estimated time and actual time of delivery.
10. The Company's responsibility ends at the delivery point. The Customer must unload the Goods. 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. 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

11. The Customer must examine the Goods immediately on delivery. The Customer must check the Goods supplied for size and quality. The Company shall not be liable for any claims whatsoever unless made in writing within 10 Business Days after delivery.

### PROPERTY AND RISK

12. 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.

### PERSONAL PROPERTY SECURITIES ACT 2009

13. 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.
14. The Customer acknowledges that the Company may register a financing statement on the Personal Properties Security Register ("PPSR").
15. 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.
16. The Customer will give the Company 10 Business Days (being a day not Saturday, Sunday or public holiday in the State of Victoria) prior written notice of any change in the Customer's name, A.B.N, address, contact details or any other change to Customer's detail.

### DEFAULT

17. If the Customer fails to make payment in accordance with Clause 6, or fails in any material respect to comply with these Terms and Conditions, or an Insolvency Event occurs, then all amounts owed to the Company by the Customer are immediately due and payable (including any interest charges and collection/legal costs), 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 interest at 2% per month on all overdue amounts calculated on a daily basis from the due date. The parties agree this is a true measure of damages incurred by the Company. Any payments received from the Customer will be credited first against interest then against the oldest amount outstanding.

(d) claim from the Customer all reasonable 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 12 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.

18. "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.

#### **PRODUCT WARRANTY**

19. Subject to payment in full being made in accordance with clause 6, 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**

20. These Terms and Conditions 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.
21. The Customer must satisfy themselves of the fitness of the goods for the particular purpose in question. The Customer does not rely on the skill or judgement of the Company or any person on the Company's behalf. The Customer warrants that such specification, working documentation and resultant goods will not infringe any third party intellectual property rights. The customer 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.
22. 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 10 Business Days of the date of delivery of those Goods.
23. 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 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
24. Clauses 21 to 25 (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, 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**

25. 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 any cause, event or circumstance whatsoever outside the reasonable control of the Company 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. The Company may in its absolute discretion elect to cancel any order affected by these circumstances by providing written notice to the Customer or may 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**

26. 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.
27. Other than in respect of the Company's obligations pursuant these clauses 28 and 29, the Company do 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. The Customer must pay for return freight and other expenses.

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

28. The laws of Victoria govern these Terms and Conditions and the parties agree to submit to the exclusive jurisdiction of the Courts of Victoria.
29. 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.