

Terms and Conditions of Sale of Goods

1 Definitions

1.1 In these terms and conditions:

- (1) **Supplier** means thyssenkrupp Materials Pty Ltd (ABN 94 078 520) and any of its subsidiaries or associated entities.
- (2) **Customer** means the entity purchasing the goods upon these terms and conditions.
- (3) **Offer** means the Suppliers written offer for supply of goods expressly subject to and incorporating these terms and conditions.
- (4) **Order** means the order placed with the Supplier by the Customer accepting the terms of the Offer in writing, orally or by Contract.
- (5) **Contract** means the Offer when accepted by the Customer by:
 - (a) placing the Order with the Supplier; or
 - (b) accepting the goods supplied by the Supplier.
- (6) **PPSA** means *Personal Property Securities Act 2009* (Cth).

2 Binding terms and conditions

2.1 The only terms which are binding on the Supplier are:

- (1) those set out in these terms and conditions;
- (2) those if any, which are imposed by law which cannot be excluded; and
- (3) such further terms as may be agreed to in writing by the Supplier.

2.2 Any additional terms sought to be imposed by the Customer (whether part of the Order or otherwise) are not part of this Contract or otherwise binding on the Supplier unless specifically agreed to in writing by the Supplier.

2.3 The acceptance of goods delivered by the Supplier referring to these terms and conditions shall be deemed to be the acceptance of these terms and conditions (if not previously accepted by the Customer).

3 Delivery and performance

3.1 If a delivery date is specified in the Offer, that date is an estimate only and the Supplier is not liable for any delay in delivery.

3.2 If the Supplier is unable to supply the Customer's total Order these terms and conditions continue to apply to the goods supplied.

4 Acceptance

4.1 Unless stated in writing by the Supplier, the goods will be at the risk of the Customer from the time that the goods are allocated to the Order by the Supplier.

4.2 The Customer must inspect the goods immediately upon delivery and must within 14 days after the date of inspection give written notice to the Supplier, with particulars of any claim that the goods are not in accordance with the Contract. If the Purchaser fails to give that notice, then to the extent permitted by statute the goods must be treated as having been accepted by the Purchaser.

4.3 The Customer must not accept the delivery of any goods if at the time it is insolvent or likely to become insolvent.

5 Exclusions and limitations

5.1 Conditions and Warranties required to be binding

The only conditions and warranties which are binding on the Supplier in respect of:

- (1) the state, quality or condition of the goods supplied by it to the Customer; or
- (2) advice, recommendations, information or services supplied by it, its employees, servants or agents to the Customer regarding the goods, their use and application;

are those imposed and required to be binding by statute (including the Competition and Consumer Act 2010 (Cth)).

5.2 Limitation on liability

To the extent permitted by statute, the liability, if any, of the Supplier arising from the breach of the conditions or warranties referred to in this clause is, at the Supplier's option, limited to and completely discharged:

- (1) in the case of goods, by either:
 - (a) the supply by the Supplier of equivalent goods; or
 - (b) the replacement by the Supplier of the goods supplied to the Purchaser; and
- (2) in the case of advice, recommendations, information or services, by supplying the advice, recommendations, information or services again.

5.3 Exclusion of other conditions and warranties

Except as provided in this clause, all conditions and warranties implied by law in respect of the state, quality or condition of the goods which may apart from this clause be binding on the Supplier are excluded.

5.4 Acknowledgements by Customer

The Customer acknowledges that it does not rely and it is unreasonable for the Customer to rely on the skill or judgment of the Supplier as to whether the goods supplied are reasonably fit for any purpose for which they are being acquired, and that the sale is not a sale of goods by description or sample.

5.5 Exclusion of consequential loss

Except as provided in this clause the Supplier has no liability (including liability in negligence) to any person for:

- (1) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the goods or advice, recommendations, information or services; and
- (2) in particular, without limiting (1), any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect of deficiency of any kind of or in the goods or advice, recommendations, information or services.

6 Indemnity

6.1 The Customer indemnifies the Supplier, regardless of any negligence on the part of the Supplier, against:

- (1) all losses incurred by the Supplier;
- (2) all liabilities incurred by the Supplier; and
- (3) all costs actually payable by the Supplier to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by the Supplier in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);

arising directly or indirectly as a result of or in connection with the supply of goods by the Supplier to the Customer unless caused by wilful misconduct on the part of the Supplier or any of its employees or agents acting within the scope of their employment.

6.2 The Customer must pay to the Supplier all liabilities, costs and other expenses referred to in this clause, whether or not the Supplier has paid or satisfied them.

7 Payment

7.1 The price of the goods is set out in the Offer or otherwise varied by the Supplier in writing.

7.2 Payment must be made in full prior to despatch of the goods unless otherwise agreed by the Supplier in writing.

7.3 Time is of the essence in respect of the Customer's obligation to make payment for goods sold by the Supplier to the Customer.

7.4 If payment is not made by the due date, the Supplier may, without prejudice to any of its other rights, claim any cost associated with the collection of the outstanding overdue debt from the Customer including costs on an indemnity basis. This includes interest on amounts not paid at a rate equivalent to 3% per annum more than the business overdraft commercial interest rate of the Supplier's principal bankers from the invoice date until the payment of the debt.

8 Title in the goods

8.1 Title in the goods does not pass until the Customer has paid all monies owing to the Supplier in full.

8.2 Until payment of all monies owed by the Customer to the Supplier, the Customer holds the goods as fiduciary bailee and agent for the Supplier and must keep the goods physically separate from all other goods of the Customer, and clearly identified as owned by the Supplier.

8.3 If an Event of Default occurs (as defined in the Credit Agreement), then without prejudice to the Supplier's other rights, the Supplier may without notice to the Customer enter any premises occupied by the Customer or any other place where the goods may be and recover possession of them. If the Customer sells any of the goods while money is owed to the Supplier, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.

8.4 If the Customer uses the goods in a manufacturing or construction process, then the Customer must hold on trust for the Supplier, part of the proceeds of the manufacturing or construction process as it fairly relates to the value of the goods compared to the value of all goods used in the manufacturing or construction process.

8.5 If the goods are resold, or products using the goods are manufactured and resold by the Customer, the Customer must hold on trust for the Supplier all of the book debts that are owed in respect of sales and proceeds of the goods.

8.6 As security for payment to the Supplier of all monies payable by the Customer and for the Customer's obligations generally under the Credit Terms, and these terms and conditions, the Customer charges in favour of the Supplier the whole of the Customer's undertaking, property and assets (including without limitation or with the Customer's interest, both legal and beneficial, in freehold and leasehold land and personal property) both current and later acquired.

8.7 The Customer acknowledges and agrees that:

- (1) the Supplier is a *secured party* in relation to the goods and any *proceeds* of the Goods, and may *register* its interest on the *register* established under the PPSA as a security interest or a *purchase money security interest*, at the discretion of the Supplier;
- (2) the Supplier may, by notice to the Customer, require the Customer to take all steps that the Supplier considers necessary or desirable to ensure its security interest in the goods is enforceable and to perfect or better secure the position of the Supplier under these terms and conditions as a first ranking security;
- (3) the Customer must comply with a notice from the Supplier under this provision at the cost of the Customer;
- (4) the Customer must promptly inform the Supplier of any change to information that it provides to the Supplier under this provision;
- (5) the Supplier is not required to give any notice or provide reports of any documents under the PPSA (including notice of a verification statement) unless the notice is required by law and cannot be excluded; and
- (6) a term used in italics in this provision has the same meaning as in the PPSA.

9 Taxes and Duties

9.1 Despite any other provision in these terms and conditions of sale, the Supplier may pass on as an addition to the price of the amount of any sales tax, use tax, consumption tax, goods and services tax, value added tax, import tax, export tax, customs tax or any tax, impost, levy or duty (tax) levied on the Goods or payable by the Supplier in respect of the Goods supplied to the Customer.

9.2 Clause 9.1 applies:

- (1) whether the tax is levied under Australian federal, state or territorial law or by the law of any other place; and
- (2) whether the imposition of the tax is in force at the commencement of these terms and conditions of sale or comes into force at a later time.

10 General terms

10.1 Each of the provisions of the Contract is severable from the others in that if at any time one or more of such provisions is or becomes void, invalid, illegal or unenforceable for any reason, the remaining provisions of the Contract will not be affected.

10.2 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

10.3 The Customer may not assign any rights under this Contract without the Supplier's written consent.

10.4 The Supplier may assign or otherwise deal with its rights under this Contract in such manner as it considers appropriate. The Customer agrees that the Supplier may disclose any information or documents that it considers desirable to enable it to exercise this right. The Customer also agrees that the Supplier may disclose information or documents to any person to who it assigns its rights under this Contract.

10.5 This Contract is to be governed and interpreted in accordance with the Law of the State of New South Wales.