

**DALSTEEL METALS PTY LTD AUSTRALIA -  
CONDITIONS OF SALE**

**1. Interpretation**

1.1 In these Conditions;

"BUYER", "YOU" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.

"GOODS" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.

"SELLER", "US" means DALSTEEL METALS PTY LTD (ABN 43 134 243 235).

"CONDITIONS" means the standard terms and conditions of sale set out in this document and includes any special terms and conditions agreed in Writing between the Buyer and the Seller.

"CONTRACT" means the contract for the purchase and sale of the Goods.

"WRITING" includes telex, cable, e-mail, facsimile transmission, and comparable means of communication.

**2. Basis of Sale**

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any order of the Buyer which is accepted by the Seller in accordance with clause 3.1 which shall in any event be subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made by the Buyer.

2.2 All orders accepted by the Seller are deemed to include these Conditions. The Seller may at any time alter these Conditions and the updated Conditions will apply to all further orders. Up to date Conditions are published on the Seller's website. Any terms or conditions contained in any order, offer, acceptance or other document of the Buyer and all representations, statements, terms and conditions or warranties (whether implied by statute or otherwise) not included in these Conditions are expressly excluded to the maximum extent permitted by law.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk.

2.5 Any typographical, clerical, or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.6 A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise a quotation at any time prior to the Seller's acceptance of the Buyer's order.

**3. Orders and Specifications**

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative. If the Contract price exceeds \$20,000,

then the Contract must be authorised on behalf of the Seller by the Branch Manager of the Seller. If a Contract in which the Contract price exceeds \$20,000 is not authorised by the Branch Manager of the Seller, then that Contract shall be voidable at the option of the Seller. Should the Seller exercise this option, then that Contract shall be void and to no effect and neither party shall have any claim of any nature whatsoever against the other.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 Subject to clause 3.7 below, the quantity, quality, and description of and any specification for the Goods shall be those set out in the Buyer's order (if accepted in Writing by the Seller in accordance with clause 3.1).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EU requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

3.7 The Seller reserves the right to supply Goods which may vary in weight by up to 10% from the amount stated in the Contract. Where the Seller under-delivers Goods by an amount not exceeding 10% by weight, the delivery of such lesser amount of Goods shall be deemed to be delivery under the Contract and shall be paid for by the Buyer at the rate set out in the Contract. Where the Seller delivers Goods by an amount no greater than 10% by weight of the amount set out in the Contract, the delivery of such greater amount shall be deemed to be delivery under the Contract and paid for by the Buyer at the rate set out in the Contract. In the event of the Seller delivering an amount greater than 10% by weight in excess of the quantity set out in the Contract, the Buyer shall have the option of paying for such excess at the rate set out in the Contract or at its option, returning such additional Goods to the Seller (in the same condition as delivered to the Buyer) Provided Always that such Goods must be returned no later than 14 days from the date of delivery.

**4. Price of the Goods**

4.1 The price of the Goods shall be the Seller's quoted price. All prices quoted are valid for 7 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation,

alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instruction.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable tax (GST), which the Buyer shall be additionally liable to pay to the Seller.

**5. Terms of Payment**

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days after the end of the month in which the Goods are delivered, and the Seller shall be entitled to recover the price, notwithstanding that the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 cancel the contract or suspend any further deliveries to the Buyer.

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);

5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 2 per cent per annum on above the ANZ Bank base rate (as at due date) from time to time calculated on a daily basis, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.4 In the event that the Seller owes money to the Buyer under any contract or other arrangement entered into between the Seller and the Buyer the Seller shall be entitled to set off such sums owed by the Seller to the Buyer against any sums which the Buyer shall owe to the Seller pursuant to this contract.

**6. Delivery, Inspection and Complaints**

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only and subject to clause 6.4 below, the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not

be of the essence of the Contract unless previously agreed by the Seller in writing, The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods. Provided always that time shall not be of the essence of this contract and no delay by the Seller in the delivery of the Goods (or any instalments) which does not exceed (6 months) shall give the Buyer the right to terminate this contract or purchase similar goods elsewhere.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.6 The Buyer shall examine the Goods upon delivery and satisfy itself that they conform to Contract. A claim that Goods are not in accordance with the Contract will not be accepted by the Seller unless notice in writing, specifying the alleged default, is given to the Seller within 7 days of delivery of the Goods.

6.7 Failure to notify the Seller of the non-delivery of the Goods, or any of them, within 7 days of the due date for delivery will release the Seller from liability for claims for non-delivery.

6.8 Any Goods considered to be damaged or defective (together with their packaging materials) shall be retained by the Buyer intact as delivered for a period of twenty-one days from notification of the claim to the Seller, within which time the Seller or its agents shall have the right to investigate the complaint and examine the Goods and, if possible, to remedy any defect. Any breach of this condition will release the Seller from any liability for Goods which are alleged not to conform to Contract.

6.9 If the Seller agrees with the Buyer that the Goods are damaged or defective and that it is not possible to remedy any defect then the Seller shall, at its sole option, replace the Goods or credit the Buyer accordingly.

6.10 If the Seller disagrees with the Buyer that the Goods are damaged or defective then the dispute shall be referred to an independent third party appointed jointly by the Seller and the Buyer or, failing agreement within 7 days, by a party appointed, on the application of either the Seller or the Buyer, by the President for the time being of Institute of Chartered Accountants. Such independent third party shall act as an expert and not as an arbiter and his decision shall be final and binding on, and his costs and

expenses shall be borne equally by, the Seller and the Buyer.

6.11 The Seller shall have no liability to the Buyer in respect of damaged or defective Goods (and the Buyer shall be required to pay the full contract price) where: (a) any claim made by the Buyer is not in accordance with these Conditions; (b) damage has been sustained after delivery of the Goods to the Buyer, or its agents; (c) defects are caused by installation, operation or maintenance carried out other than in accordance with any instructions supplied orally or in writing with the Goods or by wear and tear, accident or misuse, improper operation or neglect or if any adjustment, alteration or other work has been performed on the Goods by any person other than the Seller or its employees or agents; or (d) a receipt has been obtained by the Seller, duly signed by the Buyer or one of its employees or agents, confirming that the Goods have been delivered in a satisfactory condition.

## **7. Property and Risk and Creation of Security Interest**

7.1 The goods will be at Your sole risk as soon as they are deemed to be delivered.

7.2 Property in and title to the goods will not pass to You until those goods and all other amounts owed to Us by You have been paid for in full and until then: (i) You will hold the goods as fiduciary and bailee for Us; (ii) the goods must be stored separately and in a manner enabling them to be identified as Our goods and cross-referenced to particular invoices and You acknowledge that if the goods are processed or mixed with other goods such that the goods are no longer separately identifiable the parties will be owners in common of the new goods; (iii) You may sell the goods in the ordinary course of business as Our bailee and will hold the proceeds of sale in a separate account on trust for Us and account to Us for those proceeds; and (iv) We may require the goods to be returned on demand and may enter upon Your premises to inspect or repossess the goods.

7.3 (a) You expressly and irrevocably agree that We are entitled to enter any premises in which the goods supplied by Us are located, to repossess, remove and sell such goods. You, Your successors and assigns (including any external manager or administrator) will not object to Us, or Our agents, entering any premises for the purpose of this clause and agree to indemnify and keep Us indemnified in respect of any claims, actions and costs that may arise against Us in relation to the removal, repossession and sale of the goods pursuant to these Terms including any claims brought by third parties.

(b) You will insure the goods against theft or any damage until such goods have been paid for or until they are sold by You, whichever occurs first, and We will be entitled to call for details of the insurance policy. If You do not insure the goods or fail to supply details of Your insurance policy, You will reimburse Us for the cost of any insurance which We may reasonably arrange in respect of the goods supplied to You.

(c) You agree that these Terms create a PMSI in the goods (and their proceeds) supplied presently and in the future by Us to You and You agree to do all things necessary and execute all documents reasonably required to register the PMSI granted by You under these Terms and to ensure that We acquire a perfected security interest in the goods under the PPSA. Until ownership of the goods passes to You, You waive Your rights under sections 95, 118, 129, 130, 132, 135, 137, 142, 143 and 157 of the PPSA. To the extent permitted by the PPSA, these Terms exclude any provisions of the PPSA which may be excluded in Our discretion, and which would otherwise confer rights on You.

## **8. Cancellation and return of Goods**

8.1 If a Buyer cancels or alters (with the prior written agreement of the Seller) an order or any part of any order after the Seller has accepted the order, the Seller may invoice the Buyer as a debt due for all costs and expenses reasonably incurred by the Seller in relation to the order and its cancellation or alteration including the cost of any materials, labour, packing or transport.

8.2 Other than in respect of the Seller's obligations by law, subject to the Terms and Conditions of Sale, the Seller will not accept any return of goods. The Seller may at its absolute discretion accept the return of Goods in extenuating circumstances with prior written approval from an authorised representative of the Seller. Goods returned will be subject to a restocking, handling, and administration fee equivalent to a minimum 10 % or \$ 50, whichever is greater. The Seller reserves the right to charge a higher fee at its sole discretion. Return freight and other expenses shall be paid for by the Buyer.

## **9. Risk and Property**

9.1 Risk of damages to or loss of the Goods shall pass to the Buyer: 9.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

9.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds, payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

9.3 Until such time as the property in the Goods passes to the Buyer the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, the Buyer irrevocably authorises the Seller and its agents and employees to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

9.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **10. Warranties and Liability**

10.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 3 months from the date of delivery.

10.2 The above warranty is given by the Seller subject to the following conditions:

10.2.1 The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.

10.2.2 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's written approval;

10.2.3 The Seller shall be under no liability under the above warranty (or any other warranty, condition, or guarantee) if the price due for the Goods has not been paid;

10.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

10.3 If the Seller agrees that it is or (as the case may be) it is found to be liable under the provisions of clause 10.2 above, then the Seller's entire liability to the Buyer shall be limited, at the option of the Seller, to repairing or replacing the Goods or refunding the purchase price (or a proportionate part thereof) for them.

10.4 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer, all warranties, conditions, or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

10.5 Where the Goods are sold under a consumer transaction the statutory rights of the Buyer are not affected by these Conditions.

10.6 Nothing in these Conditions is intended to exclude or limit the liability of the Seller to the Buyer for the following matters:

10.6.1 death or personal injury caused by the Seller's negligence;

10.6.2 failure to give good title to the Goods or;

10.6.3 fraud or fraudulent misrepresentation;

However, save for these matters and save for the liability accepted by the Seller under clauses 10.3 and 6.4 and clause 11 below the Seller shall have no liability of any nature whatsoever to the Buyer whether for breach of contract, any act or omission (including negligence), breach of any statutory duty, breach of any warranty, condition or other term implied by law, misrepresentation (unless fraudulent) or in any other manner whatsoever. Under no circumstances shall the Seller be liable to the Buyer for any loss of profits, loss of contracts, loss of goodwill, administration and management expenses, or any consequential loss or damage of any nature even if any of these matters were reasonably foreseeable.

10.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

10.7.1 Act of God, explosion, flood, tempest, fire, or accident.

10.7.2 war or threat of war, sabotage, insurrection, civil disturbance, or requisition.

10.7.3 acts, restrictions, regulations, by-laws, prohibitions, or measures of any kind on the part of any governmental, parliamentary, or local authority.

10.7.4 import or export regulations or embargoes.

10.7.5 strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party).

10.7.6 difficulties in obtaining raw materials, labour, fuel, parts, or machinery.

10.7.7 power failure or breakdown in machinery.

10.8 These Conditions do not create any right enforceable by any person not a party to it except that a person who is the permitted successor to or assignee of the Seller is deemed to have the benefit of all rights of the Seller.

## 11. Indemnity

11.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

11.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;

11.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations.

11.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

11.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

11.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and

11.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

## 12. Insolvency of Buyer

12.1 This clause applies if:

12.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

12.1.2 an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Buyer; or

12.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

12.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

12.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 13. General

13.1 The Seller is a member of a group of companies and accordingly the Seller may perform any of its

obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.

13.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

13.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

13.5 Unless varied by notice in writing by the Supplier these Terms and Conditions and any Contract entered into, shall be governed by and construed in accordance with the law of the State or Territory in which the Order is accepted and the courts of that State or Territory have non-exclusive jurisdiction in connection with this document. The Sale of Goods (Vienna Convention) Act 1986 (New South Wales) (and any other similar legislation relating to the Vienna Convention in other States or Territories) does not apply to the Terms and Conditions and Contract