

FAGERSTA STEELS PTY LTD – TERMS AND CONDITIONS OF SALE

By submitting a credit application and/or ordering goods and services (“**goods**”) from Fagersta Steels, you (“**Customer**”) agree that the following terms and conditions of sale shall apply to the supply. These terms and conditions replace any previous terms and conditions of sale. These terms and conditions create a security interest in favour of Fagersta Steels for the purposes of the Personal Property Securities Act 2009.

1. INTERPRETATION

In these terms and conditions and the following sections of this document entitled “Personal Guarantee, Indemnity & Charge (“**Guarantee**”)” and “Deed of Agreement and Charge” and any other associated or collateral documents (unless a contrary intention is stated):

- 1.1 ‘Fagersta Steels’ shall mean FAGERSTA STEELS PTY LTD (ACN 157 676 796) or its successors;
- 1.2 “Customer” shall mean a person whose order for the purchase of goods is accepted by Fagersta Steels.
- 1.3 “Consumer” means a consumer as that term is defined in the Australian Consumer Law;
- 1.4 “Guarantor” means each of the persons who execute this document as guarantor;
- 1.5 “PPSA” means the Personal Property Securities Act 2009;
- 1.6 “Purchase Monies Securities Interest” or “PMSI” has the meaning given in section 14 of the PPSA as amended from time to time.
- 1.7 “Supplier” means Fagersta Steels Pty Ltd ACN 157 676 796 or their assigns
- 1.8 The headings used do not form part of these terms and conditions and are for convenience only.
- 1.9 Where the context admits or requires words importing, the singular number shall include the plural number, those denoting a given gender shall include all other genders and those denoting natural persons shall include corporations.
- 1.10 “Including” is not a term of limitation.

2. PRICING/PAYMENT

- 2.1 Prices contained in quotations for the supply of goods are exclusive of GST unless such quoted prices state that GST is included. The Customer shall be responsible for the payment of any GST or like tax payable in respect of goods supplied to the Customer and any such tax shall be in addition to any quoted prices unless such quoted prices state that GST is included.
- 2.2 Notwithstanding any prior acknowledgment by Fagersta Steels of the price of goods, the prices specified for goods may at Fagersta Steels’ option be subject to alteration to reflect Fagersta Steels’ prices and charges in effect at the time of delivery.
- 2.3 Any variations in the invoice or contract price as a consequence of currency fluctuations, taxes, customs duty or other imposts shall be to the Customer’s account.
- 2.4 Fagersta Steels will be entitled to set off against any money owing to the Customer amounts owed to Fagersta Steels by the Customer on any account whatsoever. However the Customer shall not set off any amounts allegedly owing by Fagersta Steels to it against any amount due by it to Fagersta Steels.
- 2.5 Unless otherwise agreed to by the Supplier, the only accepted means of paying accounts will be by cash, bank cheque, COD or electronic funds transfer, all without any deduction.

3. ACCOUNT TERMS

- 3.1 Payment for goods is to be made in cash not later than the end of the month following the month in which goods are delivered or are made available for delivery.
- 3.2 Fagersta Steels reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery if in the sole opinion of Fagersta Steels this is warranted.
- 3.3 Fagersta Steels shall be entitled to charge interest on all accounts not satisfied in accordance with clause 3.1 at 16% charged on a daily basis and which shall be calculated from the date upon which moneys become due and payable up to the date of payment in full at the sole discretion of Fagersta Steels. Fagersta Steels may debit the Customer’s account monthly or at such other times it chooses for such interest.
- 3.4 Fagersta Steels shall be entitled to charge the Customer an administration fee for the costs of recovery of overdue accounts.
- 3.5 The Customer shall pay any stamp duties, any bank charges or merchant fees or like charges levied on the Supplier by any banker or other credit provider whose banking or credit card facilities are utilised by the Customer for paying the Supplier any amounts on any account and legal costs on an indemnity basis, including any other expenses payable of and incidental to the performance or enforcement of or any litigation on these terms and conditions or Guarantee, Indemnity and Charge or Agreement or any credit application or any security documents signed by the Customer or any guarantor together with any other collection costs.
- 3.6 Credit extended to the Customer for all goods sold will be made in accordance with the terms of credit as agreed by Fagersta Steels at the time the Customer’s account was established or as subsequently altered by Fagersta Steels. In all other respects these terms and conditions will apply. Provided always Fagersta Steels may withdraw the Customer’s credit facilities at any time without notice or at its discretion alter the Customer’s credit limit for any reason (including to meet the Customer’s then buying needs). Any credit approval limit noted in this form, any monthly statement or otherwise is for Fagersta Steels’ convenience only and does not reflect what may actually be the credit limit of the account at any one time.
- 3.7 The Customer is liable for all purchases made under account. It is not the responsibility of Fagersta Steels to confirm authority for the purposes of

supplying or delivering goods to the Customer, its agent(s) or those who Fagersta Steels deems to be its agents. It is the sole responsibility of the Customer to ensure there is no unauthorised use of their account number or name.

4. DEFAULT

4.1 If the Customer makes default in payment or otherwise fails to carry out the terms of or repudiates the contract created by acceptance of a quotation by the Customer or by the acceptance of an order by Fagersta Steels or if the Customer stops payment or calls a meeting of its creditors or becomes insolvent or subject to the bankruptcy laws or being a company calls a meeting for the purpose of going or goes into liquidation or has a winding up petition presented against it or a Receiver appointed, Fagersta Steels may at its option and notwithstanding its waiver of such default or failure and without prejudice to its other rights under the contract so created suspend or cancel such contract or require payment in cash before or on delivery of goods notwithstanding the terms of payment specified or may take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for any loss resulting from such resale. Fagersta Steels may exercise any of such rights as to the whole or part of the goods.

5. DELIVERY

5.1 If at any time before delivery of goods or performance of any work by reason of war, strike, lockout, cessation or shortened hours of labour, transport delays, delay in delivery by Supplier's suppliers, accidents, destruction of or damage to Fagersta Steels' works or business or those of its suppliers, Government interference with or control of the operation of the works or business of Fagersta Steels or its suppliers, or any cause whatsoever beyond the control of Fagersta Steels, Fagersta Steels is prevented from making delivery or performance at the time stipulated Fagersta Steels shall be entitled at its option either to extend the time for delivery or performance for a reasonable period or to determine the contract and the Customer shall in consequence have no claim for damages, but without prejudice to Fagersta Steels' rights to recover all sums owing to it in respect of deliveries made or services performed prior to the date of such determination and to recover all payments made or expenses incurred by Fagersta Steels in connection with the contract.

5.2 All goods supplied will be at the Customer's risk if delivered to a requested point of delivery and to leave the goods at such place whether or not any person is present to accept delivery, unless the Customer requests any other arrangements which are agreed to by Fagersta Steels in writing.

5.3 The Customer shall be liable for payment of any charges for the delivery of the goods unless otherwise agreed to in writing between Fagersta Steels and the Customer before the goods are despatched.

6. PROPERTY AND RISK

6.1 Legal and equitable title in goods shall not pass to the Customer until the purchase price for those goods and all other amounts owed to Fagersta Steels have been paid in full to Fagersta Steels by the Customer but risk in the products shall pass to the Customer upon delivery.

6.2 Until such time as title passes in accordance with paragraph (a) above the Customer shall hold the goods as fiduciary and Bailee for and agent of Fagersta Steels on the terms set out below.

6.3 Pending transfer of title, the Customer may use the goods as agent of Fagersta Steels and as authorised by Fagersta Steels to manufacture new products. The products resulting from such manufacture will be the property of Fagersta Steels.

6.4 The Customer is authorised to sell, or agree to sell, the goods or any manufactured products as agent of Fagersta Steels until such time as title passes to the Customer PROVIDED THAT the Customer shall not represent or hold out to any third parties that it is acting as agent of Fagersta Steels and Fagersta Steels shall not be bound as principal by any contracts between third parties and the Customer.

6.5 Without prejudice to any other rights which Fagersta Steels may have under this contract or at law, the Customer expressly and irrevocably agrees that Fagersta Steels shall be entitled to enter upon the Customer's premises and repossess, remove and sell the goods or any manufactured products in which the goods have been used without notice upon the occurrence of any of the following events:

- (a) the Customer, being a natural person, commits an act of bankruptcy, or is declared insolvent;
- (b) where the Customer is a corporation, proceedings are commenced to wind up the Customer or the Customer is placed under official management or a receiver is appointed over the Customer's undertaking or property or any part thereof or the Customer is placed under any other form of insolvent administration;
- (c) the Customer enters into some arrangement or assignment for the benefit of its Creditors;
- (d) the Customer disposes of or parts with possession of the goods otherwise than as expressly authorised by this contract; (e) the Customer, in the opinion of Fagersta Steels, is in breach of any terms of this contract.

7. SPECIFICATIONS OR SPECIAL ORDERS

7.1 It is the responsibility of the Customer to notify Fagersta Steels in writing of the nature, standard and specifications of the goods required to be supplied. Subject to any limitation expressed or implied by statute Fagersta Steels does not give any advice, make any recommendation or provide any warranty in relation to the suitability of goods ordered by the Customer for the purpose or use to which the goods are to be put by the Customer or any third party.

8. CLAIMS ON FAGERSTA STEELS

8.1 Unless agreed in writing by Fagersta Steels, Fagersta Steels will not accept the return of goods. The proof of purchase from the Customer must accompany all goods returned to the Supplier.

- 8.2 Goods proved to be defective as a result of action or inaction on the part of Fagersta Steels or its supplier will be replaced at the place of original delivery provided written notification of the defect be given to Fagersta Steels within seven (7) days from the date of delivery and the goods are returned, except if destroyed, by the Customer to Fagersta Steels' works, warehouse or depot from which they were purchased. In no circumstances will any other allowance be made or compensation or damages paid in respect of defective goods or for non-delivery where goods delivered are claimed to be defective. For the purpose of this clause the word 'defective' means 'not in accordance with the express or implied terms, conditions or warranties of the contract'.
- 8.3 Notwithstanding these terms and conditions Fagersta Steels does not accept any responsibility whatsoever for errors in dimensions, quantities, specifications or otherwise where orders for any of those goods are placed with Fagersta Steels by the Customer otherwise than in writing.
- 8.4 If material is supplied to Fagersta Steels by the Customer for cutting or any other treatment and such material is lost, damaged or destroyed by Fagersta Steels, Fagersta Steels' liability to the Customer shall be limited to replacement of any material so lost, damaged or destroyed or at the discretion of Fagersta Steels, payment by Fagersta Steels to the Customer of the replacement cost of such material, subject to any limitation expressed or implied by statute.
- 8.5 The Customer shall be responsible for immediate examination of goods after arrival at the place of delivery and Fagersta Steels shall not be liable for any claim to which it would otherwise be liable in respect of damaged goods including goods, damaged in course of transit unless particulars of such claim are notified to Fagersta Steels in writing within seven (7) days after arrival of the goods into the custody of the Customer or its carrier. Shortages other than those noted on Fagersta Steels' Delivery Receipt by or on behalf of the Customer or by or on behalf of his carrier at the time of passing of the goods from the custody of Fagersta Steels or its carrier shall not be recognised by Fagersta Steels.
- 8.6 Fagersta Steels' liability for damages for any breach of this contract and terms and conditions shall be subject to any limitations expressed or implied by statute, be limited to general damages and Fagersta Steels shall not be responsible for any special damage suffered by the Customer whether on the grounds of consequential loss howsoever caused, loss on resale, delays in the Customer's factory or otherwise.
- 8.7 Unless a required delivery date is notified by the Customer to Fagersta Steels in writing and is confirmed in writing by Fagersta Steels the goods will be made available or delivered by Fagersta Steels (as the case may be) as soon as reasonably practicable by Fagersta Steels and Fagersta Steels shall not be liable for any loss or penalty for late delivery whether such loss is actual or consequential.

9. FITNESS FOR PURPOSE

- 9.1 To the maximum extent permitted by law, the Customer agrees that it does not rely on the skill or judgement of the Supplier in relation to the suitability of any goods for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever.

10. LAWS TO GOVERN

- 10.1 All matters arising in connection with the agreement for the sale of goods by Fagersta Steels to the Customer shall be governed by the law of the State of Victoria and the parties submit to the jurisdiction of the courts of that State. The Sale of Goods (Vienna Convention) Act 1987 Vic (or its corresponding legislation in other States or Territories) shall not apply.

11. SEVERANCE

- 11.1 In the event that the whole or any part or parts of any provisions in this agreement should be held to be void or unenforceable in whole or in part such provision or part thereof shall to that extent be severed from these terms and conditions but the validity and enforceability of the remainder of these terms and conditions shall not be affected.

12. PERSONAL PROPERTY SECURITIES ACT

- 12.1 The Customer agrees that these terms and conditions create a PMSI in the goods (and their proceeds) supplied presently and in the future by Fagersta Steels to the Customer.
- 12.2 The Customer agrees to do all things necessary and execute all documents reasonably required to register the PMSI granted by the Customer under these terms and conditions and to ensure that Fagersta Steels acquires a perfected security interest in the goods under the PPSA.
- 12.3 The Customer will, upon demand, pay all of the Supplier's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of the Supplier's security interest and all other costs associated with protection and enforcement of the Supplier's security interest created by these terms and conditions or by undertaking an audit under the provisions of the PPSA, or the repossession of the goods the subject of these terms and conditions or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that Fagersta Steels has with the Customer.
- 12.4 This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations.
- 12.5 Until ownership of the goods passes to the Customer, the Customer waives its rights under the following provisions of the PPSA, to the extent that it is permitted by law to:
- (a) receive a notice of intention of removal of an accession (s.95);
 - (b) receive a notice that Fagersta Steels has determined to enforce its security interest in accordance with land law (s118);
 - (c) receive a notice of enforcement action against liquid assets;
 - (d) receive a notice of disposal of goods by Fagersta Steels purchasing the goods (s129);

- (e) receive a notice to dispose of the goods (s130);
 - (f) receive a statement of account following disposal of the goods (s132(2));
 - (g) receive a statement of account if no disposal of the goods, six monthly (s132(4));
 - (h) receive notice of any proposal by Fagersta Steels to retain the goods (s135(2));
 - (i) object to any proposal by Fagersta Steels to either retain and dispose of the goods (s137(3));
 - (j) redeem the goods (s142);
 - (k) reinstate the security agreement (a143); and
 - (l) receive a notice of any verification statement (s157(1) and 157(3)).
- 12.6 To the extent permitted by the PPSA, these terms and conditions exclude any provisions of the PPSA which may be excluded in the Supplier's discretion and which would otherwise confer rights on the Customer.
- 12.7 The Customer further agrees that where Fagersta Steels has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
- 12.8 The Customer's right to possession of goods still owned by Fagersta Steels under these terms and conditions shall cease if:
- (a) the Customer being an individual, commits an act of bankruptcy,
 - (b) the Customer being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for winding up, or the Customer entering into a Deed of Company Arrangement,
 - (c) the Customer ceasing or threatening to cease conducting business in the normal manner or applying for deregistration or receives a deregistration notice,
 - (d) any cheque the Customer provides to Fagersta Steels or any Group Company is dishonoured for payment,
 - (e) the Customer failing to comply with any demand for payment issued by Fagersta Steels or any Group Company, or
 - (f) the Customer breaching any of the terms and conditions contained herein and/or are in default of any other agreement between Fagersta Steels or any other Group Company and the Customer.
- 12.9 The Customer expressly and irrevocably agrees that Fagersta Steels is entitled to enter any premises where the goods supplied by Fagersta Steels are located to repossess, remove and sell such goods. The Customer (its successors and assigns, including any external manager or administrator) shall not object to the Supplier, or its agents, entering any premises for the purpose of this clause and agrees to indemnify and keep Fagersta Steels indemnified in respect of any claims, actions and costs that may arise against Fagersta Steels in relation to the removal, repossession and sale of the goods pursuant to these terms and conditions including any claims brought by third parties.
- 12.10 The Customer agrees that repossession and retention of the goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to Fagersta Steels by the Customer, as is equivalent to the Supplier's estimation of the market value of the goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest Fagersta Steels has on the value of the goods recovered.
- 12.11 Until ownership of the goods passes, the Customer must not give Fagersta Steels a written demand or allow any other person to give Fagersta Steels a written demand requiring Fagersta Steels to register a financing change statement under the PPSA or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA.
- 12.12 The Customer agrees not to change the Customer name or undertake any changes to any documents that Fagersta Steels has registered, requires to be registered or are capable of being registered without our prior written consent of the Supplier. For avoidance of doubt, these terms regarding the PPSA apply even where the customer is a Consumer.
- 13. CERTIFICATE**
- 13.1 A statement in writing signed by Fagersta Steels' duly authorised officer ("the certificate") stating all or any of the following matters, facts or things: (a) The amount due at any date for all goods provided;
- (b) The amount due at any date for interest on the monies due.
 - (c) The amount due at any time for legal costs and/or other amounts due on the account.
 - (d) The date of making default in performing or observing any terms and conditions, covenant or agreement to be performed or observed by the Customer, and whether such default has continued between specified dates.
 - (e) Anything else relevant to the establishment of any right or remedy of Fagersta Steels or of the liability of the Customer. Shall be conclusive evidence of such matter(s), fact(s) or thing(s) stated in the certificate.
- 14. MISCELLANEOUS**
- 14.1 Unless otherwise specifically agreed in writing by Fagersta Steels, where any terms and conditions of the Customer's order are inconsistent with these terms and conditions, then these terms and conditions will prevail. Any variations or additions to these terms and conditions not expressly agreed to in writing by Fagersta Steels are expressly rejected by the Supplier.
- 14.2 These terms and conditions and all obligations hereunder shall be binding on the Customer's personal representatives, successors and permitted assigns and shall be for the benefit of Fagersta Steels' successors and assigns.
- 14.3 Notwithstanding any prior acknowledgment by Fagersta Steels of the price of goods, the prices specified for goods may at Fagersta Steels' option be subject to alteration to reflect Fagersta Steels' prices and charges in effect at the time of delivery.

- 14.4 Payments received by the Supplier shall be applied first in payment of interest and any costs of and incidental to debt recovery and then in reduction of principal.
- 14.5 Payments received without remittance advice will be applied first to the oldest balance owing by the Customer.
- 14.6 Fagersta Steels and the Customer hereby exclude the application of the United Nations Convention on Contracts for the International