



## TERMS AND CONDITIONS OF TRADE

To the fullest extent legally possible all contracts, dealings and/or arrangements made between Omega Stainless Steel Products Pty. Ltd. ACN 087 090 293 and each of its subsidiaries, affiliates, associated companies and related entities ("Omega") and any customer of Omega ("Customer") relating to any goods, products, services or materials supplied or to be supplied by Omega to the Customer ("Goods") are subject to the following Terms and Conditions of Trade ("these Terms") unless otherwise agreed in writing.

### 1. Payments

- (a) Payments to be within 30 days of end of month of invoice date without deduction or set-off of any kind.
- (b) Omega may apply a payment received from the Customer to any amounts owed by the Customer (including part payment of an invoice, administration, collection and other costs) in any order.
- (c) Omega is entitled to set-off or deduct any amount payable by Omega to the Customer.
- (d) A payment dishonour fee may be charged by Omega if a Customer's payment is dishonoured in any way. This fee will be in addition to any fees the Customer's financial institution or credit provider may charge the Customer.
- (e) The Customer must pay Omega interest on Omega's overdue accounts at a rate of 1% per calendar month.

### 2. Retention of Title and liability for goods:

- (a) Immediately upon delivery the Customer accepts risk and liability for the Goods.
- (b) A document signed by an officer of Omega identifying Goods and certifying that monies are owing to Omega will be conclusive evidence of Omega's title thereto.
- (c) Omega retains legal and equitable title in any Goods supplied to the Customer until payment in full for or in connection with the supply of the relevant Goods has been received by Omega ("Full Payment"). Until Full Payment has been received, the following terms apply:
  - (i) Notwithstanding that title in the Goods remains with Omega until Full Payment, the Customer may sell or use the Goods in a manufacturing or construction process in the ordinary course of the Customer's business. As between the Customer and the purchaser of any item of the Goods, the Customer sells as principal and not as agent of Omega. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for Omega and the Customer is under a duty to account to Omega for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to Omega for Goods supplied;
  - (ii) Until Goods are sold or used in a manufacturing or construction process, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of Omega, store them in such a way they are clearly identified as the property of Omega and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by Omega;
  - (iii) Omega is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Customer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, Omega and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by Omega and to indemnify Omega and its agents for any liability arising from any entry upon such third parties' premises or vehicles. Omega and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods; and
  - (iv) this reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.
- (d) Clause 2 is not intended to create a charge and must be read down to the extent necessary to avoid being a charge.
- (e) The retention of title arrangement described in this clause 2 constitutes the granting of a purchase money security interest by the Customer in favour of Omega in respect of all present and after acquired Goods supplied by Omega to the Customer and the Customer must immediately, if requested by Omega, sign any documents, provide all necessary information and do anything else required by Omega to ensure that Omega's purchase money security interest is a perfected security interest and the provisions of clause 40 will apply.
- (f) The Customer will not enter into any security agreement that permits any other person to have or to register any security in respect of the Goods or any proceeds from the sale of the Goods until Omega has perfected its purchase money security interest.

**3. Limitation of Liability:** To the extent permissible at law (including under the Australian Consumer Law):

- (a) Omega will not be liable for any claim arising after 7 days from delivery of Goods or performance of services (or at all once Goods have been unpacked, modified, on-sold or otherwise used or applied) after which there will be deemed to be unqualified acceptance;
- (b) Omega will not be liable in any way for any contingent, consequential, direct, indirect, special or punitive damage arising whether due to Omega's negligence or otherwise and the Customer acknowledges this limit of liability and agrees to limit any claim accordingly;
- (c) no other term, condition, agreement, warranty, representation or understanding whether express or implied in any way extending to or otherwise relating to or binding upon Omega is made or given except where done so in writing and signed by an authorised officer of Omega or is explicitly set out in these Terms; and
- (d) Omega will not be liable for any claim relating to or arising from any alleged fault or defect, caused or contributed to by the Customer or any third party.

**4. Returns:** To the extent permissible at law (including under the Australian Consumer Law):

- (a) if Omega elects to take back product it must be in as new and saleable condition and upon terms agreed and a re- stocking fee will apply.
- (b) custom made or custom processed Goods or Goods acquired by Omega specifically for the Customer will not be returnable.
- (c) any Goods which are accepted by Omega as defective may be returned and will be replaced free of charge or be the subject of a credit for the invoiced value. "Free of charge" does not include labour, transport or material costs.
- (d) credits will not be accepted later than 28 days after invoice date.

**5. Specific Order:** Omega may set specific terms from time to time in relation to customer specific orders (e.g. full pre-payment, deposit etc.). Customer specific orders include, but are not limited to, where the Customer requires a variation to standard packaging (e.g. inclusion of Customer's logo), change to composition etc.

### 6. Placement of Orders:

- (a) To the extent permissible at law (including under the Australian Consumer Law), if any dispute arises concerning any order (and including any measurement, quality, quantity, identity, or authority or any telephone, facsimile, e-mail or computer generated order) the internal records of Omega will be conclusive evidence of what was ordered.
- (b) When any order is placed, the Customer must inform Omega of any material facts which would or might reasonably affect the commercial decision by Omega to accept the order and/or grant credit in relation thereto.

### 7. Delivery:

- (a) To the extent permissible at law (including under the Australian Consumer Law), Omega accepts no responsibility for delivery but may elect to arrange delivery at its discretion and without any liability and at the Customer's costs and responsibility in all things.
- (b) Omega reserves the right to charge for any delivery.
- (c) The Customer will be deemed to have accepted delivery and liability for the Goods immediately after Omega notifies that they are ready for collection or when they are delivered to a carrier or to the Customer's business premises or site whether attended or not.
- (d) A document (including without limitation a consignment note) purporting to be signed by an officer of Omega confirming delivery will be conclusive evidence of delivery as will any signed delivery docket.
- (e) To the extent permissible at law (including under the Australian Consumer Law), Omega will not be liable for delay, failure or inability to deliver any Goods.
- (f) Once the Customer has been notified that Goods are ready for collection, the Customer agrees to pay all costs of holding or handling Goods.
- (g) Frustrated Delivery If time spent delivery exceeds 30 minutes or requires more than one attempt, the Customer agrees to pay all costs relating thereto.

**8. Variation:** Variation or cancellation of any order, dealing or arrangement must be agreed in writing.

**9. Exclusions:** To the extent permissible at law (including under the Australian Consumer Law):

- (a) no dealing with the Customer will be deemed to be a sale by sample or description.
- (b) if Omega publishes material about its Goods and prices, any part which is incompatible with these Terms is expressly excluded.

(c) the Customer will rely on its own knowledge and expertise in choosing any product for any purpose.

(d) any advice or assistance given for or on behalf of Omega must be accepted at the Customer's risk and must not be or be deemed given as expert or adviser nor to have been relied upon.

**10. Privacy disclosure and consent:** The Customer authorises Omega to:

(a) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in any credit application completed by it ("**Credit Application**") and provided to Omega and from any other credit provider or credit reporting agency for the purpose of assessing its Credit Application, or in connection with any guarantee given by the Customer;

(b) use, disclose or exchange with other credit providers and other Omega entities information about the Customer's credit arrangements in order to assess its Credit Application, monitor credit worthiness and collect overdue accounts; and

(c) disclose the contents of any credit report on the Customer to any of its related entities, and any of their solicitors and mercantile agents.

**11. Severability:** If a provision of these Terms would but for this clause, be unenforceable, that provision must be read down to that extent necessary to avoid that result and if that provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of these Terms.

**12. Purchase Price:** All sales are made by Omega at its ruling price at the time of delivery unless otherwise agreed in writing by Omega. All government imposts and any GST ("**imposts**") will be to the Customer's account. Omega's price lists exclude Imposts unless expressly noted thereon.

**13. Default:** To the extent permissible at law (including under the Australian Consumer Law), default or breach by the Customer of these Terms or in any dealings with Omega will entitle Omega to retain all monies paid, call-up all monies due or owing (whether currently due and owing or not) cease further deliveries and recover from the Customer all loss of profits without prejudice to any other of its rights under these Terms or at law.

**14. Product and Services:**

(a) Omega may update, modify, make substitution or alter any of its Goods or any component or raw material incorporated in or used in forming any part of any Goods as part of its ongoing business. The Customer agrees to accept current Goods in substitution of any Goods ordered provided they are not materially different.

(b) To the extent permissible at law (including under the Australian Consumer Law), Omega disclaims any responsibility or liability relating to any Goods:

(i) processed or made to designs, drawings, specifications or measurements etc. or with materials which are provided or approved (whether in part or fully) by or on behalf of the Customer: and/or

(ii) utilised, sorted or handled incorrectly or inappropriately.

(c) The Customer must not alter, modify or use Goods in contravention of Omega's instructions, manufacturer guidelines or common or accepted industry practice.

**15. Other Terms:** Terms and/or conditions sought to be imposed by the Customer upon Omega will not apply unless agreed in writing by Omega.

**16. Recovery Costs:** The Customer will pay ( on a full indemnity basis) all costs and expenses of Omega, its legal adviser, mercantile agents and others acting on its behalf in respect of anything instituted or being considered as a result of any breach of these Terms or breach of any dealings with Omega.

**17. Attornment:** To give effect to its obligations arising under these Terms (and especially clause 22) the Customer hereby irrevocably appoints any director of Omega from time to time, as its attorney.

**18. Customer Restructure:**

(a) The Customer will notify Omega of any change in its structure or management including any sale in or disposition of any part of the business of the Customer, any change in director, shareholder, management, partnership or trusteeship or sale of any material part of its business ("**Restructure**") within 7 days of any such change.

(b) The Customer agrees it:

(i) will cause any new entity created by virtue of a Restructure ("**New Entity**") to be bound by the Terms; and

(ii) will continue to be bound by these Terms despite a Restructure and will indemnify Omega for any loss or damage it suffers as a result of a breach of these Terms by the New Entity.

**19. Jurisdiction:** All contracts made with Omega will be deemed to be made in the State of Victoria and the parties submit to the non-exclusive jurisdiction of the appropriate Courts in or nearest Melbourne in that State.

**20. Credit Line:** Omega can vary or withdraw any credit facility or limit at any time at its discretion and without any liability to the Customer or any other party.

**21. Waiver:** If Omega elects not to exercise any rights arising as a result of breach of these Terms it will not constitute a waiver of any rights relating to any subsequent or other breach.

**22. Security for Payment:** The Customer agrees subject to clause 40, that:

(a) despite anything to the contrary contained therein or any other rights which Omega may have howsoever, where the Customer is the owner, or becomes the owner in the future, of land realty or any other asset capable of being charged ("**Asset**") the Customer agrees, upon Omega's written request to mortgage and/or charge all of their joint and/or several interest in the Asset to Omega to secure all amounts and other monetary obligations payable by the Customer to Omega;

(b) it grants a lien to Omega over all of its property in the possession or control of Omega until Full Payment;

(c) it will execute any documents and to do all things requested by Omega to register a mortgage (or such other security Omega requires) over any current or later acquired real property the Customer has an interest in;

(d) it consents unconditionally to Omega lodging a caveat noting Omega's interest in any current or later acquired real property the Customer has an interest in; and

(e) any officer of Omega may (without limitation) sign documentation to effect the Customer's compliance with this clause 22.

**23. Force Majeure:** Omega will not be in default or breach of any dealings with the Customer as a result of force majeure (i.e. anything beyond Omega's reasonable control).

**24. Sampling:** The Customer must pay for all Goods provided to or ordered by the Customer as "sampling" unless otherwise agreed in writing.

**25. Intellectual Property:**

(a) If Omega utilises any design patent or intellectual property or follows any instruction provided by or on behalf of the Customer, the Customer indemnifies Omega against any claim, proceeding, damages or liability for any loss cost or expense arising as a result whether for any alleged infringement of any intellectual property or otherwise.

(b) The Customer must not advertise, use or represent any intellectual property of Omega or of any Goods themselves in any way without the prior written consent of Omega.

(c) If the Customer breaches or permits any breach of this clause 25, it acknowledges Omega may suffer claims by third parties as a result (e.g. by models whose images are reproduced without authority and/or by parties who are entitled to exploit any intellectual property) and clause 34 will apply.

(d) All rights in the composition of Goods and processes remain with Omega unless otherwise agreed in writing by Omega.

(e) The Customer is not granted any right in Omega's processes by virtue of such processes being incorporated into a Customers' product.

**26. Discounts:** Any discount offered by Omega is at its complete discretion and will only be available provided the Customer is not in breach of any part of these Terms nor in default in any of its dealings with Omega.

**27. Specifications:**

(a) Any illustration drawing or specifications supplied by Omega ("**Specs**") are drafts and approximates and are for illustration purposes and the Customer should not rely on the accuracy of such Specs in any way.

(b) Any tangible or intellectual property rights in Specs remain the property of Omega and may be recalled at any time.

(c) Specs are to be treated at all times as confidential and not made use of without the prior written consent of Omega.

**28. No Set-Off:** To the extent permissible at law (including under the Australian Consumer Law), no set off or counterclaim will be made or applied by the Customer until payment in full of all bona fide invoices raised by Omega (whether current or overdue) and this clause may be pleaded as a bar to any action taken prior to such payment in full.

**29. Trusts and Companies:** The Customer agrees that these Terms bind it not only in its own capacity but also as the Trustee of every trust of which it is a trustee. The Customer also agrees to procure each of its directors to execute an agreement to guarantee and indemnify in favour of Omega and in the form approved by Omega to be returned to Omega at the same time as the signed credit application.

**30. No Merger:** Termination of these Terms and/or dealings between the Customer and Omega ("**Cessation**") will not end those provisions of these Terms that are capable of surviving Cessation.

**31. Stock Discretion:** Omega has a continuing discretion to allocate available stock and gives no warranty as to certainty of supply unless expressly agreed in writing in advance.

**32. Partial Delivery/Forward Orders:** If the Customer places forward orders or request partial or instalment delivery, the Customer agrees:

(a) to pay for so much of any order as is from time to time delivered by Omega: and

(b) that no delay or failure to fulfil any part of any order will entitle the Customer to cancel or vary any order or delay or reduce any payment.

**33. Acceptable Variation:** The Customer will accept variation in quantities at plus or minus 5% and will pay pro-rata for the actual quantity delivered.

**34. Indemnity:** To the extent permissible at law (including under the Australian Consumer Law), the Customer indemnifies Omega, and agrees to keep Omega indemnified against any claim or loss arising from or related in any way to any contract or dealing between Omega and the Customer or anything arising there

from or arising as a result of or subsequent to any breach of these Terms by the Customer.

**35. Insolvency:** If the Customer commits or is involved in any act of insolvency, it will be deemed in default under these Terms. An act of insolvency includes bankruptcy, liquidation, receivership, administration or the like and failure to pay in accordance with these Terms.

**36. All Divisions:** The Customer agrees that these Terms will apply to all dealings between the Customer and Omega and any part or member of the Omega Group.

**37. Recalls:** In the event of a product recall (“Recall”) the Customer must give Omega such assistance as Omega reasonably requires in relation to that Recall.

**38. Pallets:** The Customer will return all pallets and any re-useable packaging provided with Goods and indemnifies Omega for the full replacement cost thereof, if not returned to Omega promptly and in good order.

**39. Exclusion of warranty:** To the extent permissible at law (including under the Australian Consumer Law), Omega is not bound by any warranty (and the Customer agrees not to make any claim against Omega in relation to any warranty) in respect of Goods or services unless all Goods and services have paid for in full without set-off or deduction of any kind.

**40. Personal Property Securities Act 2009:**

(a) Where the Personal Property Securities Act 2009 (“PPSA”) is in force, the Customer acknowledges that these Terms create a security interest under the PPSA in all Goods supplied by Omega to the Customer, and for avoidance of doubt, the proceeds of sale of those Goods.

(b) The Customer consents to Omega effecting a registration on the PPSA register (in any manner Omega considers appropriate) in relation to any security interest contemplated by these Terms (including but not limited to an interest under clause 2 and 22) and further agrees:

(i) to do all things necessary and required by Omega to make sure that the security interest is a perfected “purchase money security interest” under the PPSA; and

(ii) not to allow any third party to acquire a security interest in the Goods.

(c) To the extent that the Goods are for the Customer’s business use, the Customer agrees to the extent permitted under the PPSA, that the Customer has no right:

(i) to receive notice of removal of an accession under the PPSA;

(ii) under Chapter 4 if the PPSA; or

(iii) under the PPSA to receive a copy of any verification statement or a financing statement under the PPSA.

(d) Without in any way limiting clause 40(c) the Customer agrees that to the extent permitted under the PPSA, the Customer hereby waives its rights under sections 95, 96, 117, 118, 120, 121 (4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142 and 143 of the PPSA.

(e) Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

(f) The Customer hereby waives its rights to receive notices under sections 95, 118, 121 (4), 130, 132 (3) (d) and 132 (4) of the PPSA.

(g) The Customer must not assign or grant a security interest in respect of any accounts owed to it in relation to the Goods without Omega’s prior written consent.

(h) Without limiting any other provision of these Terms, if the Customer makes a payment to Omega at any time whether in connection with the supply of Goods or otherwise, Omega may at its absolute discretion apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.

**41. The Competition and Consumer Act 2010 (Cth) and Fair Trading Acts:**

(a) Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

(b) If the Customer is a consumer for the purposes of the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (“ACL”), nothing in these Terms limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

**42. Limitation of Liability:**

(a) This clause 42 is subject to any contrary provisions of any applicable law (including without limitation the Australian Consumer Law Schedule of the Competition and Consumer Act 2010), the operation of which cannot be excluded.

(b) Except as provided in clause 42(c), Omega’s liability for a breach of these terms, a condition, warranty or a guarantee of supply or in relation to defective goods and services is limited to (at Omega’s election):

(i) in the case of goods Omega supplies:

A. the replacement of the goods or the supply of equivalent goods;

B. the repair of the goods; or

C. the payment of the cost of replacing the goods or of acquiring equivalent goods;

(ii) in the case of services Omega supplies, the supplying of the services again, and the Customer will limit any claim upon Omega accordingly.

(c) If goods or services Omega supplies are of a kind ordinarily acquired for personal, domestic or household use or consumption, and there is a “major” failure of the goods or services to meet any consumer guarantee under Schedule 2 (The Australian Consumer Law) of the Competition and Consumer Act 2010 (Cth) then the Customer may choose one of the following remedies:

(i) in the case of goods Omega supplies:

A. ask for a refund;

B. return the goods and ask for an identical replacement, or one of similar value if reasonably available; or

C. keep the goods and ask for compensation for the drop in value caused by the problem; or

(ii) in the case of services Omega supplies:

A. cancel the contract and pay a reasonable amount for the work done, or seek a refund; or

B. for money already paid, keep the contract and negotiate a reduced price for the drop in value of the service — this may mean asking for some of the money back the Customer has already paid.

**43. Exports:** Exports of any Goods are governed by these Terms and all international trade conventions and/or terms including but not limited to the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) are expressly excluded unless otherwise stipulated in these Terms or on Omega’s invoice for the Goods. Unless otherwise noted on Omega’s invoice, all exported Goods are sold FOB and FOB has the meaning as defined by Incoterms 2000.

**44. Adverse Environments:** The Customer acknowledges and agrees that Goods can be adversely affected by severe environments, temperature extremes, frost, wind borne salt or abrasives which cause flaking, eat-away finish and reduce expected operating life especially in seaside locations.

**45. Tooling:** The Customer agrees that all tooling, material or intellectual property employed in the preparation for or production of any products or provision of any services will be and remain the property of Omega notwithstanding any contribution by the Customer thereto.

**46. Quotations:** The Customer agrees:

(a) quotations where given, will in writing;

(b) Omega shall not be bound by any quotation if an order is placed outside the period of the quotation’s validity noted thereon and in the absence of such period being noted, 14 days from the date of the quotation;

(c) prior to receipt of any order Omega may amend a quote;

(d) Omega shall not be bound by any quote if:

(i) it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Customer and those circumstances have materially changed; or

(ii) the Customer is in breach of these Terms;

(e) to pay any reasonable charges Omega claims for holding any Goods referred to in any quote pending placement of an order.

**47. Standards**

(a) Omega will, subject to clause 49(b), use reasonable endeavours to supply the Goods having the grade and/or composition (if any) specified in its quotation or acknowledgement of order (if applicable) and make sure that any grade and/or composition so specified will, unless otherwise agreed in writing by Omega, be in accordance with relevant Australian Standards, Omega’s applicable standards and/or as detailed in any current, relevant schedule of prices, product lists, product handbooks or other literature of Omega.

(b) Unless otherwise agreed in writing by Omega:

(i) all Goods will be supplied and delivered in accordance with Omega’s standard practice and shall be subject to Omega’s normal tolerances, limitations and variations of dimensions, weight, shape, composition, mechanical properties, structure, quality and service conditions (“Characteristics”);

(ii) any statements made by Omega as to Characteristics of Goods are approximate and Omega may supply Goods on an actual or calculated basis (calculated in accordance with applicable Australian standards); and

(iii) Omega’s statements as to Characteristics are, in the absence of manifest error, final, and must not be contested by the Customer unless the Customer has given Omega both written notice of any error within 14 days of delivery, and a reasonable opportunity to examine and re-test the Goods before they are used or dealt with.