



TERMS & CONDITIONS

1. Definitions and interpretation

Additional Charges means any charges which are additional to the amount payable for the Goods and/or Services specified in a Contract, including but not limited to those set out in clause 7.15.

Agreement means these terms of trade and all Contracts, and any written variations thereto.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales are open for business.

Change of Control means, in respect of a particular entity, a person who Controls that entity ceasing to do so or another person acquiring Control of it.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whatsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Consumer has the meaning given to that term in section 3 of the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Consumer Guarantees means any guarantee under Division 1 of Part 3-2 of the Australian Consumer Law applicable to a supply of goods or services.

Contract means a contract for the supply of Goods and/or Services formed in accordance with clause 4.

Control has the meaning given in Section 50AA of the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth).

Customer means the person, firm, organisation, partnership, corporation, trustee of a trust, or other entity (including its successors and permitted assigns) who places (or proposes to place) an Order with the Supplier

Customer Material means any and all information, specifications, data and documents provided by or on behalf of the Customer to the Supplier (whether in hard copy or in an electronic format) in the course of the Supplier supplying the Goods.

Default Rate means a rate of interest based on the Business Lending Base Rate of the National Australia Bank Limited (as current from time to time) and calculated daily.

Event of Default has the meaning given in clause 14.1.

Goods means the goods to be provided by the Supplier to the Customer under a Contract.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST has the same meaning given to that expression in the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth), as in force from time to time.

Insolvency Event means, in respect of a party, any of the following events or any analogous event:

(a) where the party is an individual, that party commits an act of bankruptcy or is declared bankrupt or insolvent or that party's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency;

(b) where the party is a company, a resolution is passed or court order made for the winding up of that party or an administrator is appointed to that party pursuant to any relevant law, or the party is dissolved (other than to carry out a reconstruction while solvent);

(c) the party is in receivership, in receivership and management, in liquidation or provisional liquidation; under administration; protected from creditors under any statute; or subject to any arrangement, assignment or composition; or

(d) the party is otherwise unable to pay its debts as and when they fall due.

Intellectual Property Rights means all intellectual property rights, including copyright and neighbouring rights (including moral rights), all rights in relation to inventions (including patents), registered and unregistered trade marks, business names, domain names, registered and unregistered designs, circuit layouts, confidential information, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Loss includes, but is not limited to, loss, liability, costs (including all legal and other professional costs on a full indemnity basis), charges, expenses, award of damages, outgoing, fine or payment of any nature or kind.

Order means a purchase order for Goods and/or Services placed by a Customer with the Supplier.

Anchor Steel Terms & Conditions



Order Confirmation means the written communication provided by the Supplier to the Customer confirming acceptance of the Order or acceptance of the Order subject to limitations or further stipulations. An Order Confirmation may accept, specify or vary the description of the Goods and/or Services to be provided, the Supplier's charges for the provision of such Goods and/or Services and/or the estimate of the time frame for the delivery of such Goods and/or Services, compared to that which was specified by the Customer in the Order.

PPSA means:

- (a) the *Personal Property Security Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPSA.

Quote mean any written or verbal advice provided by the Supplier to the Customer for the supply of Goods and/or Services.

Services means the services to be provided by the Supplier to the Customer under a Contract.

Supplier means Anchor Steel Pty Ltd ABN 75 677 090 907.

2. General

2.1. The Customer acknowledges that it has read and understood these terms of trade and agrees to be bound by them. Upon issuing an Order to the Supplier, the Customer confirms its acceptance of these terms of trade (and if the Customer does not accept these terms of trade, it must not issue an Order to the Supplier).

2.2. The Customer acknowledges that its acceptance of these terms of trade is a condition of the Supplier entering into a Contract with the Customer for the provision of Goods and/or Services.

2.3. These terms of trade apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services. This includes all Quotes and Contracts, and variations thereto. All terms of trade contained in any document of the Customer, any term of an Order submitted by the Customer (not accepted by the Supplier in its Order Confirmation) or elsewhere are fully excluded.

2.4. The variation or waiver of a provision of this Agreement or a party's consent to a departure from a provision by another party is ineffective unless in writing and signed by the parties.

2.5. Despite clause 2.3 and in only in relation to the relevant Contract, any details and terms specified in

the Supplier's Order Confirmation will take precedence over these terms of trade (but only to the extent of any inconsistency) and supersede any relevant prior detail in dealings between the parties.

3. Quotation

3.1. The Supplier may provide the Customer with a Quote.

3.2. Any such Quote is an invitation to treat only and does not constitute a contractual offer.

3.3. The Quote shall remain valid for a period of 30 days from the date of that Quote, unless otherwise specified in writing;

3.4. Following provision of a Quote to the Customer, the Supplier is not obliged to supply any Goods until a Contract is formed (which may be via the provision by the Supplier of an Order Confirmation).

3.5. An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of any applicable Consumer Guarantees, this estimate is not binding upon the Supplier.

4. Orders

4.1 The Customer must order Goods and Services from the Supplier in writing. The Order will not be binding on the Supplier and does not form part of a Contract – except to the extent the terms of an Order are accepted by the Supplier in an Order Confirmation.

4.2 Each Order must:

- (a) be signed by a person purporting to have authority on behalf of the Customer and on the Customer's letterhead or contain the Customer's email signature;
- (b) specify the date of the placement of the Order;
- (c) specify the quantity and description of the goods and/or services ordered; and

specify a preferred delivery date for the goods.

4.3 A Contract will be formed on the earlier of:

- (a) where the Supplier accepts all of the terms of the Order and specifies no further terms, provision of an Order Confirmation by the Supplier to the Customer accepting the Customer's Order or upon delivering the Goods or providing the Services to the Customer; or
- (b) where the Supplier does not accept all of the terms of the Order and/or specifies further terms:
 - (i) following the provision of an Order Confirmation to the Customer, upon expiration of the period referred to in clause 4.4 below; or

Anchor Steel Terms & Conditions



(ii) if the terms specified by the Supplier in an Order Confirmation are the subject of a notice from the Customer under clause 4.4, upon the Customer and Supplier reaching written agreement on those terms.

4.4 To the extent an Order Confirmation specifies any new or different terms to those specified in the Order, the Customer will be deemed to have accepted such new or different terms unless the Customer gives written notice to the Supplier (within [10] Business Days of the Supplier's provision of the Order Confirmation to the Customer) specifying the terms which are not accepted by the Customer. For clarity, if the Customer provides such notice, a Contract will not be formed unless or until the parties agree the terms of the Order Confirmation.

4.5 Despite any Contract, the Supplier may in its absolute discretion refuse to provide Goods or Services to the Customer where:

- (a) Goods are unavailable for supply for any reason beyond the Supplier's control;
- (b) credit limits cannot be agreed upon by the parties or have been exceeded by the Customer;
- (c) payment of any amount for Goods or Services previously provided to the Customer is outstanding or otherwise has not been received by the Supplier;
- (d) the Supplier is unable to obtain or maintain a policy of trade credit insurance to cover the supply of Goods or Services, or if such policy (having been obtained) no longer subsists; or
- (e) the delivery of the Order results in the credit limit issued by the Supplier's trade credit insurer to be exceeded. In these circumstances the Supplier may consider supplying the Goods if the Customer provides early payment in respect of such Goods or of any unpaid Order, or otherwise provides an alternate form of security for payment of the Goods which is satisfactory to the Supplier.

4.6 The Supplier can decline any Order received from the Customer by written notice to the Customer.

4.7 Once an Order Confirmation has been provided by the Supplier to the Customer and a Contract formed under clause 4.3 above, that Order cannot then be withdrawn and the resulting Contract cannot be cancelled or terminated for convenience by the Customer without the written consent of the Supplier. Where the Supplier gives its consent, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of any cancelled Goods and/or Services. This includes, but is not limited to, loss of profit from other orders foregone by the

Supplier as a result of the scheduling of the Order which was subsequently cancelled.

5. The Contract

5.1 The only terms which are binding on the Supplier in respect of each Contract are:

- (a) those set out in these terms of trade and the Order Confirmation (if any, and which may include the agreed terms of an Order);
- (b) those, if any, which are imposed by law which cannot be excluded; and
- (c) such further terms as may be agreed to in writing by the Supplier.

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

5.3 The acceptance of Goods delivered by the Supplier which refer to these terms of trade shall be deemed to be the acceptance of these terms of trade (if not previously accepted by the Customer, for example, in accordance with clause 2.1 above).

6. Collection or delivery of Goods

6.1 The Contract will specify whether the Goods are to be collected by the Customer from a specified site or whether the Goods will be delivered by the Supplier to a delivery site.

6.2 If the Contract specifies collection by the Customer, the Supplier must use its best endeavours to prepare the Goods for collection by the Customer, or as otherwise agreed in an Order, prior to the estimated delivery date as set out in the Contract.

6.3 As soon as the Goods are ready for collection, the Supplier must notify the Customer in writing. Within 10 days of receiving notification that an Order is ready for collection, the Customer must remove the Goods from the Supplier's premises.

6.4 The Customer must sign a delivery docket or packing slip to confirm the completion of the collection.

6.5 As an Additional Charge, the Customer must pay all reasonable expenses properly and necessarily incurred by the Supplier in the course of storing Goods for the 10 day period for collection by the Customer in accordance with clause 6.2.

6.6 If the Contract specifies delivery by the Supplier, the Supplier will use its best endeavours to arrange for delivery of the Goods on or about the date specified as the estimated delivery date. As an Additional Charge, the Customer must pay all reasonable

Anchor Steel Terms & Conditions



expenses properly and necessarily incurred by the Supplier in the course of delivering the Goods, including but not limited to costs associated with loading, unloading, transportation and insurance of the Goods.

7. Price

7.1 The amount payable by the Customer will be the amount set out in the invoice and any Additional Charges. This will be calculated as:

- (a) the amount for the Goods or Services (or both) as set out in the Contract; or
- (b) where no Order Confirmation has been provided by the Supplier, the Supplier's usual charges for the goods or services (or both) as described in the Order, and any Additional Charges.

7.2 The Supplier can vary the amount payable for any Goods and/or Services by notifying the Customer in writing as soon as the Supplier is aware of any price changes (such changes will not take effect until the parties have a good faith negotiation regarding price) if:

- (a) there is any change in the cost of supplying the Goods and/or Services, including any actual increase in manufacturing, procurement, transportation or service delivery costs;
- (b) the delivery of the quoted goods does not proceed according to the agreed delivery timetable;
- (c) the supply of the Goods and/or Services is suspended for more than 30 days; or
- (d) the Supplier incurs any tax, duty, levy, or additional charge related to the supply of the Goods and/or Services due to changes in legislation or regulation.

7.3 The Customer must pay an invoice issued by the Supplier to the Supplier within the time prescribed in clause 13.

7.4 If any amount under an invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until the overdue amounts are paid in full.

7.5 The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.

7.6 The Customer is not entitled to retain, nor set off, any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of this Agreement, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph or this Agreement more generally affects

the Customer's rights for any alleged failure of a Consumer Guarantee or otherwise under the Australian Consumer Law.

7.7 Interest will be incurred at the Default Rate on all overdue amounts owed by the Customer to the Supplier, compounded daily, and the Customer must pay any such interest to the Supplier on demand.

7.8 All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under this Agreement.

7.9 The Customer and the Supplier agree to comply with their obligations in relation to GST under the GST Act.

7.10 Except where the context suggests otherwise:

- (a) terms used in clauses 7.11 to 7.13 have the meaning given to those terms in the GST Act;
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of clauses 7.11 to 7.13;
- (c) unless otherwise stated, any amount, payment or consideration referred to under or in connection with this Agreement or a Contract is exclusive of GST; and
- (d) any supply the consideration for which is specified to be inclusive of GST, is not subject to clause 7.13.

7.11 If GST is payable in relation to a supply made under or in connection with this Agreement then the party (**Recipient**) that is required to pay or provide consideration to the other party (**Provider**) for that supply must, subject to receipt of a valid tax invoice, pay an additional amount to the Provider equal to the amount of that GST at the same time as the other consideration is to be paid or provided for that supply.

7.12 Any payment or reimbursement required to be made under this Agreement, including any Contracts, for a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

7.13 If the GST payable in relation to a supply made under or in connection with this Agreement varies from the additional amount paid by the Recipient, the Provider must issue an Adjustment Note as required under GST Law, such that:

- (a) a further amount of GST is payable in relation to the supply; or

Anchor Steel Terms & Conditions



(b) a refund or credit of GST is obtained in relation to the supply,
then the Provider will provide a corresponding refund or credit to the Recipient, or the Recipient will be required to pay the amount of that variation to the Provider (as applicable). Any payment, credit or refund under this clause 7.13 deemed to be a payment, credit or refund of the additional amount payable under clause 7.11.

7.14 All amounts to be paid by a party to another party under or in connection with this agreement must be paid in cash or by way of bank cheque or electronic funds transfer into the account nominated by the other party.

7.15 Additional Charges may occur as a result of:

- (a) charges, fees or expenses incurred for additional work performed at the Buyer's request or required because of the Buyer's conduct, calculated in line with the Supplier's then rates and prices;
- (b) cancellation by the Buyer of an Order where the Supplier accepts that cancellation, subject to the payment of a cancellation fee;
- (c) additional storage costs for Goods not collected from the Supplier within the timeframe specified in the Contract;
- (d) packing or handling charges not included in the Contract;
- (e) a delivery of the Goods under a Contract not being made directly to the Buyer (with any such additional costs for this delivery being recoverable at the rates incurred by the Supplier);
- (f) Governmental or council duties taxes or charges not included in the Contract; or
- (g) any additional work required by the Buyer or any other occurrence which causes the Supplier to incur additional costs to fulfil the Buyer's Order additional to the amount quoted in the Contract which were not anticipated at the time the Order or Order Confirmation (as applicable for the Contract) was issued. This includes but is not limited to costs associated with PSS, BAF, container detention exceeding the free 14 day period, increases in export taxes or decreases in export rebates in the country of origin.

8. Passing of title and risk

8.1 Property and title in the Goods passes to the Customer when all money due and payable to the Supplier by the Customer in respect of those Goods has been fully paid.

8.2 Risk of damage to, or loss of, each of the Goods passes to the Customer:

- (a) If the Goods are collected by the Customer; immediately prior to collection of the Goods by the Customer (or, where the Goods are not collected by the Customer within the time period specified in clause 6.2, then risk will pass to the Customer on the expiration of that period); or
- (b) If the Goods are delivered by the Supplier, then on delivery to the specified site of delivery.

8.3 In connection with the Goods, the Supplier states to the Customer that:

- (a) the Supplier has the right to supply the Goods to the Customer; and
- (b) if the Goods are not owned by the Supplier, the Supplier is authorised to supply the Goods to the Customer.

8.4 Prior to title in the goods passing to the Customer under the terms of this Agreement, the Customer agrees that it:

- (a) has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Supplier owes to the Customer;
- (b) cannot claim any lien over the Goods; and
- (c) will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Supplier.

8.5 Where Goods are supplied by the Supplier to the Customer without payment in full, the Customer:

- (a) is a bailee of the Goods until property in them passes to the Customer and the Customer acknowledges that this bailment may give rise to a security interest in the Goods in favour of the Supplier;
- (b) must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries on business;
- (c) must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods;
- (d) acknowledges that the Supplier may register a financing statement on the register maintained under the PPSA in respect of any a security interest that the Supplier may have in the Goods;
- (e) irrevocably appoints the Supplier to be its attorney to do all acts and things necessary to ensure the retention of title to goods with respect to the Goods under applicable law;

Anchor Steel Terms & Conditions



- (f) unless the Supplier otherwise agrees in writing, must at all times ensure that any Goods belonging to the Supplier are held separately from other goods which are held by the Customer and that the Goods are clearly marked as belonging to the Supplier;
- (g) must not allow any person to have or acquire any security interest in the Goods;
- (h) will not deliver the Goods or any document of title to them to any person except as directed by the Supplier;
- (i) agrees that the Supplier may repossess the Goods if payment is not immediately made when due;
- (j) grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of the Goods from the Customer; and
- (k) agrees to the provisions set out in clauses 8.6 and 8.7 below.

8.6 Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and:

- (a) the Customer makes a new object from the Goods, whether finished or not;
- (b) the Customer mixes the Goods with other goods; or
- (c) the Goods become part of other goods, (in each case, a **New Good**) then the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier (and any accessory or item which accedes to any of the Goods and New Goods by an act of the Customer, or of any person at the direction or request of the Customer, becomes and remains the property of the Supplier) until the Supplier is paid for the relevant Goods. The Customer will hold the New Goods as bailee for the Supplier until payment of all sums owing to the Supplier under this Agreement for the related Goods has been made. The Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.

8.7 For the avoidance of doubt, under clause 8.6, the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods were converted into, were mixed with or became part of other goods.

8.8 The Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business. This is provided that the

security interest of the Supplier in the Goods (or New Goods) continue in the proceeds of the Goods (or New Goods), and the Customer must either pay the amount of the proceeds of supply/re-supply to the Supplier immediately when they are received, or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Supplier. Where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.

8.9 The Customer indemnifies the Supplier and its agent for any damage to property or personal injury which occurs as a result of the Supplier or its agent entering the Customer premises to recover the Goods.

9. PPSA

9.1 The Customer consents to the Supplier registering a financing statement on the register maintained under the PPSA in respect of any security interest that the Supplier may have in the Goods and agrees to provide all assistance required by the Supplier to facilitate registration.

9.2 Until title in the Goods has passed to the Customer as contemplated by clause 8, the Customer agrees not to in any way assign, lease or otherwise deal with the Goods in such a manner as to create a security interest over the goods in favour of the Customer or any third party. The parties agree that this clause will not prohibit the Customer from selling the Goods in the ordinary course of business.

9.3 The Customer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by PPSA and cannot be excluded.

9.4 The Supplier and the Customer agree that this Agreement and all related information and documents are confidential (Confidential Information) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this Agreement or required by law.

9.5 Unless the Goods are used predominantly for personal, domestic or household purposes (which the parties have agreed under clause 10.7 is not the case), the Supplier and the Customer agree that each of the following requirements or rights under the PPSA does

Anchor Steel Terms & Conditions



not apply to the enforcement of the Supplier's security interest in the Goods or of this agreement:

- (a) Any requirement for the Supplier to give the Customer a notice of removal of accession;
- (b) Any requirement for the Supplier to give the Customer a notice of the Supplier's proposed disposal of the goods;
- (c) Any requirement for the Supplier to include in a statement of account, after disposal of the goods, the details of any amounts paid to other secured parties;
- (d) Any requirement for the Supplier to give the Customer a statement of account if the Supplier does not dispose of the goods;
- (e) Any right the Customer has to redeem the goods before the Supplier exercises a right of disposal; and
- (f) Any right the Customer has to terminate this agreement before the Supplier exercises a right of disposal of the goods.

10. Limitation of liability

10.1 Nothing in this clause 10 or this Agreement more generally is intended to have the effect of excluding, restricting or modifying any liability of the Supplier in relation to a failure to comply with a Consumer Guarantee.

10.2 All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any applicable Consumer Guarantees, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to not accept the Goods upon inspection, or to make any claim in respect of them.

10.3 Any representation, statement, advice, recommendation, information, assistance or service given by the Supplier to the Customer is made in good faith but without any representation nor warranty of accuracy, appropriateness or reliability. The Customer acknowledges and warrants that it has made its own due and reasonable enquiries, and it does not enter into this Agreement or any Contract in reliance on any conduct (including any representation, statement, advice, recommendation, information, assistance or service) by or on behalf of the Supplier, except as expressly stated in this Agreement or any Order Confirmation.

10.4 The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the maximum extent permitted by law, the Customer excludes all conditions, warranties and

representations expressed or implied by law or otherwise in relation to the provision of the Goods and/or Services under this Agreement.

10.5 To the maximum extent permitted by law, under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any Loss as a result (direct or indirect) of (without limitation):

- (a) any Goods or Services supplied to the Customer, including any defect, deficiency or discrepancy in the Goods or Services;
- (b) any delay in or failure to supply the Goods or Services; or
- (c) any warranties or representations purportedly made.

10.6 To the maximum extent permitted by law, the liability (if any) of the Supplier under this Agreement or any Consumer Guarantee is, at the election of the Supplier, limited to and completely discharged:

- (a) in the case of the supply of Goods, by either:
 - i. the supply by the Supplier of any goods equivalent to the Goods (or the payment of the cost of re-supply or of acquiring equivalent goods); or
 - ii. the replacement by the Supplier of the Goods supplied to the Customer (or the payment of the cost of having the goods replaced); and
- (b) in the case of the supply of Services, the supplying of the Services again or the payment of the cost of having the Services supplied again (including in respect of any advice, recommendations, information or services),

and in all other circumstances, the Supplier's aggregate liability under or in connection with the Agreement, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action is limited to \$10,000.

To the maximum extent permitted by law, the Supplier is not liable to the Customer, howsoever arising and whether for breach, in tort (including negligence) or for any other common law or statutory cause of action, for any indirect, punitive, incidental, special, consequential loss or damages and including, without limitation, damages for loss of use, loss of data, loss of profits, or loss of business opportunity, regardless whether in the contemplation of the parties as at the time this Agreement or any Contract was formed.

10.7 The Customer acknowledges that the Goods or Services are not goods or services of a kind ordinarily

Anchor Steel Terms & Conditions



acquired for personal, domestic or household use or consumption.

11. Termination

Termination for breach

11.1 The Supplier may terminate this Agreement immediately (in whole or in part) by notice to the Customer if an Event of Default occurs in respect of the Customer.

11.2 If a party commits any material or persistent breach of this agreement (the Defaulting Party), the other party may (but is not obliged to) provide the Defaulting Party with a notice of breach in writing. If the Defaulting Party fails to remedy the breach within 20 Business Days, or such other period as agreed, after the date of its receipt of such notice, the other party may terminate this agreement with immediate effect upon providing the Defaulting Party with a further notice of termination in writing.

Termination for convenience

11.3 The Supplier may terminate this Agreement or any Contract, or reduce the scope of any Contract, for any reason and without liability to the Customer, by providing at least 30 days' written notice to the Customer.

Effect of termination

11.4 In the event of any termination of this Agreement in any circumstances and for any reason whatsoever:

- (a) the Customer will remain liable to pay all charges accrued up to and including the date of termination (whether or not invoiced prior to the date of termination) and, in all cases other than where this Agreement is terminated by the Supplier for convenience, the Customer will reimburse the Supplier for all charges incurred by the Supplier for the purchase of materials for Goods prior to such termination; and
- (b) the Supplier will send to the Customer a final invoice for the balance of the charges referred to clause (a) above.

Legislation

11.5 If any provision of this Agreement is otherwise unenforceable by virtue of the operation of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth), upon the occurrence of an Insolvency Event in respect of a particular party, notwithstanding any other provision of this agreement, to the maximum extent permitted by law: (a) time is of the essence in respect of all obligations of that party under this agreement (whether falling

due for performance before, upon or after the occurrence of that Insolvency Event); and (b) any breach of this Agreement by that party (whether occurring before, upon or after the occurrence of that Insolvency Event), however minor, will (alone or, severally, in combination with the occurrence of that Insolvency Event) be deemed to be a material breach of this agreement, and, if any such material breach has occurred or occurs, the parties acknowledge and agree that such provision will instead be enforceable by virtue of the occurrence of that material breach.

Accrued rights

11.6 Termination of this agreement will not affect any rights or liabilities that the parties have accrued under it prior to such termination.

12. Indemnity

12.1 The Customer indemnifies and keeps indemnified the Supplier, its employees, officers and agents (**those indemnified**) against all Loss sustained or incurred by those indemnified arising in any manner out of or in connection with any Event of Default, or as a consequence of the Customer's failure to comply with the obligations under any Contract or this Agreement.

12.2 A certificate by the Supplier detailing the Supplier's Loss referred to in clause 12.1 is sufficient evidence of the amount of the Supplier's loss, damage and expenses, unless proved to be incorrect.

12.3 This provision remains in force after the expiry or termination of this Agreement.

13. Payment terms

13.1 Where the Customer has a commercial credit account with the Supplier, invoices are due and payable on the last working day of the month after the month in which the Goods and/or Services were delivered (or such other date agreed by the parties in writing).

13.2 Where the Customer does not have an approved commercial credit account, payment of the invoice must be made upon formation of a Contract under clause 4.3 or as otherwise may be agreed in the terms of the relevant Contract.

13.3 The Customer must check all invoices and advise the Supplier of any errors or omissions within 5 Business Days of receipt. Failing advice from the Customer that the invoice contains an error or omission, the invoice may be deemed accepted by the Customer.

14. Event of Default

Anchor Steel Terms & Conditions



14.1 Each of the following occurrences constitutes an "Event of Default":

- (a) the Customer breaches this Agreement for any reason (including, but not limited to, defaulting on any payment due under this Agreement or a Contract);
- (b) the Customer repudiating or, in the reasonable opinion of the Supplier, evincing an intention to repudiate, this Agreement;
- (c) the Customer undergoing a Change of Control without the prior written consent of the Supplier;
- (d) the Customer is subject to an Insolvency Event;
- (e) the Customer purports to assign its rights under this Agreement without the Supplier's prior written consent;
- (f) there is an adverse change in the creditworthiness of the Customer in the reasonable opinion of the Supplier;
- (g) for a Customer that holds (or held) a commercial credit account with the Supplier:
 - i. one or more guarantors becomes Insolvent;
 - ii. in the reasonable opinion of the Supplier, there is an adverse change in the creditworthiness of one or more guarantors; or
 - iii. one or more guarantors revokes their deed of guarantee without a suitable replacement guarantor having provided a replacement guarantee acceptable to the Supplier prior to the revocation; or
 - iv. there is a change in ownership or control of a guarantor without prior written consent of the Supplier; or
- (h) the Customer ceases or threatens to cease conduct of its business in the normal manner.

14.2 Where an Event of Default occurs and without limiting any of the Supplier's other rights and remedies under this Agreement, the Supplier may without liability to the Customer:

- (a) terminate this Agreement;
- (b) terminate any one or more Contracts and credit arrangements (if any) with the Customer;
- (c) refuse to deliver Goods or provide further Services;
- (d) pursuant to clause 8, repossess and re-sell any Goods collected by the Customer, the payment for which has not been received;
- (e) retain (where applicable) all money paid by the Customer on account of Goods or Services or otherwise, provided that the Supplier does not retain any money for Goods and/or Services not provided to the Customer (without limiting the Supplier's set off rights under this Agreement);

- (f) charge interest on any overdue amount at the Default Rate, which will accrue and be recoverable from and including the due date for payment until and including the day that payment in full is received;
- (g) if the Customer has a commercial credit account, immediately suspend that account.

14.3 In addition to any action permitted to be taken by the Supplier under clause 14.2, on the occurrence of an Event of Default all invoices will become immediately due and payable.

14.4 The Customer will indemnify the Supplier against and reimburse on written demand the Supplier's:

- (a) costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis; and
- (b) Losses incurred in connection with or arising from the suspension or cancellation of any Contract or the collection of Goods in accordance with clause 14.2 including restocking fees, freight and handling costs, third party costs and bank charges.

15. Cancellation or suspension of Orders

15.1 The Supplier may suspend and/or cancel a Contract under clauses 14.1 (Event of Default) or 19 (Force Majeure) as described of these Terms and Conditions.

15.2 Unless agreed in writing by the parties, the Customer may not cancel a Contract (or any part of a Contract) once a Contract is formed under clause 4.3. Goods which have been collected by the Customer cannot be returned.

15.3 If the Supplier accepts the cancellation of a Contract or a return of Goods under clause 15.2, the Supplier may require the Customer to reimburse the Supplier for all Loss it has incurred or may incur as a result of the cancellation of that Contract (in whole or part) or the return of Goods, including, without limitation:

- (a) restocking fees;
- (b) the cost of returning Goods to the Supplier (including freight and handling costs);
- (c) the cost of any damage to Goods returned (including, but not limited to, damage that occurs in return transit);
- (d) third party costs;
- (e) bank charges; and
- (f) any other incidental expenses incurred on any Order cancelled or Goods returned.

Anchor Steel Terms & Conditions



15.4 In order for Goods to be returned to the Supplier, they must be undamaged and packed and wrapped appropriately. The Supplier may reject any proposed return of Goods that does not meet these criteria.

15.5 The Customer may not request the cancellation of a Contract or the return of Goods, where the Goods have been specifically produced, processed, manufactured or purchased by the Supplier at the Customer's request.

15.6 Unless agreed in writing by the parties, the Customer may not suspend a Contract (or any part of a Contract) or delay or defer delivery of Goods.

15.7 If the Supplier agrees to suspend, delay or defer in accordance with clause 15.6, the Supplier may require an adjustment to the price (under clause 7) and may require the Customer to reimburse the Supplier for all Loss it has incurred or may incur as a result of the suspension, delay or deferral, including, without limitation:

- (a) a storage fee
- (b) restocking fees, and
- (c) any other incidental expenses or costs incurred on any part of the Order or delivery.

15.8 The Customer agrees to indemnify the Supplier against any Loss incurred by the Supplier as a result of any claim by the Customer or by a third party against the Supplier, caused by, arising from or in connection with any suspension of a Contract or delay or deferral of a delivery of Goods agreed in accordance with clause 15.6.

16. Returns

16.1 The Customer must inspect the Goods prior to their collection by the Customer or promptly after delivery (as applicable).

16.2 Where the Goods are collected by the Customer, before picking up any of the Goods, the Customer must notify the Supplier of any Goods which do not conform to the requirements of the Contract or which have been damaged. Upon collection of the Goods by the Customer, the Customer is deemed to have accepted the condition of those Goods.

16.3 Where the Goods are delivered by the Supplier, the Customer must inspect the goods by the earlier of: (i) 24 hours after delivery to a construction site or 48 hours after delivery elsewhere; and (ii) the time that the Customer deals with the Goods. If the Customer claims that any Goods do not conform to the requirements of the Contract or have been damaged (while the Goods were at the Supplier's risk), the Customer must give written notice to the

Supplier within the time periods specified in this clause 16.3 for the inspection of the Goods, and:

- (a) the Customer must allow the Supplier to inspect the Goods the subject of the claim, including allowing reasonable access to the site to inspect the Goods;
- (b) the Customer must leave the Goods in the place, state and condition in which they were delivered until the Supplier has inspected the Goods;

If the Customer fails to give written notice to the Supplier under clause 16.3 (in the period provided for in that clause) then the Customer shall have no claim against the Supplier in relation to the conformity of the Goods with the specifications, damage occurring to the Goods while at the Supplier's risk or the supply of incorrect Goods, and the Customer is deemed to have accepted the condition of the Goods.

16.4 If the Supplier agrees that the Goods do not conform to the requirements of the Contract or have been damaged while still at the Supplier's risk, the Supplier will, at its option:

- (a) replace those Goods or resupply equivalent Goods which meet the requirements of the Contract and are not damaged;
- (b) repair those Goods;
- (c) pay the cost of replacing those Goods or acquiring equivalent goods; or
- (d) the payment of the cost of having those Goods repaired.

17. Intellectual Property Rights

17.1 The Customer acknowledges that:

- (a) all Intellectual Property Rights embodied in or used by the Supplier in connection with the Goods and/or Services, or which may be developed in connection with the Goods and/or Services (whether registered or unregistered) will be and remain the property of the Supplier (**Supplier IP**);
- (b) unless otherwise agreed in writing, any Supplier IP created or developed following the date of a Contract will vest in the Supplier as soon as the Intellectual Property Rights are created or developed and will at all times remain the property of the Supplier. The Customer will assign any right, title and interest in such Supplier IP immediately upon creation, free of any encumbrances, security interest and third party rights and such assignment will operate as a present assignment of future Intellectual Property Rights; and
- (c) subject to payment of all invoices due in respect of the Goods and/or Services, the Supplier grants to the Customer a perpetual, non-exclusive licence to exercise any of the Supplier's Intellectual Property

Anchor Steel Terms & Conditions



Rights in the Goods and/or Services to the extent required for the Customer to use those Goods and Services as contemplated within the relevant the Contract.

17.2 The Customer warrants that it owns all Intellectual Property Rights in any materials supplied by it (or on its behalf) to the Supplier or has a valid licence which permits the Supplier to receive, use and exercise other Intellectual Property Rights in those materials in performing its obligations under a Contract. The Customer indemnifies and agrees to keep indemnified the Supplier against all Losses suffered or incurred by the Supplier in relation to or in any way directly or indirectly connected with a breach of the warranty in in this clause 17.2 (including any Loss arising from a third party's claim that the Supplier's receipt and use of materials supplied to it by the Customer (or on the Customer's behalf) infringes that third party's Intellectual Property Rights).

18. Agency and assignment

18.1 The Customer agrees that the Supplier may at any time appoint or engage an agent and/or subcontractor to perform any of the Supplier's obligations under this Agreement.

18.2 The Supplier may assign any of its rights under this Agreement, and the Supplier may novate and/or transfer to any person this Agreement or any part of it provided that such person agrees to assume the duties and obligations of the Supplier under this Agreement that are transferred or novated to it.

19. Force majeure

19.1 If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods or Services or the performance by the Supplier of any of its other obligations under this Agreement, the Supplier is free from any obligation to provide the Goods or Services and the affected obligations of the Supplier are suspended while those circumstances continue. The Supplier may elect to terminate this Agreement or keep the Agreement on foot until such circumstances have ceased or suspend, and the Supplier may reduce the amount of Goods to be delivered and/or Services to be performed during such time. The Supplier will not be liable to the Customer for any Loss suffered or incurred by the Customer in connection with the Supplier's delay or non-performance of an obligation which it is hindered, delayed or prevented from performing due to a circumstance beyond the Supplier's control.

19.2 Circumstances beyond the Supplier's control include, but are not limited to, unavailability or price increases of materials or components; freight, strikes, trade disputes or labour disturbances; lockouts, riots, natural disasters, fire, war, acts of God, Governmental decrees, proclamations; or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

20. Variation

20.1 The Customer agrees that these terms of trade may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Customer. Except as otherwise agreed in writing, the Customer agrees that the variation or amendment to these Terms and Conditions will take effect 28 days after dispatch of the written notice of the variation or amendment by the Supplier (**Effective Date**) in respect of all Contracts entered into after the Effective Date.

20.2 Any proposed variation to these Terms and Conditions by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

20.3 Variations requested by the Customer will only be binding if they are in writing and signed by an authorised officer of the Supplier and may be in the form of Special Conditions applicable to all Contracts or specific only to a particular Contract, as agreed between the parties in writing.

21. Governing law, Jurisdiction and Disputes

21.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed or determined (as applicable) in accordance with, the laws of New South Wales

21.2 The parties irrevocably agree to the exclusive jurisdiction of the courts of New South Wales, and the relevant federal courts and courts competent to hear appeals from those courts to settle any dispute or proceedings that arise out of, or in connection with, this Agreement or its subject matter or formation (including non-contractual disputes or claims). Each party waives any objection it may have now or in the future to the venue of any proceedings and any claim it may have regarding any proceedings or claim being brought in an inconvenient forum.

22. Entire agreement

To the extent permitted by law and except where expressly agreed otherwise, this Agreement

Anchor Steel Terms & Conditions



constitutes the entire agreement and understanding between the parties relating in any way to its subject matter and will supersede any prior agreement or understanding of the parties (written or otherwise). Each party acknowledges and warrants that it does not enter into this Agreement, including each Contract, in reliance on any previous negotiations, understandings, representations, warranties, memoranda or commitments. No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.

23. Quantities

23.1 The actual mass and length of steel reinforcing materials supplied as Goods may vary from the mass and lengths ordered to the extent of the permissible mass tolerances and length deviations referred to in clauses 7.3.1, 7.3.2 and 7.5.7 of AS/NZS 4671:2019.

23.2 The mass of steel reinforcing bars will be calculated on the basis of mass per metre as defined in clause 7.3.1 of AS/NZS 4671:2019.

23.3 Calculations with respect to the length of steel reinforcing will be made in accordance with AS/NZS 1100 Part 501.

23.4 Steel reinforcing materials will be invoiced at the maximum permissible mass tolerance referred to in clause 7.3.1 of AS/NZS 4671:2019. The mass per metre (being length ordered plus the maximum permissible mass tolerance) of certain products is set out in the reinforcing steel products page on the Supplier's website.

24. Miscellaneous

Further assurances. Each party must (at its own expense, unless otherwise provided in this agreement) promptly execute and deliver all such documents, and do all such things, as any other party may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

Third parties. This Agreement is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

Costs. All costs and expenses in connection with the negotiation, preparation and execution of this Agreement, and any other agreements or documents entered into or signed pursuant to this Agreement, will be borne by the party that incurred the costs.

Severability. If a provision or the application of a provision of this Agreement is invalid, prohibited, void, illegal or unenforceable in a jurisdiction:

- (a) it is to be read down or severed or be ineffective in that jurisdiction to the extent of the prohibition, invalidity voidness, illegality or unenforceability; and
- (b) this will not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

Electronic exchange. Delivery of an executed counterpart of this Agreement or any agreement or document entered into pursuant to these terms of trade by facsimile, or by email in PDF or other image format, will be equally effective as delivery of an original signed hard copy of that counterpart.