

TERMS AND CONDITIONS

These terms are entered into between Darley Aluminium Trading Pty Ltd (ACN 076 364 657) (**we, us or our**) and you, the person or entity stated in the Quote (**you or your**), together the **Parties** and each a **Party**. Together, these terms and conditions of sale, the Quote and/or Order, the Credit Terms, and the Warranty against defects (if applicable) (together with any attachments to any of these documents) form the entire agreement under which we will provide the Goods and Services to you (**Terms**).

Our Disclosures:

Please read these Terms carefully prior to accepting these Terms. By accepting these Terms, you agree that:

- if these Terms express a time within which the Goods are to be supplied, we will use reasonable endeavours to supply the Goods by such time, but you agree that such time is an estimate only;
- subject to your Consumer Law Rights, we do not accept change of mind returns;
- without limited to the Warranty terms, to claim the benefit of the Warranty terms, you must, if the Goods are returned after 30 days following the date of delivery, pay us an administration charge equal to 10% of the Price of the relevant Goods to assess your Warranty claim, such charge to be refunded to you if we assess that the Warranty applies;
- subject to your Consumer Law Rights, our Liability for the supply of the Goods will be limited to, at our discretion the resupply of the Goods or the repayment of the Price paid by you to us;
- our aggregate liability for any Liability arising from or in connection with these Terms will be limited to the Price paid by you to us in respect of the supply of the relevant Goods to which the Liability relates; and
- you may have rights under the Australian Consumer Law (see above) in addition to this clause including as applicable directly against any manufacturer of the Goods. If we are not the manufacturer of the Goods, the manufacturer may provide you with a separate warranty against defects in addition to any rights under these Terms and you may have rights against such manufacturer. To the maximum extent permitted by law including the Australian Consumer Law, we will not be liable for, and you waive and release us from and against any Liability arising from any failure of a manufacturer to comply with their warranty.

These Terms does not intend to limit your rights and remedies at law, including any of your Consumer Law Rights.

1. Acceptance

1.1 You accept these Terms by the earlier of:

- (a) signing and returning the Quote and/or Credit Terms to us;
- (b) accepting the Quote online or sending an email to us accepting the Quote (expressly or impliedly);
- (c) issuing us with a purchase order; and

- (d) making part or full payment of the Price (including any Deposit).

1.2 To the extent of any inconsistency, the order of priority for interpretation is: (i) first these Terms and Conditions of Sale; (ii) the Credit Terms; (iii) the Quote; (iv) an Order (v) any attachments to these terms and conditions of sale; (vi) any attachments to the Quote and lastly (vii) any attachments to an Order other than the Quote.

2. Goods

2.1 In consideration of your payment of the Price, we will provide the Goods in accordance with these Terms, whether ourselves or through our Personnel.

2.2 If these Terms expresses a time within which the Goods are to be supplied, we will use reasonable endeavours to provide the Goods by such time, but you agree that such time is an estimate only.

2.3 Notwithstanding clause 5, you agree that we may amend the Goods or the Price at any time prior to us supplying the Goods to you respect of a Quote and/or Order, by providing written notice to you. If you do not agree to any amendment made to the Goods or Price, you may terminate these Terms (or a Quote or Order under them) in writing. If we amend the Price or Goods in respect of a Quote and/or Order after you have paid us the Deposit for the Quote and/or Order, and you wish to terminate the Order, we will refund the Deposit to you or we will provide you with a credit for the amount of the Deposit to be used towards your next Order, as agreed between the Parties.

3. Orders

3.1 During the Term, you may issue requests for further Goods (**Order Request**) by notifying us in writing, online or by any other process which we may advise to you from time to time.

3.2 We may, at our discretion, accept or reject an Order Request. If we accept the Order Request, we will issue an Order, and the Order will be binding on the Parties in accordance with these Terms and the Order.

4. Delivery or Collection If

4.1 the Parties agree that:

- (a) we are responsible for delivering the Goods to you, we will use reasonable endeavours to deliver the Goods to the delivery location by the delivery time as agreed between the Parties;

- (b) you are responsible for collecting the Goods from us, we will use reasonable endeavours to make available the Goods at the collection location by the collection time as agreed between the Parties, and you agree to:

- (1) use reasonable endeavours to collect the Goods from the collection location and by the collection time as agreed between the Parties; and
- (2) comply with any policies and procedures which we make known to you which apply at the collection location from which you collect the Goods; and

- (3) pay our additional costs reasonably incurred as a result of you failing to comply with this clause.
- 4.2 Unless otherwise agreed between the Parties, we will only deliver to the delivery address as set out in the Quote or Order, as applicable. Any change of address is subject to clause 5.
- 4.3 As between the Parties, you agree to pay for the reasonable costs of delivering and/or collecting the Goods.
- 5. Variations**
- 5.1 Subject to our right to amend the Goods or the Price as set out in clause 2.3, by providing written notice to you as set out in clause 2.3, all variations to the Goods must be agreed in writing between the Parties and will be priced in accordance with any schedule of rates provided by us, or otherwise as reasonably agreed between the Parties. If we consider that any instruction or direction from you constitutes a variation to the scope of our obligations under these Terms, then we will not be obliged to comply with such instruction or direction unless agreed in accordance with this clause.
- 6. Payment**
- 6.1 In consideration for us providing the Goods, you agree to pay us the Price and any other amounts due and payable under these Terms in accordance with this clause 6.
- 6.2 When applicable, GST is payable on the Price and will be clearly shown on our invoices. You agree to pay us an amount equivalent to the GST imposed on these charges.
- 6.3 Unless otherwise agreed in writing between the Parties and subject to clause 6.5:
- (a) If any Deposit is identified in the Quote and/or Order, you must pay us the Deposit within 14 days after the date of the invoice and subject to your Consumer Law Rights, you agree that once paid, the Deposit is not refundable except under clause 2.3; and
- (b) You must pay us the remainder of the Price (less the Deposit if any) and any other amounts (such as the GST and delivery and collection costs as per clause 4.3) within the earlier of 30 days of the date of the invoice or such earlier date identified in the Quote as the payment due date.
- 6.4 Unless we agree (in our sole discretion) to supply the Goods to you on credit pursuant to our Credit Terms, you will not be entitled to any part of the Goods until payment in full of the Price, the GST and delivery/ collection costs.
- 6.5 If we agree (in our sole discretion) to supply the Goods to you on credit, you acknowledge and agree that:
- (a) the Credit Terms attached to these terms and conditions of sale apply to the supply of the Goods and/or Order;
- (b) subject to clause 2.2, we will make the Goods available to you on the date indicated in the Quote and/or Order;
- (c) you must pay us the Price for the Goods prior to the expiry of the credit term (as defined in the Credit Terms).
- 6.6 If any payment has not been made in accordance with this clause 6, we may (at our absolute discretion, and without prejudice to any of our rights or remedies under these Terms, the Credit Terms or at law):
- (a) after the relevant due date, cease supplying the Goods, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs);
- (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date in accordance with the Payment Terms; and/or
- (c) if our Credit Terms apply, exercise any rights relating to overdue accounts under our Credit Terms.
- 7. Title and Risk**
- 7.1 Title in the Goods will only pass to you on the date that you pay the Price (including the Deposit, if any) plus the GST (if any) and delivery and collection costs as per clause 4.3 in full in accordance with these Terms and if applicable, our Credit Terms.
- 7.2 If the Parties agree that you are to collect the Goods from us, risk in the Goods will pass to you when you have collected the Goods from the location agreed between the Parties.
- 7.3 If the Parties agree that we are to deliver the Goods to you, risk in the Goods will pass to you when we have delivered the Goods to the location agreed between the Parties.
- 8. Security Interest**
- 8.1 You acknowledge and agree that:
- (a) these Terms are a 'security agreement' under the PPSA;
- (b) this clause 8 creates a security interest in all present and after acquired goods, and any proceeds from any sale or disposal of goods, as security for your obligations to us;
- (c) we are a secured party in relation to the Goods and any proceeds in respect of any sale or disposal of the Goods, and we are entitled to register this interest on the relevant register as either (at our discretion) a security interest, and if applicable, a 'purchase money security interest';
- (d) you must (at your cost), where we request, take all steps that we consider necessary or desirable to ensure our security interest in the Goods and the proceeds is enforceable, and to perfect, or better secure our position under these Terms, or ensure our priority over all other security interests.
- 8.2 Until such time as title in the Goods has passed to you as contemplated under clause 7, you must not allow any person to have or acquire any security interest in the Goods, unless with our prior written consent.
- 8.3 To the extent the law permits, you waive your right to receive any notice (including notice of a verification statement) that is required by the PPSA, including but not limited to notices under sections 157, 95, 118, 121, 130, 132 or 135. However, this does not prevent us from giving a notice under the PPSA.

8.4 You must not disclose any information of the kind referred to in section 275 of the PPSA, to the extent permitted under that section.

8.5 Nothing in this clause 8 is intended as an agreement to subordinate a security interest arising under these Terms and conditions in favour of any person under section 61 of the PPSA.

8.6 In this clause 8 a 'security interest' includes any form or lien, encumbrance or a security interest under the PPSA.

9. Warranties and Representations

9.1 Each Party represents, warrants and agrees that:

- (a) it has full legal capacity, right, authority and power to enter into these Terms, to perform its obligations under these Terms, and to carry on its business;
- (b) that these Terms constitute a legal, valid and binding agreement, enforceable in accordance with its terms;
- (c) if applicable, it holds a valid ABN which has been advised to the other Party; and
- (d) if applicable, it is registered for GST purposes.

9.2 You represent, warrant and agree:

- (a) to comply with these Terms and all applicable Laws;
- (b) that all information and documentation that you provide to us in connection with these Terms is true, correct and complete;
- (c) to comply with our reasonable requests or requirements;
- (d) that as applicable, you (and to the extent applicable, your Personnel) will provide us with all documentation, information, instructions, cooperation and access reasonably necessary to enable us to provide the Goods; and
- (e) if you enter these Terms as a trustee of a trust, then:
 - (1) you are the sole trustee of the trust and no action has been taken to remove or replace it;
 - (2) you have the power under the trust deed to execute and perform your obligations under these Terms;
 - (3) all necessary action has been taken to authorise the execution and performance of these Terms under the trust deed;
 - (4) you have the right to be fully indemnified out of the trust fund of the trust in relation to these Terms, and that right has not been modified or released;
 - (5) the assets of the trust are sufficient to satisfy the trustee's right of indemnity and all other obligations in respect of which the trustee has a right to be indemnified out of the assets of the trust; and
 - (6) these Terms is executed, and all transactions relating to it are or will be entered into, as part of the due and proper administration of the trust, and the transactions are or will be for the benefit of the beneficiaries.

10. Intellectual Property

10.1 As between the Parties, each Party retains all Intellectual Property Rights in its Intellectual Property developed prior to or independently of these Terms (**Existing Materials**). Nothing in these Terms constitutes an assignment or transfer of such rights.

10.2 As between the Parties, ownership of all Intellectual Property Rights in any Intellectual Property developed, adapted, modified or created in connection with these Terms, or the provision of the Goods will at all times vest, or remain vested, in us (or as applicable our licensees).

10.3 Each Party grants the other Party a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of the Term, to use its Existing Materials solely for the performance of their obligations under these Terms.

10.4 In the use of any Intellectual Property Rights in connection with these Terms, you agree that you must not (and you must ensure that your Personnel do not) commit any Intellectual Property Breach. Where you reasonably suspect that such a breach may have occurred, you must notify us immediately.

10.5 This clause 10 will survive termination or expiry of these Terms.

11. Confidential Information

11.1 Subject to clause 11.2, each Party must (and must ensure that its Personnel do) keep confidential, and not use or permit any unauthorised use of, confidential information provided by the other party.

11.2 Clause 11.1 does not apply where the disclosure is required by law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with these Terms and provided that the disclosing party ensures the adviser complies with the terms of clause 11.1.

11.3 This clause 11 will survive the termination of these Terms.

12. Australian Consumer Law

12.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the supply of the Goods by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**). To the extent that you maintain Consumer Law Rights at law, nothing in these Terms excludes those Consumer Law Rights.

12.2 Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

12.3 Subject to your Consumer Law Rights, we exclude all warranties, and all material, work and services (including the Goods) are provided to you without warranties of any kind, either express or implied, whether in statute, at Law or on any other basis, except where expressly set out in these Terms.

12.4 This clause 12 will survive the termination or expiry of these Terms.

13. Limitations on liability

13.1 Despite anything to the contrary but subject to your Consumer Law Rights, to the maximum extent permitted by law:

- (a) neither Party will be liable for Consequential Loss;
- (b) a Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and
- (c) (in respect of any failure by us to comply with relevant Consumer Law Rights) our Liability is limited (at our discretion) to:
 - (1) replacing the Goods or the supply of equivalent Goods, or the payment of the cost of replacing the Goods or of supplying equivalent Goods; and/or
 - (2) the repair of the Goods, or the payment of the cost of having the Goods repaired.
- (d) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to the Price paid by you to us in respect of the supply of the relevant Goods to which the Liability relates.

13.2 This clause 13 will survive the termination or expiry of these Terms.

14. Warranty

14.1 Subject to your Consumer Law Rights, we do not accept change of mind returns.

14.2 A warranty against defects may apply to the Goods if particularized in or attached to the Quote and/or Order (**Warranty**). The Warranty will not be available for specially-manufactured Goods.

14.3 If a Warranty applies, the benefits given to you under the Warranty are in addition to, and do not limit or derogate, your rights and remedies at law in relation to your Goods, including under the Australian Consumer Law within the *Competition and Consumer Act 2010* (Cth).

14.4 If a Warranty is applicable, the Warranty terms, period of Warranty and commencement date of Warranty, rights to specific refund, replacement or repair, when the Warranty applies and what obligations you have to exercise the Warranty will be set out in the Quote and/or Order. Without limitation to the Warranty terms, to claim the benefit of the Warranty you must:

- (a) notify us in writing or by email as soon as you become aware that the Goods are defective;
- (b) if requested by us, provide us with such evidence as we reasonably require to assess the Warranty, including any proof of purchase documentation we require;
- (c) if we ask you to, return the Goods to us together with all packaging, parts, accessories and documentation and provide us with proof of re-delivery to us; and

(d) if the Goods are returned after 30 days following the date of delivery, pay us an administration charge equal to 10% of the Price of the relevant Goods to assess your Warranty claim, such charge to be refunded to you if we assess that the Warranty applies; and

(e) obtain our prior permission as to the application of the Warranty.

15. Term and Termination

15.1 These Terms will commence on the Commencement Date and will continue until we have completed the supply of the Goods to you, unless earlier terminated in accordance with its terms (**Term**).

15.2 Either Party may terminate these Terms at any time by giving 30 days' notice in writing to the other Party.

15.3 These Terms or an Order under these Terms, will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:

- (a) the other Party (Defaulting Party) breaches a material term of these Terms (or in the case of an Order the Order) and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) (to the extent permitted under the Corporations Act 2001 (Cth)) any step is taken to enter into any arrangement between the Defaulting Party and its creditors, any step is taken to appoint a receiver, a receiver and manager, a liquidator, a provisional liquidator or like person of the whole or any part of the Defaulting Party's assets or business, the Defaulting Party is bankrupt, or the Defaulting Party is unable to pay its debts as they fall due.

15.4 Upon expiry or termination of these Terms (or in the case of an Order, the Order):

- (a) we will immediately cease providing the Goods (or in the case of an Order the Goods outlined in the Order);
- (b) without limiting and subject to your Consumer Law Rights, you agree that any payments made by you to us are not refundable to you including the Deposit (if any) except under clause 2.3;
- (c) you are to pay for all Goods provided prior to termination, including Goods which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms and or the Credit Terms;
- (d) by us pursuant to clause 15.3, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees);
- (e) you agree to cease all activities under or in connection with this Agreement, including any, except to the extent required in order to comply with this clause 15 or any other clause which survives the termination of this Agreement;
- (f) upon request, you will return to us any of our property, including any of our Intellectual Property

and equipment provided to you (except those Goods purchased by you in accordance with this Agreement), that you have in your (or your Personnel's) possession; and

- (g) upon request, a Party must destroy or return the confidential information of the other Party, except for any confidential information required to be maintained by law.

15.5 Unless otherwise agreed between the Parties, if these Terms are terminated, then any outstanding Orders will continue in accordance with the terms of the Order (and these Terms) until such time as the Order is complete or the Order is otherwise terminated in accordance with its terms.

15.6 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

15.7 This clause 15 will survive the termination or expiry of these Terms.

16. General

16.1 **Publicity:** Despite clause 11, with your prior written consent, you agree that we may advertise or publicise the broad nature of our supply of the Goods to you, including on our website or in our promotional material.

16.2 **Amendment:** Subject to clauses 2.3 and 5, these Terms may only be amended by written instrument executed by the Parties.

16.3 **Assignment:** Subject to clause 16.4, a Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

16.4 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.

16.5 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first complying with this clause 16.5. A Party claiming that a Dispute has arisen must give written notice to the other Party specifying the nature of the Dispute (**Dispute Notice**). The Parties must meet (whether in person, by telephone or video conference) within 10 Business Days of service of the Dispute Notice to seek (in good faith) to resolve the Dispute. If the Parties do not resolve the Dispute within 20 Business Days of the date the Dispute Notice was served (or such further period as agreed in writing by the Parties), either Party may refer the matter to mediation, administered by the Australian Disputes Centre in accordance with Australian Disputes Centre Guidelines for Commercial Mediation. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

16.6 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event, provided that the Party seeking to rely on the benefit of this clause:

- (a) as soon as reasonably practical, notifies the other party in writing details of the Force Majeure Event, and the extent to which it is unable to perform its obligations; and
- (b) uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.

Where the Force Majeure Event prevents a Party from performing a material obligation under these Terms for a period in excess of 60 days, then the other Party may by notice terminate these Terms, which will be effective immediately, unless otherwise stated in the notice. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under these Terms.

16.7 **Subcontracting:** We may subcontract the provision of any part of the Goods without your prior written consent. We agree that any subcontracting does not discharge us from any liability under these Terms and that we are liable for the acts and omissions of our subcontractor.

16.8 **Governing law:** These Terms is governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

16.9 **Notices:** Any notice given under these Terms must be in writing addressed to the addresses set out in these Terms, or the relevant address last notified by the recipient to the Parties in accordance with this clause. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

16.10 **Relationship of Parties:** These Terms is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.

17. Definitions

In these Terms, unless the context otherwise requires, capitalised terms have the meanings given to them in the Quote and/or Order, and:

ACL or Australian Consumer Law means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

Business Day means a day on which banks are open for general banking business in New South Wales, excluding Saturdays, Sundays and public holidays.

Commencement Date means the date these Terms are accepted in accordance with its terms.

Consequential Loss means, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise:

- (a) any loss or damage that cannot be considered to arise according to the usual course of things from the relevant breach, act or omission, whether or not such loss or damage may reasonably be supposed to have been in the contemplation of the Parties at the time they entered into these Terms as the probable results of the relevant breach, act or omission; and/or

- (b) without limiting subclause (a), any real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data.

However, the Parties agree that your obligation to pay us the Price under these Terms will not constitute "Consequential Loss".

Consumer Law Rights has the meaning given in clause 12.1.

Credit Terms means our Credit Application Form and Credit Information Policy.

Deposit means the deposit as set out in the Order, if any.

Dispute has the meaning given in clause 16.5.

Force Majeure Event means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

Goods means the goods set out in the Order, as adjusted in accordance with these Terms.

GST has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights or **Intellectual Property** means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trade marks, domain names, know-how,

inventions, processes, trade secrets or confidential information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable.

Laws means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with these Terms or the supply of the Goods.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to these Terms or otherwise.

Order means an order for the supply of the Goods, issued by us in accordance with clause 3 and as applicable includes the Quote.

Order Request has the meaning given in clause 3.1.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Price means the price set out in the Order, as adjusted in accordance with these Terms, and includes the Deposit (if any) but excludes delivery/collection costs.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Quote means the quote attached to these Terms.