WESTBERG METALS PTY LTD ABN 41 671 445 864
GENERAL TERMS & CONDITIONS OF TRADE

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1. Definitions

I. **"Australian Consumer Law"** means Schedule 2 of the Competition and Consumer Act 2010 (Cth); Conditions means these General Terms & Conditions of Trade;
II. **"Consumer"** has the meaning given in the Australian Consumer Law;
III. **"Consumer Contract"** has the meaning given in section 23 of the Australian Consumer Law;
IV. **"Contract"** means a contract (whether or not in writing) between or involving the Purchaser and the Supplier (and possibly one or more others) for the supply of Products by the Supplier to the Purchaser, to which these Conditions apply under clause 3 including any quotation or invoice given by the Supplier to the Purchaser, or any Purchase Order to the extent it is accepted by the Supplier);
V. **"Custom Products"** means any goods manufactured by the Supplier for the Purchaser in accordance with specifications or requirements provided by the Purchaser to the Supplier;
VI. **"GST Act"** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
VII. **"PPSA"** means the Personal Property Securities Act 2009 (Cth);
VIII. **"Prescribed Rate"** means the rate that is 3.5% per annum above the rate specified from time to time under section 2 of the Penalty Interest Rates Act 1983 (Vic);
IX. **"Prices"** has the meaning given in clause 5;
X. **"Products"** means any goods manufactured and/or supplied (or to be manufactured and/or supplied) by the Supplier to the Purchaser (including those products specified in any Contract, any Custom Products and any Imported Products);
XI. **"Purchase Order"** means any purchase order, instruction, specification or requisition issued by the Purchaser to the Supplier relating to Products;
XII. **"Purchaser"** means the person specified in or contemplated by a Contract as being the purchaser of the Products; and
XIII. **"Related Body Corporate"** has the meaning given in the Corporations Act 2001 (Cth); and
XIV. **"Supplier"** means the company specified in or contemplated by a Contract as being the supplier of the relevant Products, being Westberg Metals Pty Ltd ABN 41 671 445 864

2. Interpretation

(a) In these terms of trade, unless the context otherwise requires:
(b) a reference to writing includes email and other communication established through the Supplier's website (if any);
(c) the singular includes the plural and vice versa;
(d) a reference to a clause or paragraph is a reference to a clause or paragraph of these terms of trade;
(e) a reference to a party to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;

(f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

(g) headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and

(h) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:

i. if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and

ii. in all other cases, must be done on the next Business Day.

3. General

(a) 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 quotations, contracts and variations (as applicable). Subject to 3(c), these terms of trade take precedence over terms of trade contained in any document of the Customer or elsewhere.

(b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.

(c) The Supplier may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.

4. Quotes

(a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for 30 days from the date of issue unless retracted by the Supplier by notice in writing, on the date of that notice.

(b) Unless otherwise expressly agreed in writing, a Quote does not include delivery or installation of the Goods.

(c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary instructions to the Supplier.

(d) Following provision of a Quote to the Customer, the Supplier is not obliged to commence work until the Quote has been accepted by the Customer and all necessary manufacturing drawings are approved and signed by the Customer and returned to the Supplier.

(e) The Supplier reserves the right to amend any Quote before the Order has been completed to consider any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these terms of trade.

(f) 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 and is subject to change. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law (ACL), this estimate is not binding upon the Supplier.

5. Prices

(a) Subject to the other provisions of this clause 5, all prices payable by the Purchaser to the Supplier for Products supplied or to be supplied by the Supplier to the Purchaser (Prices) are as set out in the relevant Contract, or if not specified in that Contract, as notified to the Purchaser by the Supplier from time to time.

(b) Prices are subject to change by the Supplier from time to time on the Supplier giving the Purchaser prior written notice of any such change.

(c) Unless otherwise stated in a Contract, the Prices do not include any of the following in relation to the relevant Products:

i. any applicable GST (as that term is defined in the GST Act);

ii. (any other taxes (other than income tax), duties, levies and other government fees and charges (**Other Taxes**); or

iii. any delivery, packaging, freight, insurance, installation and/or commissioning costs, expenses or surcharges (**Delivery Charges**).

(d) Unless otherwise stated in a Contract, the amount of any applicable GST, Other Taxes and Delivery Charges will be added to, and must be paid by the Purchaser to the Supplier, in the same way and at the same time as the Price for the relevant Products is payable under or in connection with the relevant Contract.

6. Orders

(a) Every Order by the Customer for the provision of Goods or Services must be submitted in writing to the Supplier.

(b) An Order will only be deemed to be placed by the Customer if the Order clearly identifies the Goods or Services ordered and the Supplier's Quote. Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.

(c) (Orders must be signed by an authorised representative of the Customer (who has authority to bind the Customer), and must specify the required date of delivery.

(d) Placement of an Order by the Customer signifies acceptance by the Customer of these terms of trade and the most recent Quote provided by the Supplier relating to that Order.

(e) The Supplier may in its absolute discretion refuse to provide Goods or Services for any reason (acting reasonably), for example where:

i. Goods are unavailable for any reason whatsoever;

ii. credit limits cannot be agreed upon or have been exceeded; or

iii. payment for Goods or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.

(f) An Order cannot be cancelled by the Customer without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation. This includes, but is not limited to, loss

of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

7. Variations

(a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier to have effect.

(b) If the Customer wishes to vary its requirements after a Quote has been prepared by the Supplier or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods or Services or both.

(c) The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation, or other extension of time notified to the Customer upon acceptance of the variation by the Supplier.

8. Invoicing and payment

(a) The Supplier may in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:

i. prior to commencing the provision of the Goods or Services, for an amount equal to the Quote and Additional Charges where the Supplier has not previously carried out work for the Customer or where the Supplier chooses to do so;

ii. (prior to commencing the provision of the Goods or Services, for an amount equal to 50% of the Quote and Additional Charges where the new or existing Customer has ordered a custom-made product.;

iii. upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Order and for any Additional Charges.

(b) The amount payable by the Customer will be the amount set out in the invoice. This will be calculated as:

i. the amount for the Goods or Services (or both) as set out in the Quote and any Additional Charges, or

ii. where no Quote has been provided by the Supplier, the Supplier’s usual charges for the goods or services (or both) as described in the Order.

(c) The Customer must pay an invoice issued by the Supplier to the Supplier:

i. Prior to dispatch for non-account customers, or

ii. within 30 days EOM for account customers; or

iii. in any other manner contemplated by the Contract or otherwise agreed between the parties in writing.

(d) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.

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

(f) The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these terms of trade, 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.

(g) The Customer is to pay the Supplier on demand interest at Prescribed Rate on all overdue amounts owed by the Customer to the Supplier, calculated daily.

(h) 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 these terms of trade.

(i) The Customer and the Supplier agree to comply with their obligations in relation to GST Act.

9. Additional Charges

(a) The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).

(b) The imposition of Additional Charges may also occur as a result of:

i. cancellation by the Customer of an Order where cancellation results in Loss to the Supplier;

ii. storage costs of $100 per week for Goods not collected from the Supplier within 30 days from the date on which the Goods are completed;

iii. photocopying, courier, packing or handling charges not included in the Quote;

iv. Government or council taxes or charges not included in the Quote; or

v. additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.

10. Acceptance of Goods

If the Customer fails to advise the Supplier in writing of any damage to goods which has occurred in transit during delivery within 24 hours of arrival, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the ACL.

11. Delivery

(a) The Products will be delivered or taken to be delivered, when they are delivered to the delivery place specified in the relevant Contract. If no such address is specified in that Contract or the Purchaser nominates an unmanned location for delivery, then delivery will be taken to occur at the time when the Products are ready for collection at the Supplier's premises or at the time the Products are left at the unmanned location, respectively.

(b) Delivery may be by separate instalments. Each separate instalment must be accepted and fully paid for by the Purchaser, notwithstanding any late delivery or any non-delivery of any other instalment.

(c) Any times quoted for delivery are estimates only. The Supplier will not be liable to the Purchaser for any failure to deliver or for delay in the delivery of the Products. Any failure to deliver or delay in delivery does not entitle the Purchaser to terminate any Contract.

12. RISK

Risk in each Product will pass to the Purchaser at the time delivery to the Purchaser occurs (or is taken to have occurred) in accordance with clause 11(a).

13. TITLE

(a) Capitalised terms used in this clause 13 that are not otherwise defined in these Conditions have the meaning given in the PPSA.

(b) The Purchaser acknowledges and agrees that each Contract constitutes a Security Agreement under the PPSA and secures the Supplier's right to receive the Price of all Products sold under the relevant Contract and all other amounts from time to time owing by the Purchaser to the Supplier under that Contract or any other Contract.

(c) The Purchaser agrees that legal title and property in the Products is retained by the Supplier (and that the Supplier retains a Security Interest in all Proceeds relating to those Products) until payment is received in cleared funds from the Purchaser of all sums owing to the Supplier in relation to the Products.

(d) The Purchaser must promptly do anything required by the Supplier to ensure that the relevant Security Interest is a perfected Security Interest and has priority over all other Security Interests in the Products and any Proceeds relating to those Products.

(e) Until legal title and property in any Product has passed to the Purchaser, the Purchaser must keep that Product separate from other products and must store the Products so that they are readily identifiable as being supplied by the Supplier.

(f) If the Purchaser fails to pay any amount to the Supplier in relation to any Products by the due date required under the relevant Contract for that payment, then the Supplier may (without limiting any of its other rights and remedies) recover and resell any of the Products in which property has not passed to the Purchaser and any Proceeds relating to those Products. In addition to any rights the Supplier may have under Chapter 4 of the PPSA, the Supplier may, without notice, enter any premises where it suspects the Products and/or any Proceeds relating to the Products may be located and remove them without committing a trespass, and the

Purchaser authorises the Supplier to enter on to the premises where the Products and/or those Proceeds are located to take possession of the Products and/or those Proceeds for that purpose at any time.

(g) The Purchaser agrees to waive any right to receive any notice or statement from the Supplier under the PPSA, except to the extent that the giving of that notice or statement is required by the PPSA and cannot be excluded by agreement.

(h) To the maximum extent permitted by law:

a. for the purpose of sections 115(1) and 115(7) of the PPSA:

i. the Supplier need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and

ii. sections 142 and 143 are excluded;

b. or the purpose of section 115(7) of the PPSA, the Purchaser need not comply with sections 132 and 137(3); and

c. if the PPSA is amended after the date of the relevant Contract to permit the Supplier and the Purchaser to agree to not comply with or to exclude other provisions of the PPSA, then the Supplier may notify the Purchaser that any of those provisions are excluded, or that the Supplier need not comply with any of those provisions, as notified to the Purchaser by the Supplier, and that notice will be binding on the Purchaser.

(i) If the Supplier exercises a right, power or remedy in connection with any Contract, then that exercise is taken not to be an exercise of a right, power or remedy under the PPSA, unless the Supplier states otherwise at the time of exercise. However, this clause 13 (i) does not apply to a right, power or remedy that can only be exercised under the PPSA.

(j) The Security Interests arising under this clause 13 attach to the relevant Products when the Purchaser obtains possession of those Products and the parties confirm that they have not agreed that any Security Interest arising under this clause 13 attaches at any later time.

14. WARRANTY

(a) In this clause 14, terms that are in italics have the meaning given to them in the Australian Consumer Law.

(b) Any guarantees in relation to a Product only apply for a period of 12 months from the date of delivery or supply of that Product by the Supplier to the Purchaser (each a **Warranty Period**)

(c) If the Purchaser considers that it is entitled to make a claim under this clause 14 or otherwise in relation to a Product (**Warranty Claim**), then the Purchaser must (at its cost):

a. notify the Supplier by email or post (using the contact details set out on the first page of these Conditions or as otherwise notified by the Supplier) before the end of the relevant Warranty Period;

b. as part of that notification, provide the Supplier with:

i. details of the alleged defect that relates to the Product;

ii. the Purchaser's full name, address and telephone number;

iii. a copy of the Contract relating to the Product; and

iv. product serial number if applicable; and

v. any other information required by the Supplier; and

c. cause the allegedly defective Product to be returned to the Supplier for inspection at the address set out on the first page of these Conditions.

(d) If the Supplier is satisfied that the Purchaser has the right to make a Warranty Claim and that the relevant Product is defective, then the Supplier will (at the Supplier's option and as the Purchaser's sole remedy) take any action contemplated by clause 16 (e).

(e) To the maximum extent permitted by law, the warranties and other requirements contained in this clause 14 (if applicable) do not cover defects in material or workmanship which the Supplier determines to have been caused by:

a. improper use,
b. improper installation in contravention to installation instructions,
c. fire, water, lightning, frost or accidental damage;
d. any alteration, repair or other technical manipulation (without the Supplier's consent) by the Purchaser or any other person not acting under the direction or control of the Supplier;
e. any act or omission of the Purchaser or any other person not acting under the direction or control of the Supplier;
f. the fitting or use of parts or accessories not approved by the Supplier;
g. normal wear and tear; or
h. in the case of Custom Products, any incorrect specifications or requirements provided by the Purchaser to the Supplier.

(f) To the maximum extent permitted by law, the following additional terms and conditions will apply in respect of any Warranty Claim:

a. To the extent that this clause 14 (or any applicable law) places a repair or replacement obligation on the Supplier, the relevant Products or any other consumables or other materials used in relation to that repair or replacement, may (where possible) instead be replaced by second hand or refurbished products, consumables or other materials (as the case may be) of the same or similar type.
b. Without limiting the other provisions contained in these Conditions, the Supplier will not be liable under any Warranty Claim relating to any Products if:
    i. any moneys are owing by the Purchaser to the Supplier in relation to any of the Products; or
    ii. the Purchaser is in breach of any terms of the relevant Contract (including these Conditions).

(g) Any Products supplied to a Purchaser by the Supplier acting as agent, re-seller or re-supplier of the manufacturer of the relevant Product, may come with limited warranties from the manufacturers of those Products and, to the maximum extent permitted by law, those warranties are the only warranties given to the Purchaser in respect of those Products (it being acknowledged and agreed that those warranties are given by the manufacturer, not the Supplier). The Supplier (in its capacity as agent, re-seller or re-supplier) has no authority to make any representations or warranties in relation to any such Products, and it can only pass on information in relation to the Products which is published in materials or other data provided by the manufacturer of the Products, and which is in the public domain.

15. LIABILITY

(a) Subject to the provisions of this clause 16, and to the maximum extent permitted by law, the Supplier is not liable to the Purchaser or to any other person for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, or loss or damage resulting from wasted management time, irrespective of whether the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise, or the Supplier or any other person was previously notified of the possibility of that loss or damage.

(b) Any warranty condition, representation, undertaking or other right that would be implied in or otherwise required in connection with the relevant Contract by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

(c) Notwithstanding the other provisions in this clause 16 and anything else in these Conditions, the Supplier does not exclude, restrict, or modify any warranty, guarantee, condition, representation, undertaking or other right under any statute (including the Competition and Consumer Act 2010 (Cth)) where to do so would contravene that statute or cause any part of these Conditions to be void (Non-excludable Condition).

(d) Subject to this clause 16, the maximum aggregate liability of the Supplier for all proven losses, damages and claims arising out of any Contract, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the amounts paid by the Purchaser to the Supplier under the relevant Contract to which the relevant breach, negligence, tort or common law or statutory action relates.

(e) To the maximum extent permitted by law, the liability of the Supplier for a breach of any Non-excludable Condition in respect of any goods or services supplied under a Contract that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited, at the Supplier's option to:

a. in the case of goods:
    i. repair of goods at Supplier premises;
    ii. replacement of parts;
    iii. the payment of the cost of having the goods repaired should a and b not be feasible.

b. in the case of services:
    i. the supplying of the services again; or
    ii. the payment of the cost of having the services supplied again.

16. INTELLECTUAL PROPERTY

Any technical information, knowledge or installation methods at any time given or transmitted either orally or in writing by the Supplier to the Purchaser (or otherwise obtained by the Purchaser directly or indirectly from the Supplier) will remain the property of the Supplier and must be treated by the Purchaser as confidential information of the Supplier. Except to the extent expressly permitted by a Contract, the Purchaser must not use any such information, knowledge or methods for any purpose nor sell, transfer or divulge any of it in any manner to anyone without the prior written consent of the Supplier.

17. FORCE MAJEURE

(a) Where any failure or delay by the Supplier in the performance of its obligations under a Contract is caused, directly or indirectly, by an event or occurrence that is beyond the reasonable control of the Supplier (Force Majeure Event), the Supplier is not liable for that failure or delay and the Supplier's obligations under that Contract are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.

(b) A Force Majeure Event includes the failure or inability of any suppliers of the Supplier to supply or provide any goods or services required by the Supplier to provide or supply the Products to the Purchaser.

18. INDEMNITY

(a) The Purchaser must indemnify the Supplier and each of its Related Bodies Corporate (Indemnified Parties) on demand in respect of all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against any of the Indemnified Parties or which any of the Indemnified Parties may pay, sustain or incur as a direct or indirect result of any breach or non-performance of any Contract by the Purchaser, or as a result of any wrongful or negligent act or omission of the Purchaser or any employees, directors or agents of the Purchaser.

(b) To the extent that the indemnity in this clause 16 is expressed to be for the benefit of a Related Body Corporate of the Supplier, the Supplier enters into the relevant Contract in its own capacity and in its capacity as trustee and agent for that Related Body Corporate, and the Supplier is entitled to enforce the indemnity for the benefit of itself and that Related Body Corporate.

19. GENERAL

(a) Headings are used for convenience only and do not affect the interpretation of any Contract.

(b) Any notice to be given by the Supplier to the Purchaser under these Conditions may be given personally, by post, by fax or by email.

(c) Words importing natural persons include partnerships, bodies corporate, associations, governments, and governmental and local authorities and agencies.

(d) A reference to either the Supplier or the Purchaser includes its respective executors, administrators, successors and permitted assigns.

(e) Wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".

(f) If any provision of a Contract is or becomes invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not be affected.

(g) A failure or delay by the Supplier in exercising any right conferred on the Supplier under any Contract does not operate as a waiver of the right.

(h) The Purchaser must not transfer, assign, create an interest in or deal in any other way with any of its rights under any Contract without the prior written consent of the Supplier.

(i) The Purchaser must not set off against or deduct from any Price or other amounts owing to the Supplier, any amounts owed or claimed to be owed to the Purchaser by the Supplier, nor

withhold payment of any amount due to the Supplier because that amount or any part of it is in dispute.

(j) Each Contract is governed by and must be construed in accordance with the laws in force in Victoria. The Purchaser submits to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to that Contract