



**In this document, terms and conditions:**

(a) "Contract" means the contract formed between AOA and the customer by an order accepted and confirmed in writing or by an order acknowledgement either verbally or written.

(b) "Customer" means the person or business placing the order with AOA;

(c) "Goods" means any goods, products, services or materials supplied by AOA;

(d) "AOA" means the related bodies corporate (within the meaning of the corporations act 2001) of Australian and Overseas Alloys Pty Ltd (ABN 25 003 265 781);

(e) "Order" means a request for AOA to supply any goods, products, services or materials;

(f) "Order acknowledgement" an acknowledgement as described in clause 2b;

(g) Unless otherwise stated, an expression used or defined in the Corporations Act 2001 has the same meaning in the Terms and Conditions.

**1. Prices**

(a) Unless otherwise agreed in writing, the price charged shall be exclusive of GST or any other transaction tax, which comes into existence after the effective date of these terms and conditions.

(b) Any GST or other transaction tax payable shall be paid by the customer. Such amount will be charged by AOA and clearly shown on AOA's tax invoice.

**2. Orders, Acknowledgments and Contract**

(a) Orders must be made in writing utilizing the customer's official purchase order documentation.

(b) An order is accepted when the customer receives an order confirmation in writing, or if writing is not received, acknowledgement either verbally or on delivery of goods, whichever comes first.

(c) When an order is accepted the contract will be documented wholly by (in descending order of precedence) any specific terms agreed in writing, the order acknowledgment and these terms and conditions.

(d) Any previous dealings between AOA and the customer shall have no effect on any subsequent contract.

(e) A contract constitutes the entire agreement between AOA and the customer in regards to the goods supplied under the contract. Any prior correspondence, proposals and negotiations are superseded by that contract.

**3. Payment**

(a) Payment for goods must be made in full and received by AOA by the 30<sup>th</sup> day from the date of the invoice, unless otherwise agreed or noted on any statement or invoice.

(b) Any amounts due to AOA shall incur interest at a rate of 10% per annum from the date in which the payment is in default subject to clause 3a till the date of payment.

**4. Delivery**

(a) AOA will make all reasonable efforts to deliver the goods as agreed by the parties or in the absence of any agreement, at AOA's discretion. AOA will not be liable for any failure to deliver or delay in delivery for any reason or for any damage or loss due to unloading or transport.

(b) All costs incurred by AOA due to the customer failing to accept the goods at the time of delivery shall be reimbursed to AOA by the customer upon request.

(c) Delivery will be deemed to have occurred:

i) Immediately the goods are loaded onto transport should the freight account be in the customer's name.

ii) Immediately the transport arrives on the property of the customer or its agents or its representatives or any persons accepting delivery as directed in the customer's delivery instructions, should the freight account be in AOA's name.

**5. Title**

(a) AOA reserves the following rights in relation to the goods until all accounts due for payment by the customer to AOA are fully paid.

i) Legal ownership of the goods

ii) The right to enter the customer's premises (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and to retake possession of the goods; and

iii) To keep or resell any goods repossessed pursuant to (ii) above.

(b) If the goods are resold, or products manufactured using the goods are sold, by the customer, the customer shall hold such part of the proceeds of any such sale as represents the invoice price of the goods sold or used in the manufacture of the goods sold in a separate identifiable account as the beneficial property of AOA and shall pay such amount to AOA on request.

(c) Notwithstanding (a) and (b) above, AOA shall be entitled to maintain an action against the customer for the purchase price of the goods and the risk of the goods shall pass to the customer upon delivery or upon transfer of title to the customer, whichever occurs first.

**6. Default**

(a) AOA shall be entitled without prejudice to any rights and remedies it may have at law or to terminate any or every agreement between AOA and the customer or to suspend any further deliveries under any or every such agreement or claim the return of any goods where title has not been transferred, should any of the following occur.

i) Payment for the goods has not been received by AOA by the due date

ii) The customer if an individual becomes bankrupt or becomes an insolvent under administration

iii) The customer if a body corporate becomes externally administrated or has an application for winding up filed against it.

iv) The customer breaches these terms and conditions.

v) If in AOA's opinion the customer's credit worthiness or standing changes from that shown in the credit application.

**7. Risk**

All risks associated with the goods transfers to the customer immediately on delivery or upon transfer of the title to the customer, whichever occurs first.

**8. Intellectual property**

(a) The customer guarantees that all documents provided by the customer are true and accurate and that AOA is entitled to use such documents for the purposes of the contract and such use does not infringe on any third party intellectual property rights.

(b) The customer indemnifies AOA against all claims, losses and damages incurred by AOA as a result of any documents provided by the customer to AOA for the purpose of the contract that breaches any third party intellectual property rights.

(c) Should the customer receive any confidential information from AOA the customer may not disclose any such information to any other party without the prior written consent of AOA except where the use or disclosure is for the purposes of the contract or is required by law or enters the public domain (other than as a result of a breach of this section).

**9. Fitness for purpose and representations**

(a) The customer agrees that if it is aware or should be aware that the goods are for a particular purpose or are required to possess specific characteristics the customer will clearly state those characteristics in any order.

(b) The customer agrees that it is aware or should be aware of the characteristics and properties of AOA goods and accepts that all tolerances, properties and specifications conform only to those published by AOA and not to any third party standards unless otherwise stated by AOA.

(c) The customer accepts that AOA makes no representations for the fitness of the goods for any particular purpose or any guarantee for the suitability or service life of any of the goods for any purpose.

**10. Claims, Returns and Credits**

(a) Any claim against AOA for incorrect supply must be made within 14 days of delivery. All claims must refer to the original invoice number, date and set out in detail the reason for the claim.

(b) Freight charges for goods returned at the volition of the customer shall not be accepted by AOA unless AOA agrees in writing to accept those charges prior to the return of the goods.

(c) No credits will be issued or returns accepted for any goods unless incorrectly supplied by AOA.

**11. Liability**

(a) Except as expressly provided to the contrary in the contract all representations, warranties, terms and conditions in relation to the goods whether implied or otherwise are hereby excluded to the maximum extent permitted by law.

(b) AOA's liability to the customer (and any party claiming through the customer against AOA) should any of the goods breach any contract (including any condition or warranty that the goods shall correspond with any sample, shall be of merchantable quality or shall reasonably be fit for a purpose) shall be limited to:

i) The replacement of the defective goods or the supply of equivalent goods

ii) Repair of the defective goods

iii) The payment of the cost of replacing the defective goods or acquiring equivalent goods.

iv) The payment of the cost of having the defective goods repaired.

Whichever AOA in its absolute discretion shall think suitable.

(c) AOA's liability does not extend beyond the defective goods to any other goods that are part of an order or otherwise.

(d) AOA is not liable to the customer or any third party for any loss or damage to person or property arising from or caused in any way by the goods.

(e) AOA shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the goods including any loss of income, profit or business, goodwill or reputation or value of intellectual property.

(f) AOA's obligation under 11b does not include costs of removal of defective goods, installation of replacements, defects in goods caused by improper installation or defects in goods caused by incorrect selection of the appropriate goods for the application.

(g) AOA shall not be liable to the customer for late or partial delivery of any goods for any reason.

**12. Waivers**

AOA may waive any of its rights under the contract only in writing and such waiver is limited to the specific instance and purpose for which it is given.

**13. Severance**

If a provision of a contract becomes unenforceable by law then it must be read down to the extent necessary for it to be enforceable. If it cannot be read down it must be severed without altering the validity or enforceability of the remainder of the contract.

**14. Variation**

AOA may vary these terms and conditions at any time without notice to the customer.

**15. Costs**

The customer must pay to AOA any costs incurred in connection with the contract, including any legal fees, stamp duty and costs incurred in recovering monies owed to AOA or otherwise enforcing AOA's rights under the contract against the customer.

**16. Applicable law**

The laws in the state or territory in which the order is accepted govern these terms and conditions.

**17. Documents**

AOA may assign any documents relating to the contract to any person without notice to the customer.

**18. Cancellations**

(a) Any order cancellations must be in writing and made at the earliest possible time.

(b) The customer shall be liable to pay for any costs incurred (including profit costs to AOA) in respect of goods partially processed or completed at the time of cancellation. The customer may or may not accept delivery of those goods at the customer's discretion but the customer shall still be liable to AOA for the costs incurred (including profit costs due to AOA) to the date of cancellation.

**19. Weights and measures**

(a) Any and all representations or statements made by AOA in regards to measurements, sizes and weights are approximate only.

(b) The customer accepts that any use of such representations or statements by the customer is at the customer's own risk and the customer relieves AOA of any liability resulting from the use of such representations or statements.

**20. Debt recovery**

The cost of recovery of any debts due by the customer to AOA shall be added to the debt due and shall form part of the liquidated sum payable to AOA by the customer from time to time.