

STANDARD TERMS OF SALE

Version 1.1 effective from 30th January 2012

Terms

1. These terms apply to all goods sold by Metal Manufactures Limited ("the Company"). These terms override all terms proposed by any customer including terms set out on any order or other documents. If other terms are proposed these terms are deemed to be reoffered to and accepted by the customer or their agents on delivery of the goods. These terms may be varied at any time by the Company. The terms at the time of delivery of goods will prevail if there is any conflict.
2. These terms constitute the entire agreement. No other representations are made by the Company in relation to supply of the goods. These terms may only be varied or additional terms incorporated (other than terms of the product description, quantity, indicative price and delivery instructions set out on each order) if in writing signed by a representative of the Company of the status of General Manager or above. There are no other terms and to the extent permitted all other terms including warranties that may be implied, including statutory terms, are excluded.
3. If any trading agreement exists between the Company and the customer these terms nevertheless apply to all goods supplied which are also covered by the trading agreement though, if there is an inconsistency with these terms, the trading agreement will prevail to the extent of any inconsistency. No trading agreement will legally bind the Company or the customer unless in writing and signed by a representative of the Company of the status of General Manager or above, and the customer.

Ordering, Acceptance and Price

4. Orders once received from a customer are irrevocable. The Company may withdraw from the supply of goods ordered at any time up to delivery. Any quotation of the Company may be varied or withdrawn up to the time of delivery and will lapse on any specified expiry date.
5. The customer is responsible for ensuring all quotations and orders are accurate. The Company takes no responsibility for errors in respect of the goods, quantity or price set out on any quotation or order.
6. All prices quoted or advised are strictly net based on the quantity and the pack sizes at the date of quotation or order. Prices may be varied to those at the date of delivery and will be adjusted accordingly to any change in any costs to the Company or variation in quantity or pack sizes. Prices are exclusive of GST.
7. The customer is responsible for the following costs and charges in addition to the price unless otherwise specified in the Company's quotation:
 - a) altering items to non standard package sizes;
 - b) drums, cases, packages and reels;
 - c) special packaging or tooling requirements;
 - d) insurance for goods in transit from the Company's premises;
 - e) service charge where the invoice value is below the minimum determined by the Company from time to time;
 - f) expenses incurred by the Company due to deferral of delivery at the customer's request beyond the delivery date specified or cancellation of the customer's invoice; and
 - g) GST and all other statutory taxes and charges
8. Orders once received can not be deferred unless agreed to in writing by the Company and the customer indemnifies the Company for any loss.
9. Confirmation of order documents must be clearly marked otherwise they will be treated as original orders.
10. If for any reason the goods ordered are unavailable, the Company has the right to substitute alternative goods provided they are reasonably equivalent in all respects (unless the customer's order specified otherwise). If quantity and pack sizes vary from the date of quotation or order the Company may substitute alternative sizes but not so that the customer is required to purchase in aggregate more goods than ordered.
11. If the Company agrees to make available any goods for the carrying out of any tests or certification processes then those tests or processes will be carried out by the customer at the customer's cost and risk. By providing goods for the undertaking of testing or processes pursuant to this clause the Company expressly does not assume any responsibility for the goods whatsoever including any liability if the results of the tests or processes carried out are wrong.

Packaging and Delivery

12. Delivery will take place at the Company's premises where the customer's order is accepted unless the Company agrees at the customer's cost and risk to effect delivery or arrange freight to an address specified by the customer, in which case delivery will take place at such address. The customer will provide all necessary labour and equipment to safely off load the goods at a reasonable access point at any address specified for delivery.
13. All reusable packaging remains the Company's property. The customer must, following the unpacking of goods, retain all packaging of which title does not pass to the customer on delivery. The customer is responsible for any damage or loss to any packaging and may not treat packaging as being abandoned if such packaging is not promptly collected by the Company or manufacturer after unpacking.
14. Acceptance of delivery of the goods by the customer is deemed to be acceptance of the condition and correctness of goods ordered.
15. The Company reserves the right to supply or deliver by instalments, and each instalment will be deemed to be sold under a separate contract. Failure to supply or deliver any instalment will not entitle the customer to repudiate any order.

Safety

16. Prior to any order and at delivery, the customer must ensure it and or its agents have all documents and information regarding all goods which may be supplied by the Company, as required under all health and safety and environmental laws and standards.

Title and Risk

17. Notwithstanding delivery or freight arrangements, risk (including deterioration, loss or damage) passes to the customer preloading at the Company's premises or at an address specified by the customer or if shipped directly from the manufacturer preloading at the manufacturer's premises or if shipped directly from outside Australia preloading at the port of entry in Australia. The customer is responsible for all insurance of the goods from the point when risk passes.
18. Title passes to the customer when the Company has been paid in full for all goods supplied by it to the customer.
19. Until the customer has paid all monies owed to the Company;
 - a) the Company retains a purchase money security interest in the goods and the proceeds of sale of the goods under the Personal Property Securities Act 2009 (PPSA);
 - b) the customer consents to the Company registering a security interest under the PPSA and agrees to do all things reasonably required by the Company to effect such registration;
 - c) the customer waives any right the customer has under PPSA to receive notice in relation to registration of the Company's interest in the goods under the PPSA;
 - d) the customer will immediately advise the Company of any changes which may affect the Company's security interest.

Intellectual Property

20. The Company reserves copyright in all documents, drawings and specifications produced by the Company or on the Company's behalf in connection with the goods.

Invoicing and Payment

21. Payment must be made by the end of the month following the month in which the goods were delivered (the "due date"). In the event payment is not made by the due date the Company reserves the right to suspend or cancel undelivered orders and to take proceedings for recovery. The customer must pay interest equal to 1.5% per month for each month or part thereof on overdue amounts from the due date until paid. The customer is not entitled to any retention or otherwise retain any amount due to the Company. All payments are to be made without deduction or equitable or other set off whatsoever.
22. Until the Company has been paid in full for all goods supplied by it to the customer:-
 - a) the Company remains the owner and the customer is only a bailee;
 - b) the customer must store the goods separately from any other goods, keep them readily identifiable as the Company's goods and maintain proper records of any sale or disposal of the goods;
 - c) the customer bears all risk in respect of the goods from delivery and must fully insure them;
 - d) the customer will not sell the goods except in the ordinary course of business; and
 - e) the customer will hold the proceeds of any sale or disposal to the extent of the amount due to the Company in a separate account for the Company's benefit and promptly pay that amount to the Company.
23. At all times the customer will allow the Company access to the premises occupied by the customer during normal business hours and to the goods in order to inspect the goods and retake possession of the goods at any time prior to payment in full of the price payable for all goods supplied by the Company to the customer and for other monies payable by the customer to the Company. The customer acknowledges that this access shall be full, free and unhindered and shall not be or constitute trespass by the Company. The customer indemnifies the Company for any liability or loss it suffers seeking to exercise its rights of access and retaking possession.

Warranty and Indemnity

24. Errors and misprints in computation, typing or otherwise in the Company's documents including catalogues, price lists, delivery docket, invoice or statement or credit note shall be subject to correction by the Company by means of reissue of the document or by adjusting dockets with reference to the original transaction.
25. The customer acknowledges that the Company is a wholesaler and it does not manufacture nor warrant products sold by it nor does it hold sufficient technical expertise or skills to evaluate a customer's requirement or orders.
26. Warranties and provisions that may be implied by the *Competition and Consumer Act 2010* and any other legislation are expressly excluded except to the extent that exclusion is prohibited by the legislation and this overrides these terms.
27. Subject to paragraph 26, the Company gives no warranty whatsoever in relation to the goods sold to the customer, whether in regard to the quality of the goods, fitness of the goods for any purpose or the compliance of the goods sold with any description or sample produced by either party to the other at any time, whether prior to, at the time of or subsequent to the customer placing an order for the goods with the Company, or otherwise. The customer warrants that the goods will be installed and used (a) only in applications for which the goods were manufactured and are able to be satisfied by the goods specifications and (b) in accordance with all manufacturer's instructions and good and usual industry standards including being fully tested as safe prior to use.
28. Subject to paragraph 26, any remaining liability of the Company, if any, to the customer arising from the supply of goods by the Company or pursuant to any contract whether the liability arises for breach of contract or at common law, including the law relating to negligence by the Company, is limited to repair by the Company of the goods, the re-supply by the Company or replacement goods at no additional charge or the refund of the price paid by the customer for the goods giving rise to liability, whichever the Company deems appropriate. In no case will the Company incur liability for any loss or damage exceeding the sale price of the goods paid by the customer for the goods nor on account of losses or damages suffered by the customer including loss of profit, damage to property or personal injury arising from that supply or that agreement, whether arising directly, incidentally or consequentially.

29. Subject to paragraph 26, all information contained in any documents, catalogues, price lists, photographs, brochures and other illustrations or advertising material and drawings represent generally the subject matter of the goods and will not be taken as necessarily representing the goods the subject of any quotation or order and will not form part of any contract or agreement for supply.
30. Subject to paragraph 26, except as otherwise expressly provided in these terms, the customer releases the Company from all actions, claims, demands, losses, liability, damages and expenses arising from or in relation to the supply of the goods and indemnifies the Company for any loss or liability that the Company may suffer (including the legal costs on an indemnity basis in defending or prosecuting any claim) arising from the use by the customer of the goods or a breach of these terms including warranties by the customer.

Return of Goods

31. The Company may accept the return of goods which were incorrectly delivered, damaged prior to risk passing or which are defective and the manufacturer's warranty covers the defect and the manufacturer agrees to replace or re-supply the goods. Any acceptance of delivery back from the customer by the Company prior to the Company accepting responsibility for incorrect delivery or damage pre risk passing or the manufacturer accepting responsibility for the defective goods will be by the Company as agents for the customer and is not to be taken as any acceptance of any liability by the Company or on behalf of the manufacturer.
32. Claims for damaged or defective goods or incorrect delivery must be made within three business days of delivery. Where any goods are returned to the manufacturer or supplier they remain at the customer's risk pending acceptance of liability by the manufacturer. The customer is to pay the freight and other cost of returning the goods unless the reason for return is directly and wholly caused by an error of the Company or the manufacturer in which case only the freight for the return will be paid for by the Company or manufacturer.
33. Except for defective goods supplied by the Company, goods returned for credit will only be considered for acceptance subject to the following conditions:-
 - a) goods returned must have been incorrectly supplied or damaged prior to risk passing;
 - b) goods returned must not be obsolete, incomplete, damaged or otherwise imperfect;
 - c) goods must not be returned unless purchase invoice numbers are advised and return freight charges are paid by the customer and prior arrangement in writing is given by the Company;
 - d) goods accepted for return must be in the original packing or as supplied and remain in good condition;
 - e) the amount of credit allowed in respect of goods returned, if any, may be subject to a service charge at the Company's rate currently in effect, unless the agreement specifically states otherwise; and
 - f) the customer is responsible for goods lost or damaged in transit during return to the Company or manufacturer.
34. Where, notwithstanding these terms, the customer disputes any return of goods whether to the Company or manufacturer, it must do so in writing with full supporting explanation and documentation within 30 days of delivery failing which the customer is barred for disputing the delivery or condition of the goods and is deemed to have accepted liability for those goods in accordance with these terms.

Company Connection

35. The customer must not advertise or publish that the supplier and the Company have a contract for the supply of goods or to refer to the Company in any advertising and/or merchandising material without first obtaining the prior written consent of the Company.
36. The customer must not reproduce, modify, amend or publish, or allow to be reproduced, modified, amended or published, the Company's registered or unregistered trade marks, names or logos without first obtaining the prior written consent of the Company.

General

37. If any dispute arises in relation to goods supplied by the Company to the customer the Company may by notice to the customer at any time prior to determination by a court require that such dispute or part thereof be determined by arbitration according to law. The arbitration is to be conducted in accordance with the relevant Commercial Arbitration Act (of whatever name) of the State or Territory nominated as being the governing law and in the capital city of that State or Territory. The Company may give notice that any dispute with the customer is arbitrated with any other dispute relating to the same goods or issues. There is to be a single arbitrator appointed by agreement or failing agreement by the president of the law society of that State or Territory. The arbitrator's decision is final and binding subject to any right of appeal under the relevant Commercial Arbitration Act.
38. The reference of a dispute to arbitration does not affect the customer's obligation to pay the price of goods when due which must be paid without deduction or equitable or other set off pending the resolution of any dispute whether referred to arbitration or otherwise.
39. These terms will be governed by and construed in accordance with the laws of a State or Territory of Australia as the Company directs and the customer irrevocably submits to the exclusive jurisdiction of a competent court in the capital city of that State or Territory.
40. Expressions defined in brackets in these terms will be given the meaning where defined throughout these terms whether or not the definition is used again before or after where the expression is defined.
41. Failure by the Company to insist on performance of these terms or exercise any right or remedy for breach, is not a waiver of any other non performance or breach.
42. If any of these terms are or later become illegal or unenforceable, the illegal or unenforceable part of those terms are taken to be severed from these terms, but all other terms remain in place.