



# TATA STEEL INTERNATIONAL (AUSTRALASIA) LTD

## CONDITIONS OF SALE

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### 1. INTERPRETATION

#### 1.1 In these conditions:

"Buyer" means the person to whom this Sales Contract is addressed, and includes its successors and permitted assigns.

TSI means Tata Steel International (Australasia) Ltd.

"Costs" means:

- (i) taxes, charges, duties, imposts, levies, withholdings and deductions imposed by any authority (except if imposed on the net income of TSI);
- (ii) transportation and delivery costs (including, without limitation, fuel charges;
- (iii) premiums on insurance policies;
- (iv) storage charges; and
- (v) any other costs reasonably incurred (including without limitation, legal costs of TSI on a full indemnity basis) concerning:
  - (a) the Goods;
  - (b) this Sale Note/Invoice; or
  - (c) the actual, contemplated or attempted enforcement by TSI of this Sale Note/Invoice.
- (vi) Headings are for convenience and not interpretation.
- (vii) Expressions in this Sale Note/Invoice have the same meaning as Incoterms 2000 as replaced or amended from time to time by the International Chamber of Commerce.

- 1.2 "Force Majeure" means any circumstance beyond the reasonable control of a party and includes, without limitation inevitable accident, storm, flood, fire, earthquake, explosion, peril of navigation, hostility, war (declared or undeclared), insurrection, executive or administrative order of either general or particular application of any Government (whether de jure or de facto or of any official purporting to act under the authority of that Government), prohibitions or restrictions by domestic or foreign laws, regulations or policies, quarantine or customs restrictions, strike, lock out or industrial dispute or confiscation of property.

### 2. TERMS OF SALE

- 2.1 The Goods and all other products sold by TSI are sold on these terms and Conditions.

### 3. ENTIRE AGREEMENT

- 3.1 To the extent permitted by law, this Sales Contract contains the entire agreement between the parties.

- 3.2 Without limiting the generality, each of the following are excluded (unless expressly Contained in the Sales Contract:

- (a) any previous agreement or arrangement between the parties concerning the Goods or other Goods.
- (b) any terms and conditions proposed by the Buyer.
- (c) any representation or warranty made by or on behalf of TSI.
- (d) any condition of warranty implied by law which can be excluded.

- 3.3 No waivers or variations of this Sales Contract are binding on TSI unless in writing and signed by or on behalf of TSI.

- 3.4 All quotations given and orders accepted by TSI are subject to these terms and conditions.

### 4. DELIVERY

- 4.1 Each delivery date is approximate. Time is not of the essence in respect of any delivery date and TSI shall not be liable for loss or damage occasioned to the Buyer or its customers for late delivery or non-delivery of Goods.

- 4.2 Subject to the Buyer's rights in relation to defects, the Buyer must:

- (a) accept delivery of the Goods when the Goods are delivered; or
- (b) collect the Goods promptly (or within such a period as TSI notifies to the Buyer) after TSI notifies the Buyer that the Goods are available for collection.

- 4.3 The Goods are deemed delivered despite any discrepancy in weight, dimension or quantity not exceeding 10%. If Goods are sold by weight, quantities are to be disregarded.

- 4.4 TSI is not required to provide or pay any fees in respect of any inspection or examination report concerning the Goods.

- 4.5 TSI need not deliver the Goods if:

- (a) the Buyer is in breach of this Sales Contract at any time before delivery; or
- (b) in the reasonable opinion of TSI, the Buyer is unlikely to comply with its obligations under this Sales Contract.

## **5. PAYMENT OF PURCHASE PRICE**

- 5.1 The purchase price of the Goods must be paid in accordance with this Sales Contract
- (a) in immediately available funds;
  - (b) without withholding, deduction or set-off;
  - (c) in New Zealand dollars or such other currency as is agreed between TSI and Buyer in this contract;
  - (d) time is of the essence in respect of payment of the purchase price for the Goods.

## **6. TITLE & RISK**

- 6.1 No property in the Goods shall vest in the Buyer unless and until TSI has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by TSI to the Buyer for which payment is then due.
- 6.2 Risk of damage to or loss of the Goods shall pass to the Buyer:
- (a) in the case of Goods to be delivered at TSI' premises or designated premises, at the time when TSI notifies the Buyer that the Goods are available for collection; or
  - (b) in the case of Goods to be delivered otherwise than at TSI' premises, at the time of delivery; or
  - (c) if the Buyer wrongfully fails to take delivery of the Goods.
- 6.3 Until such time as the property passes to the Buyer, the Buyer shall hold the Goods as TSI' fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties. The Buyer shall keep the Goods properly stored, protected and insured so that they are readily identifiable as the property of TSI. During such a period, and without prejudice to its other rights, TSI shall be entitled at any time to require the Buyer to deliver up the Goods to TSI and if the Buyer fails TSI may enter any premises where the Goods are stored to inspect the Goods and repossess them.
- 6.4 Until full payment has been made, the Buyer shall not be entitled to dispose of any property in the Goods, by sale or otherwise.
- 6.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of TSI, but if the Buyer does so all monies owing by the Buyer to TSI shall (without prejudice to any other right or remedy of TSI) forthwith become due and payable.
- 6.6 TSI shall be entitled to register its security interest pursuant to the terms of this agreement under the Personal Property Securities Act 1999. The buyer expressly agrees to waive its right to receive a verification statement as under the Personal Property Securities Act 1999. The buyer further expressly undertakes to keep TSI informed at all times of the buyer's details and any changes thereof.

## **7. OTHER COSTS AND INTEREST**

- 7.1 The Buyer must pay on demand all Costs which TSI has not agreed in writing to pay.
- 7.2 The Buyer must also pay on demand any increase in Costs (including, without limitation, Costs which TSI has agreed to pay or which are included in the purchase price) occurring for any reason after the date of this Sales Contract.
- 7.3 The Buyer must also pay on demand interest (calculated daily) on any unpaid amount at the rate of 15% per annum.
- 7.4 If no foreign exchange cover by agreement between the parties hereto governs this Contract and if after the date of this Sales Contract there is any exchange rate fluctuation between the NZ dollar and the currency of the country of origin of the Goods, the Buyer must pay on demand the amount reasonably determined by TSI to be the Costs to TSI of such fluctuation. Such amount will be calculated having regard to the price of the Goods paid or payable by TSI and the purchase price of the Goods payable by the Buyer.
- 7.5
- (a) The Buyer indemnifies TSI and shall keep TSI indemnified against any loss suffered or liability incurred by TSI as a consequence of any breach by the Buyer of this Sales Contract.
  - (b) The Buyer is deemed in breach of this Sales Contract if TSI does not deliver the Goods after having formed an opinion in accordance with the clause 4.5(b).

## **8. APPROVALS AND FORCE MAJEURE**

- 8.1 TSI is not required to deliver the Goods until all approvals and requirements of any relevant authority have been obtained and satisfied (either by TSI or the Buyer). TSI need not obtain any approval or satisfy any such approval or requirement unless it agrees in writing to do so.
- 8.2 TSI does not represent or warrant that such approvals and requirements have been or are capable of being obtained or satisfied.
- 8.2.1 TSI is not responsible for any delay in delivery or non-delivery of the Goods by means of any force majeure or other event for which TSI is not directly responsible.

## **9. DEFECTS**

- 9.1 The Buyer is deemed to have accepted the Goods unless:

- (a) within fourteen (14) days after delivery of the date on which TSI has notified the Buyer that the Goods are available for collection, the Buyer gives TSI written notice of any defect in the Goods discoverable on careful inspection or reasonable testing; or
  - (b) within six months after either delivery or the date on which TSI has notified the Buyer that the Goods are available for collection, the Buyer gives TSI written notice of any defect in the Goods not discoverable on careful inspection or by reasonable testing at the time of the delivery of collection.
  - (c) the buyer shall provide TSI an opportunity to inspect any such damage or defect.
- 9.2 Except as expressly provided to the contrary herein, all warranties, whether express, implied, statutory or otherwise relating in any way to the subject matter of this Sales Contract or to the Goods are excluded. Where any Act of Parliament implies in this Sales Contract any term and that Act avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such term, that term shall be deemed to be contained in this Sales Contract.
- 9.3 To the extent permitted by law and notwithstanding anything else contained in the Sales Contract:
- (a) TSI is not responsible for special, indirect or consequential loss suffered by the Buyer by reason of any defect in the Goods, whether as a result of TSI' negligence, breach of this Sales Contract or otherwise.
  - (b) The liability of TSI for breach of such terms referred to in Clause 9.2 shall, if permitted by the Act referred to in Clause 9.2, be limited and the liability of TSI for breach of any express warranties contained herein shall be limited at the option of TSI to any one or more of the following:
    - (i) if the breach relates to goods:
      - (a) the replacement of the Goods or the supply of equivalent Goods; or
      - (b) the repair of the Goods; or
      - (c) the repayment of the cost of replacing the Goods or of acquiring equivalent Goods;
      - (d) the repayment of having Goods repaired.
    - (ii) if the breach relates to services:
      - (a) the supplying of the said services again; or
      - (b) the payment of the cost of having the services supplied again.
- 10. ASSIGNMENT**
- 10.1 The buyer must not assign this Sales Contract without the consent of TSI.
- 11. GOVERNING LAW**
- 11.1 (a) This Sales Contract is governed by the laws of New Zealand.  
 (b) The buyer submits to the exclusive jurisdiction of the New Zealand Courts provided that TSI shall have the right to bring proceedings against the Buyer in any other Court of competent jurisdiction over the Buyer.
- 12. SEVERANCE**
- 12.1 If the whole or any part of the provisions of this Sales Contract shall be held void or unenforceable in whole or in part such provision or part thereof shall, to the extent unenforceable, be severed from this Sale Note/Invoice but the validity and enforceability of the remainder of this Sales Contract shall not be affected.
- 13. PAYMENT OF GST**
- 13.1 Where any supply under this Agreement is or becomes subject to a GST, an amount equal to the GST paid or payable in respect of the supply shall be added to the amount of consideration paid or payable for that Supply under this Agreement.
- 13.2 The provisions contained in Clause 1.1 apply notwithstanding any other clause of this Agreement whatsoever.
- 13.2.1 Each party agrees to do all things, including providing invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any Supply under this Agreement.
- 13.2.2 In this Clause:
- (a) the expression "GST" means any tax in the nature of any tax on or on the supply of goods, real property, services, or other things (or similar tax) levied, imposed or assessed by the Government of New Zealand, which may operate at any time during the term of this Agreement, other than any interest, fine, penalty fee or other payment imposed on or in respect of the above.
  - (b) The expression "supply" means any form of supply whatsoever and includes any supply within the meaning of any legislation imposed in or relation to the imposition of GST.
- 14.1 If the amount of GST applicable to the supply of goods is subsequently increased or decreased by reason of:
- (a) an alteration in the applicable law;
  - (b) the issue of an alteration, ruling or advice of the authority responsible for administering the GST;
  - (c) the allowance to the Supplier of a refund of GST in respect of the supply of any Goods; or
  - (d) the amount of GST charged on the supply of goods affected by one or more of the above will vary proportionately (taking into account any reduction in or abolition of any taxes and/or statutory charges) with the movement in the rate of GST properly payable on, or the value of the amount on which GST is imposed on such goods.