



## Standard Terms and Conditions

### 1. INTERPRETATIONS AND GENERAL MATTERS

#### 1.1 Definitions and Interpretations

1.1.1 "Day" means a calendar day

1.1.2 "FOT" means, in relation to delivery of the Goods, free on truck and includes the responsibility (and associated costs) for packing and loading to the nominated delivery point for the Goods.

1.1.3 "Goods" means all goods, equipment, materials, articles, or any other property or parts to be provided to the Purchaser by inspection, testing, expending, quality assurance and control, painting packing and delivery as specified or required hereunder.

1.1.4 "Purchaser" means the person ordering the Goods, as identified in the Purchase Order Form.

1.1.5 "Purchase Order" means the purchase order issued by the Purchaser to the Supplier as evidenced by the documents listed in the Purchase Order Form.

1.1.6 "Purchase Order Form" means the section of the Purchase Order to be completed by the Purchaser, which identifies the Purchaser and the Supplier and includes but is not limited to a brief of the goods and a list of the documents comprising the Purchase Order.

1.1.7 "Supplier" means the person providing the Goods, as identified in the Purchase Order Form.

1.1.8 Words importing the singular are deemed to include the plural and vice versa. Headings and Subheadings are inserted for convenience only and shall not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.

#### 1.2 Supplier to Inform Itself

The Supplier shall be deemed to have carefully examined all documents furnished by the Purchaser and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the supply of the Goods.

#### 1.3 Order of Precedence

Unless otherwise stated, the order of precedence listed in the Purchase Order Forms, shall be as follows:

- i) The Purchase Order Form
- ii) Special Terms and Conditions
- i) General Terms and Conditions
- ii) Specification(s)
- iii) Drawing(s)

#### **1.4 Ambiguities**

If the Supplier discovers any ambiguity in the Purchase Order it shall immediately notify the Purchaser in writing. The Purchaser shall then determine the correct interpretation of the Purchase Order.

#### **1.5 Use of Documentation**

The documents shall not be copied or used for any purpose other than the supply of the Goods, without the prior written approval of the Purchaser.

#### **1.6 Confidentiality**

1.6.1 Any information provided by the Purchaser to the Supplier, which is noted as confidential shall not be disclosed to any third party without the prior written consent of the Purchaser. The obligations under this Clause shall be continuing obligations and shall survive the completion or termination of the Purchase Order.

1.6.2 The Supplier shall not issue any information which includes details about the Goods or the Purchase Order, for Publication in any news or communication media, without the prior written approval of the Purchaser.

1.6.3 All drawings, blueprints, sketches and copies supplied by the Purchaser, may not be copied or used by the Supplier for any purpose other than the execution of this order.

#### **1.7 Entire Agreement**

The Purchase Order constitutes the entire agreement between the Purchaser and the Supplier. The parties shall not be bound by or liable for any statement, representing, promise or understanding not set herein. Information contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has effect on the Purchase Order unless specifically incorporated herein.

#### **1.8 Communications**

Any notice or other communication required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from the Purchaser shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the relevant party.

#### **1.9 Licenses and Laws**

The Purchaser shall comply with all applicable laws, by-law, ordinances, regulations, proclamations, orders and rules and with the law requirements of Public and other Authorities in any way related to the supply of the Goods.

### **2. INSURANCE**

2.1 (a) It will be the responsibility of the Supplier to ensure that its normal Workshop Insurance Policy covers the items listed on the Order for loss or damage during the course of its manufacture.

(b) The Supplier shall insure his liability (including his Common Law Liability) as required under any applicable Workers' Compensation Statute or Regulation thereunder to his employees engaged in doing anything for the purpose of executing this order. The Purchaser shall also insure his and his employees'

personal property and effects whilst they are present at the Suppliers premises for any purpose.

### 3. INDEMNIFICATION

The Purchaser shall indemnify and keep indemnified the Supplier and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses arising as a result of any act, neglect or default of the Purchaser, its employees or agents related to its obligations under the Purchase Order.

### 4. PERFORMANCE AND QUALITY

#### 4.1 **Materials and Workmanship**

All Goods shall be suitable for the purpose for which they are required. The Supplier shall use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship shall be of the highest quality and standard. The work shall be carried out in accordance with good engineering practice and comply with all applicable Australian Standards and/or other reference codes, the requirements of the relevant Statutory Authorities and the Law.

#### 4.2 **Supplier Qualifications**

The Supplier represents and warrants to the Purchaser that it has necessary skills, resources and experience to successfully supply the Goods in accordance with the requirements of the Purchase Order.

#### 4.3 **Testing and Inspection**

4.3.1 The Goods must be tested/inspected in accordance with the requirements of the Purchase Order. Unless otherwise prescribed in the Purchase Order, any tests/inspections and costs thereof shall be the responsibility of the Purchaser. The result of all tests shall be promptly supplied to the Purchaser in writing.

#### 4.4 **Quality Standards**

The Supplier shall comply with the standards of quality specified in the Purchase Order. If no standards are specified the Supplier shall comply with the best quality standards applicable to the Goods concerned.

#### 4.5 **Defects and Warranty**

4.5.1 The Supplier warrants that the Goods shall:

- (i) Be free from liens, charges, encumbrances, mortgages or other defects in title;
- (ii) Be free from defects in design, materials and workmanship;
- (iii) Conform to the conditions and specifications of the Purchase Order;
- (iv) Conform to all applicable laws and regulations to which the goods are subject;
- (v) Be new and made to the specified quality.

4.5.2 The warranties noted in Clause 4.5.1 above are in addition to any statutory warranties applicable to the Goods.

#### 4.6 **Tooling**

(a) The price shown on the invoice includes the cost of all patterns, dies, tools, jigs, gauges and fixtures (hereinafter called "tool") unless otherwise stated and any such tools remain the Suppliers property on completion of the contract.

(b) Any tools loaned to the Supplier by the Purchaser are loaned as an aid to manufacture the goods by the Purchaser and the Supplier accepts no responsibility as to the accuracy or otherwise of such tooling.

(c) The Supplier shall keep in good order any tools loaned to the Supplier by the Purchaser and in the event of loss, destruction or damage of the tools shall be the Purchaser cost incurred in replacing or repairing the lost, destroyed or damaged tools. Refer 2.1 b Whilst all care will be taken by the Supplier.

(d) Where the Supplier uses tools supplied by or paid for by the Purchaser (other than those furnished on a charge basis), the ownership of the tools shall remain with the Purchaser and the Supplier will ensure that such tools are marked as to be readily identifiable as the property of the Purchaser at all times.

(e) The Supplier, upon completion of the order, will advise the Purchaser that any tools used (being the property of the Purchaser) are available for collection within a reasonable time frame.

#### **4.7 Access**

4.7.1 The Purchaser and/or Nominated Principle shall have right of access to the Supplier's premises and quality records, during normal working hours, only with prior accepted written approval from the Supplier.

### **5. DELIVERY**

5.1 Unless otherwise specified in the Purchase Order, the Goods shall be delivered FOT (Free on Truck), Ex Our Premises (South Windsor) adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the Purchase Order Form. The Goods shall be accompanied by a delivery docket which shall be signed by a duly authorised representative of the Purchaser at the point of delivery.

5.2 The Goods shall become the property of the Purchaser upon delivery of the Goods to the Purchaser, (only if paid for in Full) as evidenced by the signature on the delivery docket by the duly authorised representative of the Purchaser. If the goods are on credit or have not been paid for in full, as per Suppliers invoice, the property of the goods will remain with the Supplier until the outstanding debt (or invoice) has been settled in full.

5.3 The Supplier shall take all reasonable steps to minimise and prevent any delay to the delivery of the Goods. Time shall be the essence of this order. The Purchaser may grant an extension of time to the nominated delivery date provided:

(i) The delay is caused by any reason completely beyond the control of the Supplier, including Statewide or National industrial disputes, acts of God, war, riot, fire, storm or flood.

(ii) The Supplier has notified the Purchaser in writing within fourteen (14) days of the delivery occurring (or such other time as may be specified in the Purchase Order) of its claim for an extension of time.

#### **5.4 Packing**

Goods must be prepared and adequately packed for transformation to avoid damage, to comply with carrier's requirements and to secure minimum transportation costs and insurance rates. All charges will be accepted by the Purchaser for packing.

#### **5.5 Goods for return/Dispute for goods received**

Goods that have to be returned, for any reason, must have an ARM# issued by Performance Metals Australia P/L, Head Office within two days of receive of goods. Any goods returned without this number and prior approval, will not be accepted or will incur a A\$50 processing fee, or 20% of the value of the initial order, whichever is greater.

## 6. VARIATIONS

6.1 The Purchaser may vary the work under the Purchase Order or any condition thereof and the Supplier shall carry out any such variations as directed by the Purchaser. The Supplier's price (addition or reduction) for any variation and any effect on the delivery date(s) of the Goods shall preferably be agreed between the Purchaser and Supplier prior to the Supplier carrying out any such variation. However, if agreement cannot be reached, the Supplier shall determine the price for the variation and its effect on the delivery date(s) of the Goods.

6.2 The Supplier shall not vary the work under the Purchase Order or any condition thereof, except as directed and approval by the Purchaser in writing. Lengths of material can vary from 3-8 metres and the purchaser will accept these as supplied. On large orders the purchaser will accept +/- 15% of the ordered qty and call the order complete.

## 7. SUSPENSION/TERMINATION

### 7.1 Suspension

Once the order is placed by the Purchaser, it can't be cancelled in anyway, especially if a deposit has been taken. Orders where deposits are taken must be paid for in full before despatch from our warehouse and these can't be suspended or terminated.. No orders placed by the purchaser on the Supplier can be cancelled unless written approval is given by the Director of Performance Metals Australia P/L. Deposits are not refundable.

## 8. PRICE AND PAYMENT

8.1 Unless otherwise stated in the Purchase Order, prices shall be subject to any variation, including but not limited to variations in the cost of labour, material or exchange rates. Price in effect. Surcharge in effect.

8.2 The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, duties and charges payable with respect to the Goods. The Purchase Order price shall be deemed to be inclusive of all such taxes, duties and charges.

8.3 Unless otherwise specified in the Purchase Order, invoices for payment shall be submitted to the Purchaser for payment following delivery of the Goods and payment of the invoiced amount shall be made by the Purchaser no later than thirty (30) days from the date of invoice. This is only where the Purchaser has a credit account. Where there is no credit account in place, payment in full must be paid prior to delivery.

8.3.1 The placing of your first order is taken as acknowledgement of your acceptance of the terms and conditions as outlined in the document with no exceptions.

### 8.4 Withholding Payments for Minor Omissions and Defects

No withholding of payment will be accepted. Any defect or omission must be received (in writing), and acknowledged, in writing, by the Supplier within 5 days

of taking delivery of these goods. The supplier can then rectify the omission and defect as required at the suppliers discretion.

## 9. DISPUTES

9.1 Disputes or differences arising between the Purchaser and the Supplier shall preferably be settled quickly and by negotiation.

9.2 In the event of any unresolved dispute between the Purchaser and the Supplier, the Supplier will halt the progress of the work under the Purchase Order until the dispute is resolved. Refer section 9.4.

9.3 The preferred method of determination of unresolved disputes shall be by amicable agreement at the senior management level of the Purchaser and the Supplier.

9.4 Failing such agreement, the parties agree that the dispute shall be resolved by mediation conducted in accordance with the Australian Commercial Disputes Centre (“ACDC”) mediation procedures.

9.5 In the event that the dispute has not been settled within six (6) weeks (or such other period as may be agreed to in writing between the parties) after the appointment of the mediator, the dispute shall be referred by either party to arbitration in accordance with the provisions of Commercial Arbitration Act in force in the State or Territory in which the Suppliers’ Head Office is situated. In the arbitration both parties shall be entitled to be legally represented. Unless parties agree upon an arbitrator, the arbitrator shall be appointed by the Chief Executive Officer, for the time being, of the ACDC.

## 10. APPLICABLE LAW

Unless otherwise specified, the Purchase Order shall be governed and construed in accordance with the laws in place in the State or Territory in which the Suppliers’ Head Office is situated.. The Purchaser and the Supplier shall submit to the jurisdiction of the courts of that State or Territory.