

1. Application

- 1.1 These Terms and Conditions replace and supersede all previous terms and conditions issued by Minmetals prior to the date of issue of these Terms and Conditions.
- 1.2 These Terms and Conditions and any special conditions agreed by Minmetals in writing apply to all orders for Goods placed by the Customer to the exclusion of any previous dealings or agreed arrangements between Minmetals and the Customer or any terms and conditions of purchase provided by the Customer, whether printed on or sent with any order form or otherwise.
- 1.3 Any amendment or variation to these Terms and Conditions is of no legal effect unless it is in writing and signed by Minmetals.
- 1.4 Minmetals may replace these Terms and Conditions from time to time by providing the Customer with replacement terms and conditions. The subsequent placing of an order for Goods by the Customer will be deemed as its acceptance of the replacement terms and conditions.

2. Definitions and interpretations

- 2.1 In these Terms and Conditions:

Collection Site means the site of collection of the Goods by the Customer as determined by Minmetals and notified to the Customer through any oral or written communication to the Customer.

Confidential Information means information of every kind concerning or in any way connected with Goods, the business, property or affairs of Minmetals and any method of carrying on business by Minmetals (including details of any pricing or supply arrangements between the Customer and Minmetals) other than information which is generally available to the public (other than as a result of a breach of these Terms and Conditions) or is required to be disclosed by any law.

Customer means any person placing an order for Goods with Minmetals and any officer, employee, agent or representative of that person (including any related entity of the Customer).

Delivery Request means the request made by the Customer, whether in a quotation, an order or in any other oral or written communication between Minmetals and the Customer, for delivery of the Goods to the Customer's premises.

Force Majeure means any event beyond Minmetals' control including without limitation an act of God, war, fire, strike, lockout, trade or industrial disputes, government interference, transport delays, accidents, breakdown of plant or machinery, non-delivery or shortage of supplies.

Goods mean any goods, products, materials or services supplied, or to be supplied, by Minmetals under these Terms and Conditions.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* and **GST** has the meaning given to that term under the GST Act.

Insolvent has the meaning given in Regulation 7.5.02 of the *Corporations Regulations 2001 (Cth)*.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, inventions, process, know-how and confidential information, and other results of intellectual activity in any field whether or not registrable, registered or patentable attaching to or subsisting in the Goods and any promotional literature, technical documents or other information provided by Minmetals in connection with the Goods.

Loss means any present or future claim, demand, loss, liability, damage, cost or expense of any kind and howsoever arising.

Minmetals means Minmetals Australia Pty Ltd ACN 006 868 033.

PPSA means *Personal Property Securities Act 2009 (Cth)*.

Specification means any specification for Goods requested by the Customer and includes metallurgical properties, chemical composition, engineering specification, architectural specification or other amendment whatsoever.

Terms and Conditions mean this document.

Working Hours means 8.00am – 5.00pm where the order is placed, excluding public holidays.

2.2 The following rules of interpretation apply to these Terms and Conditions:

- (1) any requirement for a document or communication to be in 'writing' in these Terms and Conditions will be satisfied by letter, facsimile or email;
- (2) a provision of these Terms and Conditions must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these Terms and Conditions or the inclusion of the provision in these Terms and Conditions; and
- (3) 'Including', 'such as' and similar expressions, are not words of limitation.

3. Orders and quotations

- 3.1 A quotation given by Minmetals in writing constitutes an offer to sell Goods and overrides any prevailing price lists issued by Minmetals. A written quotation expires on the date specified in the quotation as the expiry date. If no expiry date is specified, the written quotation expires 14 days after the date of the written quotation unless extended by Minmetals in writing.
- 3.2 All orders for Goods must be placed by the Customer in writing. Receipt by Minmetals of an order for Goods does not constitute acceptance of that order or any other order by Minmetals. Minmetals may, in its absolute discretion, accept or decline any order for Goods. Minmetals will not be liable to the Customer or any third party for declining any order for Goods or failing to notify the Customer that it declines an order.
- 3.3 An order for Goods will be accepted on **Order Confirmation**, which shall be deemed to have occurred when Minmetals issues an order acknowledgement in writing in the form of an invoice or any other document evidencing the order for Goods to the Customer.
- 3.4 A contract for the supply of Goods is made on Order Confirmation. Any order for Goods placed by the Customer which is inconsistent in any way with any quotation provided by Minmetals will be taken to be an offer by the Customer to buy such Goods from Minmetals on the terms of these Terms and Conditions.
- 3.5 Minmetals is not bound to accept any change in any order for Goods after Order Confirmation. Minmetals must not be taken to have accepted any change in any order for Goods unless it has confirmed the change and the price for the Goods in writing.

4. Packaging and tolerances

- 4.1 Goods will be delivered in accordance with Minmetals' standard packaging, loading, bracing and shipping procedures. The Customer may request additional packaging requirements, which if accepted by Minmetals, will incur additional charges to be paid by the Customer.
- 4.2 Goods will be supplied by Minmetals within the tolerances as to quantity, weight, dimension and chemical composition as specified by Minmetals or, if not specified, consistent with accepted industry practice.

5. Delivery, transportation and collection

- 5.1 For the purposes of these Terms and Conditions, **Delivery** shall be deemed to have occurred when the Goods are set aside and identified by Minmetals (or any authorised representative on behalf of Minmetals) at the Collection Site as Goods sold or supplied to the Customer, notwithstanding any Delivery Requests put forward by the Customer.
- 5.2 The Customer may put forward a Delivery Request for any or all of the Goods ordered to be transported to the delivery point specified by the Customer in writing or where no delivery point is specified, to a delivery point determined by Minmetals. If required by Minmetals, the Customer must pay for all delivery charges imposed by Minmetals or any third party delivery carrier appointed or engaged by Minmetals and all reasonable administrative costs incurred by Minmetals in arranging the Delivery Request.
- 5.3 Minmetals is not obliged to complete any order for Goods in one Delivery and reserves the right to deliver Goods by instalments. Minmetals may invoice the Customer for part-payment of an order for Goods in respect of which some Goods have been delivered. Failure by Minmetals to deliver any instalment of Goods will not entitle the Customer to repudiate the contract.
- 5.4 The unloading of Goods is the responsibility of the Customer. The Customer will provide facilities for the efficient receipt and safe prompt unloading of the Goods. A reasonable time will be allowed for the unloading of Goods after arrival. Minmetals may invoice the Customer for its reasonable costs in connection with any delay in unloading the Goods. For the avoidance of doubt, if the Customer fails to unload or cause to be unloaded all or any of the Goods delivered pursuant to an order or otherwise in

accordance with these Terms and Conditions within a reasonable time or at all, then the Customer must pay Minmetals, immediately on demand:

- (1) an amount of \$100 per hour in respect of any demurrage costs incurred by Minmetals; or
 - (2) if the actual demurrage costs incurred by Minmetals are greater than the amount calculated in accordance with clause 5.4(1), an amount equal to the actual demurrage costs incurred by Minmetals plus 10% of those costs as an administration fee.
- 5.5 Delivery dates and times provided by Minmetals are estimates only. Any delay in Delivery will not result in a breach of contract and the Customer will not be entitled to terminate the order for Goods or to any other remedy whatsoever.
- 5.6 If the Goods are being collected by the Customer, Minmetals will hold Goods for up to 5 days after the agreed collection date at the Collection Site. The Customer must comply with all directions given by Minmetals at the Collection Site. Minmetals reserves the right to refuse entry to the Collection Site for any reason whatsoever.
- 5.7 If, for any reason, the Customer fails to take delivery of the Goods or collect the Goods on the date for delivery or collection (as appropriate), the Customer must pay Minmetals on demand all costs and expenses suffered or incurred by Minmetals in dealing with the Goods as Minmetals thinks fit (including any transportation, storage or warehouse fees).

6. Claims

- 6.1 The Customer must inspect the Goods, verify and acknowledge the Delivery of the Goods promptly after Delivery. The Customer must notify Minmetals in writing of any claim in connection with inaccurate or defective Goods, short supply, faulty workmanship or failure to supply Goods conforming to an order within 5 days of Delivery of the Goods, stating the order number and delivery or collection date. If the Customer does not notify Minmetals of the claim within this period, it will be deemed to have accepted the Goods.
- 6.2 No claim in connection with Goods delivered as part of a larger order for Goods will entitle the Customer to reject Delivery of any further Goods as part of the same order.

7. Pricing

- 7.1 Prices indicated in any price list published by Minmetals are subject to alteration by Minmetals at any time without notice. The prices are recommended prices only and Minmetals is not obliged to sell Goods at the prices.
- 7.2 Unless otherwise agreed by Minmetals, the price of Goods will be the price specified in the invoice issued by Minmetals.
- 7.3 Unless expressly included, all prices for Goods are exclusive of all applicable taxes and charges. The Customer must pay on demand all excise, sales, or other tax, charge or government impost payable in connection with the Goods or any part of the Goods, or on the manufacture, import, use, sale or delivery of the Goods in addition to the purchase price, including GST as well as any additional anti-dumping duties or charges imposed on imports of the Goods or any part of the Goods.
- 7.4 To the extent that any supply made under or in connection with these Terms and Conditions is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time as payment for Goods is made.

8. Payment and credit terms

- 8.1 Unless otherwise specified by Minmetals, the Customer must pay Minmetals for Goods in full, without set-off or counterclaim of any kind, within the date specified in the invoice issued by Minmetals. Where the Customer has a credit account with Minmetals, payment for Goods must be made in accordance with any agreed credit terms. Payment is received by Minmetals when it receives cash or when the proceeds of other payment methods are credited and cleared to Minmetals' nominated bank account.
- 8.2 The production, shipment and delivery of Goods are at all times subject to Minmetals' credit processes. Minmetals reserves the right to suspend or cancel any order for Goods, re-evaluate all payment terms, or require full or partial payment or adequate assurance of the Customer's performance of its obligations under these Terms and Conditions without liability to Minmetals if, in Minmetals' opinion, the financial position of the Customer has adversely changed.

8.3 Minmetals may set off any amount owed by the Customer to Minmetals against any amount of money that is owed, or may become owing, by Minmetals to the Customer. The Customer waives any right to set off any amount that is, or may become, owing by the Customer to Minmetals against any amount owing by Minmetals to the Customer.

9. Default

9.1 If the Customer is in default of its obligations under these Terms and Conditions (including if it becomes Insolvent), Minmetals may refuse to supply or deliver further Goods to the Customer until such time as the Customer has remedied that default.

9.2 Without prejudice to any other rights or remedies Minmetals may have under these Terms and Conditions or at law, if the Customer fails to pay any amount payable to Minmetals by the due date, Minmetals may:

- (1) charge the Customer interest on all amounts overdue, calculated and payable daily, computed from the due date for payment until the amount is paid in full, at the rate of 2% per annum above the penalty rate fixed under the *Penalty Interest Rates Act 1983 (Vic)*;
- (2) recover the cost to Minmetals of recovering the overdue amount, such as legal or debt collection costs;
- (3) terminate or suspend, without incurring liability to the Customer, any contract in force between Minmetals and the Customer for the sale or supply of Goods and withhold any deliveries of Goods the subject of any order accepted by Minmetals, whether under these Terms and Conditions or otherwise;
- (4) suspend performance under or terminate, in either case without incurring liability to the Customer, any contracts in force between Minmetals and the Customer, not being contracts for the sale or supply of Goods; or
- (5) disallow any early payment discounts, volume bonuses or incentive payments otherwise claimable by the Customer.

9.3 The Customer indemnifies and must keep indemnified Minmetals against any Loss suffered or incurred by Minmetals (including legal fees on a full indemnity basis) in connection with the recovery by Minmetals of any overdue amount payable by the Customer to Minmetals.

10. Risk and title

10.1 A term that is used in italics in this clause 10 has the same meaning as in the PPSA.

10.2 Risk in the Goods passes to the Customer on Delivery.. Minmetals is not liable for any theft or loss of, or damage to, Goods and will not be required to provide insurance for Goods once risk has passed.

10.3 Title in the Goods supplied by Minmetals to the Customer under these Terms and Conditions does not pass to the Customer until the money owing for those Goods, and any other money owing by the Customer to Minmetals, has been paid (whether or not the Goods are delivered at different times, are the subject of separate invoices or, after delivery can be determined by Minmetals to be the subject of a specific invoice).

10.4 Until title in the Goods pass to the Customer:

- (1) Minmetals reserves full ownership rights in the Goods;
- (2) The Customer:
 - (a) takes custody of the Goods and retains them as the fiduciary agent and bailee of Minmetals;
 - (b) the Customer must properly store, protect and insure the Goods including storing them separately and in a manner that clearly identifies them as the property of Minmetals;
 - (c) the Customer grants to Minmetals, its directors, employees, agents and authorised representatives, leave and licence to enter at any time, on and into the Customer's premises and any premises controlled by the Customer to inspect, search for or remove any of the Goods;
 - (d) may not, prior to the *registration commencement time*, sell the Goods, other than in the ordinary course of its business;

- (e) may not, after the *registration commencement time*, sell the Goods, other than as permitted by the PPSA;
- (f) may use the Goods in a manufacturing or construction process of its own or a third party in the ordinary course of business; and
- (g) must not to sell, assign, charge or otherwise encumber or grant any interest over any debts and other obligations which any third party may owe to the Customer as a result of the use, manufacture or resale of the Goods

Nothing in this clause 10 limits or excludes Minmetals' interest as principal in those debts and other obligations.

- 10.5 If the Customer sells any of the Goods while they remain the property of Minmetals, as between Minmetals and the Customer, the Customer does so as fiduciary agent of Minmetals and as between the Customer and the sub-purchaser, the Customer does so as principal and has no authority to bind Minmetals to any liability by contract or otherwise and must not purport to do so.
- 10.6 If the Customer sells any of the Goods while they remain the property of Minmetals, and receives proceeds of the sale or receives any other proceeds, whether tangible or intangible, direct or indirect, of any dealing with the Goods (including any proceeds from insurance claims):
- (1) the Customer holds the proceeds and any property purchased with those proceeds on trust for Minmetals up to the amount the Customer owes to Minmetals, whether for the Goods or on any other account, and the Customer must immediately on receipt pay to Minmetals the amount so held in trust. If the Customer receives the proceeds by payment to a bank account, the Customer must arrange for this to be a separate bank account; and
 - (2) If the Goods are sold after the *registration commencement time*, the Customer grants to Minmetals a *security interest* in every payment to the Customer for the Goods (both as *proceeds* of the Goods and as original collateral).
- 10.7 If the Customer uses any of the Goods in a manufacturing or construction process of its own or a third party and sells the product of the manufacturing or construction process, then the Customer holds such part of the proceeds of the sale of any manufactured product as relates to any Goods sold to the Customer and used in the manufacturing or construction process in trust for Minmetals. That part must be treated, for the purpose of quantifying how much the Customer holds in trust for Minmetals but for no other purpose, as being equal in dollar terms to the amount owing by the Customer to Minmetals at the time of the receipt by the Customer of the proceeds of sale for all Goods sold to the Customer.
- 10.8 If the sale price of all Goods sold to the Customer is greater than the sum of the amount held by the Customer on trust for Minmetals and all payments actually received by Minmetals in respect of the Goods, the difference remains a debt owing by the Customer to Minmetals.
- 10.9 Despite any statement to the contrary by the Customer, before the *registration commencement time*, every payment to Minmetals in respect of the Goods must be taken to be a payment:
- (1) firstly, of the amounts held by the Customer in trust;
 - (2) secondly, for any Goods that the Customer has sold but for which it has not received proceeds' and
 - (3) thirdly, for whatever Goods that the Customer has not sold Minmetals elects.
- Minmetals may expressly agree otherwise in writing, but this does not include an ordinary acknowledgment that an invoice has been paid.
- 10.10 Despite any statement to the contrary by the Customer, after the *registration commencement time*, every payment to Minmetals in respect of the Goods must be taken to be a payment:
- (1) firstly, of the amounts held by Minmetals in trust, or subject to a *security interest*, to the extent that the *security interest* is not a *purchase money security interest*;
 - (2) secondly, of amounts subject to a *security interest*, to the extent that it is a *purchase money security interest*;

- (3) thirdly, for any Goods that the Customer has sold but for which it has not received proceeds; and
- (4) fourthly, for whatever Goods that the Customer has not sold as Minmetals elects.

Minmetals may expressly agree otherwise in writing, but this does not include an ordinary acknowledgment that an invoice has been paid.

10.11 If the Customer becomes Insolvent, without prejudice to any other rights of Minmetals:

- (1) the Customer's right to sell the Goods in the ordinary course of business (before the *registration commencement time*) or in accordance with the PPSA (after the *registration commencement time*) and any other rights of the Customer in respect of the Goods immediately cease; and
- (2) the Customer must, as part of its fiduciary obligations, immediately return to Minmetals the Goods in which title has not passed.

10.12 The Customer irrevocably authorises Minmetals at any time, to enter any premises upon which the Goods are stored to enable Minmetals to inspect the Goods (including any records pertaining to the Goods) and, if the Customer has breached these Terms and Conditions or has become Insolvent, to reclaim possession of the Goods.

10.13 If Minmetals enters any premises for the purpose of reclaiming possession of the Goods, and incurs any liability to any person in connection with the entry or reclamation, the Customer indemnifies Minmetals against that liability.

10.14 If any of the Goods have been joined to another product, then in taking possession Minmetals must remove the product that was not supplied by Minmetals or in which title has passed to the Customer.

10.15 The provisions of this clause 10 apply despite any arrangement between the parties under which Minmetals grants the Customer credit. Where Minmetals grants the Customer credit for a specific period the credit period is for that period or until the resale of the Goods by the Customer or their use by the Customer in a manufacturing or construction process of its own or a third party, whichever is the earlier.

10.16 Minmetals may commence legal action against the Customer if the Goods are not paid for within Minmetals' usual credit terms or any separate arrangement for credit made by Minmetals with the Customer although property in the Goods has not passed to the Customer.

10.17 If, at any time after the *registration commencement time*, Minmetals retains legal title to the Goods as contemplated by this clause 10, the Customer acknowledges and agrees that:

- (1) these Terms and Conditions are a *security agreement*;
- (2) this clause 10 creates a *security interest* in all present and after acquired Goods as security for the Customer's obligations to Minmetals;
- (3) Minmetals is a *secured party* in relation to the Goods and any *proceeds* of the Goods, and is entitled to register its interest on the register established under the PPSA as a *security interest* or, where applicable, a *purchase money security interest*, at the discretion of Minmetals;
- (4) Minmetals may, by notice to the Customer, require the Customer to take all steps that Minmetals considers necessary or desirable to ensure its *security interest* in the Goods is enforceable, and to perfect, or better secure the position of Minmetals under these Terms and Conditions as a first ranking security;
- (5) the Customer must comply with a notice from Minmetals under this provision at the cost and expense of the Customer;
- (6) the Customer must promptly inform Minmetals of any change to information that it provides to Minmetals under this provision; and
- (7) Minmetals is not obliged to give any notice or provide copies of any documents under the PPSA (including notice of a *verification statement*), and the Customer waives its rights to receive any such notice or copies of any such documents, unless the notice or document is required to be given by law and cannot be excluded.

10.18 The parties agree that these Terms and Conditions and all related information and document(s) are Confidential Information and must not be disclosed to unauthorised representatives or third parties,

except to the extent disclosure is permitted by these Terms and Conditions or required by law. The Parties agree that the Seller will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.

10.19 The Customer agrees that the Goods is not intended to be used predominantly for any personal, domestic or household purposes and that each of the following requirements or rights under the PPSA do not apply to the enforcement of Minmetals' *security interest* or where applicable, *purchase money security interest* or of these Terms and Conditions:

- (1) any requirement for Minmetals to give the Customer a notice of removal of accession;
- (2) any requirement for Minmetals to give the Customer a notice of the Seller's proposed disposal of the Products;
- (3) any requirement for Minmetals to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
- (4) any requirement for Minmetals to give the Customer a statement of account if Minmetals does not dispose of the Goods;
- (5) any right the Customer has to redeem the Goods before Minmetals exercises a right of disposal; and
- (6) any right the Customer has to reinstate these Terms and Conditions before Minmetals exercises a right of disposal of the Goods.

10.20

11. Limiting liability

11.1 Except as expressly set out in these Terms and Conditions, all statutory or implied conditions and warranties are expressly excluded by Minmetals to the maximum extent permitted by law.

11.2 To the maximum extent permitted by law, Minmetals' liability under any condition or warranty which cannot legally be excluded is, at the option of Minmetals, limited to

- (1) in the case of goods, the replacement of the goods or the supply of equivalent goods or the repair of the goods or the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; and
- (2) in the case of services, supplying the services again or paying the cost of having the services supplied again.

11.3 If the Customer knows (or ought reasonably to know) that Goods are to be used for a particular purpose (including as a component part of another product) or are required to possess specific or uniform characteristics, the Customer must clearly specify that purpose or those characteristics in writing in the order for Goods placed by the Customer. Unless Minmetals confirms in writing to the Customer that the material is reasonably fit for the specified purpose or that it possesses the specified characteristics, then the Customer agrees:

- (1) that it did not rely on the skill or judgment of Minmetals in relation to the suitability of such Goods for a particular purpose or the special or uniform characteristics possessed by such Goods; and
- (2) not to use, sell or offer for sale such Goods as though they are reasonably fit for the specified purpose.

11.4 Other than liability which cannot be lawfully limited or excluded, the maximum aggregate liability of Minmetals to the Customer in connection with the supply of Goods, whether arising in contract, tort (including negligence), under legislation or in any other way, is limited to an amount equal to the price paid for the Goods the subject of the Loss.

11.5 Minmetals is not liable to the Customer for any indirect or consequential loss or damage (including loss of revenue, income or profits, business interruption or damage to goodwill) howsoever arising in connection with these Terms and Conditions or the supply or non-supply of Goods (even if Minmetals had been advised of the possibility of the loss or damage).

11.6 Notwithstanding anything else in these Terms and Conditions, Minmetals is not liable to the Customer for any Loss suffered or incurred by the Customer unless the Customer has given written notice to

Minmetals setting out specific details of the Loss within 12 months after the Customer became aware of the facts, matters or circumstances giving rise to the Loss.

11.7 Notwithstanding anything else in these Terms and Conditions, Minmetals is not liable to the Customer for:

- (1) any misrepresentation or misleading act or omission on the part of the Customer or any of its officers, employees, agents or contractors;
- (2) any loss or damage to the Goods resulting from any act or omission on the part of the Customer or any of its officers, employees, agents or contractors;
- (3) any loss of damage to the Goods or any liability which arises as a result of the loading or unloading of Goods;
- (4) any delay in delivering Goods;
- (5) any claim, action or proceeding by a third party against the Customer (or any loss, damages or liability incurred by the Customer as a result of any such claim, action or proceeding);
- (6) any statement, representation or warranty (including in relation to the fitness for purpose or suitability of Goods) given by the Customer or any of its officers, employees, agents or contractors to a third party; or
- (7) any indirect or consequential loss, loss of profit or loss of revenue.

12. Indemnity

12.1 The Customer indemnifies and must keep indemnified Minmetals and each of its officers, employees and agents against any Loss suffered or incurred by any such person in connection with:

- (1) the negligence, wrongful act or omission, breach of statutory duty, breach of contract or wilful default of the Customer or its officers, employees, agents or contractors;
- (2) any injury to or death of any person or any damage to or loss of property connected with the conduct, operations or performance of the business of the Customer;
- (3) transport, storage, repackaging or other handling of the Goods by the Customer;
- (4) misuse of any Goods by the Customer;
- (5) warranties or representations made by the Customer in relation to any Goods; or
- (6) any breach of these Terms and Conditions by the Customer.

13. Intellectual property

13.1 The Customer acknowledges that Minmetals is the owner or exclusive licensee of the Intellectual Property Rights. Nothing in these Terms and Conditions is intended to transfer ownership of or any interest in the Intellectual Property Rights to the Customer.

13.2 The Customer must:

- (1) only make use of the Intellectual Property Rights in the manner approved by Minmetals;
- (2) not represent or pass off as products made from Minmetals products, any products containing products not obtained from or manufactured by Minmetals;
- (3) provide Minmetals with all information reasonably requested to help Minmetals protect the Intellectual Property Rights;
- (4) not use the Intellectual Property Rights in a manner which, in the reasonable opinion of Minmetals, may damage or be likely to damage the goodwill attaching to the Intellectual Property Rights or do anything to diminish the value of the Intellectual Property Rights, or omit to do anything reasonably requested by Minmetals for the purposes of preventing or limiting any diminution in the value of the Intellectual Property Rights; and
- (5) not use the Intellectual Property Rights in any way which would lead any trademark of Minmetals to become generic, lose distinctiveness or become liable to mislead the public or in any way which would be materially detrimental to or inconsistent with the name, reputation or image of Minmetals.

13.3 The Customer must procure that its officers, employees, agents, contractors and related companies comply with clause 13.2.

- 13.4 The Customer warrants to Minmetals that all information provided by the Customer to Minmetals in connection with any order for Goods (including any Specification) is accurate and complete and that the use of such information by Minmetals will not infringe any intellectual property rights of any third party.
-

14. Confidentiality

- 14.1 The Customer acknowledges that the Confidential Information is proprietary, confidential or a trade secret of Minmetals.
- 14.2 Except as stated in these Terms and Conditions, the Customer must not use or disclose to any person any Confidential Information without the prior written consent of Minmetals.
- 14.3 The Customer must immediately return or destroy all Confidential Information (including all marketing and advertising materials, logos, labels and any reproductions of Minmetals brands) that is in the possession or control of the Customer upon the earlier of a request by Minmetals or the termination or expiration of these Terms and Conditions.
- 14.4 The Customer must procure that its officers, employees, agents, contractors and related companies comply with clauses 14.2 and 14.3.
-

15. Force Majeure

- 15.1 If Minmetals is prevented either directly or indirectly from performing any of its obligations under these Terms and Conditions, including delivering any Goods, by reason of Force Majeure, it may by notice to the Customer:
- (1) extend the time for delivery of such Goods; or
 - (2) terminate the order for Goods.
- 15.2 Minmetals will not be liable to the Customer for any Loss suffered or incurred by the Customer in connection with a failure to perform its obligations under these Terms and Conditions due to a Force Majeure event.
- 15.3 A Force Majeure event does not relieve the Customer from any obligation to pay for any Goods already delivered or to accept delivery of any Goods capable of delivery by Minmetals despite the Force Majeure event or after such event ends.
-

16. Governing law and jurisdiction

- 16.1 The law of Victoria governs this document. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.
- 16.2 The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the *Vienna Sales Convention 1980*), and any enabling legislation in any State or Territory, is excluded from these Terms and Conditions.
-

17. Dispute Resolution

- 17.1 Disputes or differences arising between Minmetals and the Customer in relation to these Terms and Conditions must preferably be settled quickly and by negotiation.
- 17.2 The preferred method of determination of unresolved disputes shall be by amicable agreement at the senior management level of Minmetals and the Customer. Accordingly, if a dispute under these Terms and Conditions arises, the parties agree to try to resolve the dispute at the senior management level of both parties.
- 17.3 If the parties cannot resolve such dispute within thirty (30) days of when the dispute is first raised by either or both the parties, the parties agree that the dispute must then be referred to mediation with the Australian Commercial Disputes Centre and any decision made by the mediator shall be final and binding on the parties.
- 17.4 All costs, charges and expenses incurred as a result of the parties' use of external dispute resolution procedures in this clause shall be borne by the parties equally.
- 17.5 The parties agree to adhere to the procedures set out in this clause before enforcing any other rights permitted by law in the resolution of any disputes under these Terms and Conditions.

18. Notices

18.1 A Party notifying or giving notice under these Terms and Conditions must give notice:

- (1) in writing;
- (2) if addressed to Minmetals, to the postal address, fax number or email address listed on Minmetal's website at www.minmetals.com.au or specified on the invoice for the Goods or any other address as notified in writing by Minmetals to the Customer; and
- (3) if addressed to the Customer, to the postal address, fax number or email address specified on a quotation, an order or invoice, as appropriate, or any other address as notified in writing by the Customer to Minmetals.

18.2 A notice given in accordance with this clause is received:

- (1) if left at the recipient's address, on the date of delivery;
- (2) if sent by prepaid post, five (5) days after the date of posting;
- (3) if sent by fax, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice; and
- (4) if sent by email, when the sender does not receive any failed delivery email notification from either its, or the recipient's, mail server within five (5) days after the date of the email.

19. Miscellaneous

19.1 Each provision of these Terms and Conditions is deemed to be separate and severable from the other provisions. To the extent any provision is invalid or unenforceable in any jurisdiction, this will not:

- (1) invalidate the remaining provisions; or
- (2) affect the validity or enforcement of that provision in any other jurisdiction.

19.2 The failure of a party at any time to require performance of any obligation under these Terms and Conditions is not a waiver of that party's right to assert any remedy for breach of that obligation and at any other time to require performance of that or any other obligation under these Terms and Conditions, unless written notice to that effect is given.

19.3 Minmetals may assign any or all of its rights under these Terms and Conditions (including a right to any payment) to any person without notice or approval from the Customer. The Customer may not assign the benefit of, or otherwise create an interest in its rights under these Terms and Conditions, unless it obtains the prior written consent of Minmetals.

19.4 All drawings, designs, specifications, descriptions, illustrations, data, dimensions, weights and other particulars of Goods are approximations only and are intended to be a general description for information and identification purposes only and do not create a sale by description. Minmetals reserves the right to produce Goods with such minor modifications from its drawings and specifications as it sees fit or to alter any specification shown in its promotional literature to reflect changes made after the date of such promotional literature.

19.5 The Customer must comply with all laws and requirements of any regulatory authority applicable to the Customer's business, including without limitation those laws and regulatory requirements relating to the environment, health, safety, storage, handling and sale of goods. The Customer must comply with any processes, material safety data sheets (or similar documents), instructions or reasonable directions of Minmetals issued in connection with Goods.

19.6 The Customer must not make any statement in connection with the Goods that is misleading or deceptive or inconsistent with the specifications relating to Goods published from time to time by Minmetals.

19.7 If the Customer consist of more than one person, these Terms and Conditions bind each of them separately and any two or more of them jointly.

19.8 If the Customer is a trustee of any trust, these Terms and Conditions bind the Customer both personally and in its capacity as a trustee.

