

Stirlings Australia

Terms & Conditions of sale and services

These are the terms & conditions upon which Stirling Holdings Pty Ltd (A.C.N.009215409) trading as Stirlings Australia Global Metals Distributor ("company") sells and quotes for the supply of goods or services to another party ("customer").

1. Governing terms and conditions

These terms and conditions supersede all previous terms and conditions. These are the only terms and conditions which are binding upon the company with the exception of those otherwise agreed in writing by the company or which are imposed by law. If any provision or part of a provision of these terms and conditions is or becomes void, invalid or unenforceable then the same shall be severed from these terms and conditions but the remainder of these terms and conditions will continue in full force and effect and shall be unaffected by such severance.

2. Terms of payment

- 2.1 Goods and services are supplied on a cash only basis, except when a customer has a credit trading account with the company, in which case payment by the customer is due within 30 days of the end of the month in which the goods are invoiced. If the customer fails to make payment in accordance with this clause, all amounts owing by the customer on all its accounts with the company shall immediately become due and payable. Outstanding amounts shall bear interest at the rate per annum of 2% above Westpac bank's benchmark lending rate as from time to time applicable.
- 2.2 The customer shall be liable for legal or other costs incurred by the company in the recovery or attempted recovery of any amounts due and payable by the customer with such legal costs being payable upon a solicitor/client basis.
- 2.3 The company's credit facility with the customer may be withdrawn at any time, without notice, at the absolute discretion of the company.

3. Quotations

- 3.1 Unless previously withdrawn, a quotation is valid for 7 days or such other period as stated therein unless previously altered or withdrawn by the company, notwithstanding that every quotation given by the company is subject to the continuing availability of the goods the subject of the quotation.
- 3.2 Customers' order requiring processing of goods to the customer's specification must be accompanied by a written purchase order.
- 3.3 The company shall not be bound by any conditions attaching to the customer's order or acceptance of a quotation and, unless such conditions are expressly accepted by the company in writing, the customer hereby agrees and acknowledges that such conditions shall not apply.
- 3.4 Unless otherwise stated in writing by the company, prices quoted shall be exclusive of handling, delivery, agents charges, sales tax and any other levies. Any charge, duty, sales tax or other expenditure which is not applicable at the date of the quotation or sale invoice but which is subsequently levied upon the company in relation to the quotation or sales invoice as a result of any legislation, regulation or governmental policy shall be paid by the customer.
- 3.5 A quotation contains commercially sensitive information and in receiving a quotation, the customer shall not disclose such information, in total or part, to a third party.

4. Inspection and acceptance

- 4.1 The customer shall examine all goods immediately on delivery and shall be deemed to have accepted that the goods are of the description, quality and quantity ordered, unless particulars are notified to the company in writing within 3 working days after delivery, after which the company shall not be liable for claims of this nature unless required by law.
- 4.2 Where an inspection and testing is required by the customer or its inspector before the delivery of the goods from the premises of the company, its manufacturer or agent's premises, the customer is to perform the inspection and test within the time period or date notified by the company or as agreed with the customer. If the customer does not carry out the inspection or test within the agreed time period or date and the customer does not advise the company in writing that the goods do not comply with the terms of the contract, the customer is deemed to have accepted the goods as having complied with the terms of the contract. The customer shall not be entitled to reject the goods for reasons which the inspection and testing would have revealed.
- 4.3 Pursuant to clause 4.2, if the customer gives the company notice in writing within the stipulated time period or date that following the inspection and testing of the goods, the goods are defective or claimed to be defective or not in compliance with the contract documentation, the company reserves the right to seek the manufacturer or agent's opinion and advice or alternatively, inspect or test the goods before they are used or sold.
- 4.4 If the goods were defective or did not comply with the contract documentation and such defect or non compliance was not apparent after the customer or its agent's careful inspection and testing, the customer shall immediately advise the company in writing on discovering such defect or non compliance. The customer cannot be precluded from advising the company by reason of the fact that the goods may or have been incorporated, processed or manufactured into the finished product or property of a third party.

5. Returns

Goods processed to the customer's specifications are not returnable. Other goods may be returned if returned within 14 days of their delivery in their original and undamaged condition and if authorised in writing by the company, with freight and other costs charged to the customer. The company reserves the right to charge a handling and restocking fee of up to 25% of the sale price of goods returned.

6. Passing of property and risk

- 6.1 The goods supplied by the company to the customer or those goods processed to the customer's specifications from materials supplied by the customer shall be at the customer's risk immediately upon the goods being loaded on to the vehicle effecting delivery to the customer or upon the goods being placed in the customer's custody or the goods being moved at the customer's direction (whichever is the sooner) provided that where goods are being delivered by the company or any agent, employee, sub-contractor, invitee or servant of the company the goods shall be at the customer's risk from the time where unloading commences at the customer's premises or where unloading commences at a place designated by the customer.
- 6.2 Legal ownership in the goods shall not pass to the customer until those goods and other goods supplied by the company to the customer have been paid for in full.
- 6.3 Until such payment referred to in clause 6.2 hereof has been made the customer holds the goods as bailee for the company and shall safely and securely store the goods in such a manner to clearly identify that they are the property of the company. Until legal ownership passes to the customer the customer must keep the goods free from any charge, lien or other encumbrance.
- 6.4 The customer may use, incorporate with other materials or agree to sell the goods in its possession in the ordinary course of its business notwithstanding that the legal ownership in the goods has not passed.
- 6.5 Where the customer sells any of the goods before legal ownership in the goods has passed to it, the customer shall keep apart and hold on trust for the company such part of the proceeds of such re-sale as represents the amount owed by the customer to the company in respect of the goods sold.
- 6.6 Where payment is not received by the company by the due date or in the event of a receiver being appointed to the customer, or a petition being presented for the winding up of the customer or the customer being declared insolvent or bankrupt, the customer shall, should the company so require, deliver up the goods to the company failing which the company by its servants or agents is hereby irrevocably authorised to enter any premises of the customer where the goods may be situated and take possession thereof. The company shall not be liable for any costs, losses, damages, expenses or any other moneys or losses suffered by the customer as a result of the company taking repossession of the goods. The customer further agrees to indemnify the company against all claims against the company arising from the company taking repossession of the goods.
- 6.7 In the event of the company being unable to recover the goods pursuant to clause 6.6 hereof the company shall be entitled to maintain an action for the sale price of the goods notwithstanding that it retains legal ownership of the goods pursuant to clause 6.2 hereof and all legal costs and expenses incurred by the company in the recovery of any unpaid account shall be paid by the customer with such legal fees to be charged on a solicitor/client basis.

7. Delivery of goods

- 7.1 Dates for delivery of goods are given for information purposes only and shall not form part of the contract of sale. Any delay in the delivery of goods does not constitute a breach of contract and the customer is not entitled to nullify the contract or to any other redress or compensation unless guaranteed in writing in the contract documents by the company.
- 7.2 The company shall make all reasonable efforts to deliver goods on the date agreed between the parties, but shall not be responsible for any consequential, indirect or other loss arising as a result of any failure by the company to deliver the goods at any agreed time or within a reasonable period.
- 7.3 If in the performance or observance of its obligations the company is prevented, restricted or affected by reason of a force majeure including strike, lockout, industrial dispute, raw material shortage, breakdown of plant, transport or equipment, late receipt of customer's specifications, delay caused by any agent, sub-contractor or supplier with the manufacture, processing or delivery of the goods or any other cause beyond the reasonable control of the company, the company may extend the time for the delivery for a reasonable period or may notify the customer that it is unable to fulfill all or part of the contract and may cancel the contract in whole or in part without incurring any liability whatsoever.
- 7.4 If the delivery of the goods is delayed or likely to be delayed by reason of the factors in clause 7.3, and the delay is likely to continue for an extended period of time that the customer is required to purchase substitute goods and the customer provides evidence that its operations are seriously affected or being in breach of a contractual agreement with a third party, the company at the request of the customer in writing, may agree to the cancellation of the delivery of the goods.
- 7.5 The method of delivery of the goods will be at the company's discretion and at the cost of the customer unless as specified under the terms of the contract. The company reserves the right to charge the customer any charges or costs incurred including for storage of the goods, demurrage tariffs, delayed or non acceptance of the goods by the customer and for any unforeseen requirements not stipulated in the contract documentation.
- 7.6 Where the customer does not take delivery when the goods are ready, the company shall be entitled to store the goods without liability and in the open if necessary, at the customer's cost and risk.
- 7.7 Unless otherwise agreed, goods supplied shall be of merchantable quality and all standards including but not limited to tolerances of dimension, strength and weight, shall be of such standard as the company generally applies to such type of goods.
- 7.8 Unless otherwise specified by the company the quantity supplied may vary by up to 10% over or under the quantity ordered.

8. Warranty and indemnities

- 8.1 Subject to the standards and technical specifications of the goods supplied, the company does not authorise or make any undertaking as to the quality of the goods or their suitability for any application. The customer is responsible for satisfying itself that the goods are suitable for their intended use or application before incorporating, processing or manufacturing them for such purposes or use.
- 8.2 Notwithstanding any other provision of these terms and conditions, subject to the qualifications contained in the Trade Practices Act 1974, if the company is liable for breach of a condition or warranty implied by this Act, the company's liability for such breach including location of any defect shall be limited to: (a) in the case of goods, as determined by the company, any one of: (i) the replacement of the goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) the payment of the cost of having

the goods repaired; and (b) in the case of services, as determined by the company, either: (i) the supplying of the services again; or (ii) the payment of the cost of having the services supplied again.

- 8.3 Subject to clause 8.2 all conditions, warranties and representations not expressly contained in these terms and conditions are expressly negated and excluded; no conditions, warranties, representations, statements, inducements or collateral contracts have been made, are implied or are relied on by the customer.
- 8.4 The company shall not be under any liability of any nature whatsoever to the customer or any other person for loss, damage, death or injury including any consequential loss or loss of profit either resulting from or in with connection with the use and delivery to the customer of the goods prepared, manufactured or dispatched according to the drawings, models, descriptions, analyses, prescriptions other specifications submitted by the customer, including but not limited to, action for alleged infringement of copyright, patents, registered design or trade marks or due to a defect or fault in the goods or by reason of the goods being unsuited for the purpose of the customer. The customer agrees to indemnify the company from and against all claims, actions, suits, demands, costs, loss, damages and expenses (including but not limited to all legal expenses on a solicitor/client basis) suffered or incurred by the company or by any other person arising out of the use of the goods by the customer or any agent, employee, sub-contractor, invitees or servant of the customer at any time or in connection with the services provided by the company in respect of the goods and/or delivery to the customer of the goods.
- 8.5 Goods supplied are subject to the chemical and mechanical composition, physical properties and product standards of the original manufacturer and are covered by such warranty as specified by the original manufacturer; the company does not give any warranty beyond such warranty.
- 8.6 The company shall take reasonable steps to care for and maintain any tools or models supplied to it by the customer, provided that such tools and models shall be insured by, and, where necessary repaired at the expense of, the customer.

9. Advice

Subject to clause 8 above, any advice, recommendation, information, assistance or service provided by the company in relation to goods supplied or manufactured by it in respect of their uses or application is given in good faith and such advice, recommendation, information, assistance or service is given without liability on the part of the company and it shall be the responsibility of the customer to confirm the accuracy and reliability of the same in light of the uses to which the customer makes or intends to make of the goods.

10. Consignment stock

Goods supplied by the company to the customer on a consignment basis are supplied on such basis only if expressly stated in writing by the company. If goods are supplied to the customer by the company on a consignment basis the customer hereby irrevocably authorises the company by its servants or agents to enter the premises of the customer where the goods might be situated for the purpose of conducting an on site stock take. If the company is in any way prevented or excluded from entering upon the customer's premises or any premises where the goods might be situated the customer acknowledges and agrees that the company shall be entitled to immediately invoice the customer for all the goods that have been provided to the customer upon consignment by the company.

11. Personal Property Securities Act (PPSA)

- 11.1 The customer acknowledges and agrees that the supply of goods by the company is a contractual agreement which gives rise to a security interest as defined under the PPSA. The company may exercise its rights under the contract or the PPSA.
- 11.2 The company may register a personal property security interest under PPSA before the security interest attaches to the goods as well as when it considers the security interest has arisen from the contract.
- 11.3 The company may register a Purchase Money Security Interest as defined under section 14 (including for a commercial consignment) and that the customer agrees that the company is entitled to secure its interest when registering the relevant Financing Statement.
- 11.4 Pursuant to clause 6 of the Terms and Conditions, the company's security interest secures all monies owed by the customer for the goods supplied and all proceeds of the goods.
- 11.5 The purchaser agrees to assist the company as far as possible, in its right to register a security interest which has arisen from the contract of sale.
- 11.6 The customer accepts to waive its right to receive a copy of a Verification Statement or any other notice as provided under section 157 of the PPSA. Furthermore, the customer waives its right to request or receive information from the company under section 275 of the PPSA except as provided for in section 275 (7).
- 11.7 Notwithstanding section 115 or other provisions of the PPSA, the customer shall not derogate from the terms of the contract.

12. Right to terminate contract

The company shall be entitled, without prejudice to its other rights and remedies, to terminate or suspend the whole or any part of this contract and any other contract between the company and the customer, if the customer fails to adhere to any of the terms and conditions of sale and service or if the customer obtains an unfavourable report on the customer's financial standing; or if the customer becomes insolvent, enters into any composition or arrangement with its creditors, or a manager, receiver or provisional liquidator or liquidator or administrator is appointed to the customer's business.

13. Governing law

These terms and conditions and any contract including them shall be governed and construed in accordance with the laws of Western Australia. The customer agrees to submit to the non-exclusive jurisdiction of the Western Australian courts for all purposes of or in connection with such contracts.

Effective 1st October 2015