

## TERMS AND CONDITIONS OF PURCHASE

The following terms and conditions (“the terms”) apply to the purchase and/or delivery of the goods (“the Goods”) between Sims Pacific Metals Limited Company Number 557908 (“Sims”) and the supplier of the Goods (“the Supplier”) as set out on the attached ticket.

- 1. RISK AND TITLE:** Upon Sims taking possession of the Goods, title to and risk in the Goods will pass to Sims.
- 2. PURCHASE PRICE:** The purchase price for the Goods will be as agreed between the parties and in the absence of any such agreement, will be the market price for the Goods as determined by Sims at its sole discretion, acting reasonably.
- 3. CONDITION OF GOODS:** The Supplier warrants that the Goods are of [merchantable] / [acceptable] quality, free from defects, fit for purpose, contain no hazardous or prohibited material and are in accordance with any specifications agreed to between Sims and the Supplier. The Supplier further warrants that the Goods are free from any security interests (as that term defined in the Personal Property Securities Act 1999 (as amended)).
- 4. PAYMENT TERMS:** Subject to point 5. below or as otherwise addressed in a specific supply agreement between Sims and the Supplier, where the Supplier elects to invoice Sims for the Goods supplied, Sims will make payment within 28 days from the date Sims receives a valid tax invoice from the Supplier with respect to the Goods supplied to Sims. The Supplier acknowledges and agrees that it is the Supplier’s obligation to issue a valid tax invoice to Sims and that invoices must be submitted promptly by the Supplier after delivery of the Goods.
- 5.** If the Supplier elects for Sims to issue a Buyer Created Tax Invoice (“BCTI”) for the Goods supplied to Sims, Sims will issue the BCTI and make payment within 28 days from the date Sims receives the Goods from the Supplier.
- 6.** In all other cases, payment will be made by Sims within 28 days of presentation by the Supplier of proof of delivery of the Goods to Sims.
- 7.** Where an amount is payable by the Supplier to Sims, payment of that amount will be made by the Supplier to Sims within 7 days of delivery of the Goods to Sims, unless otherwise agreed by Sims in writing.

- 8. OBLIGATION TO PROVIDE INVOICE AND SUPPORTING DOCUMENTS:** Where the Supplier is required to issue a tax invoice or provide proof of delivery to Sims for payment and the Supplier fails to do so within 12 months of the date of delivery, the Supplier acknowledges and agrees the following:
- (a) Sims is under no obligation to accept the tax invoice for the Goods or part thereof;
  - (b) Sims is under no obligation to make payment for the supply of the Goods or part thereof; and
  - (c) Any payment made by Sims will be at its sole discretion, acting reasonably.
- The Supplier acknowledges and agrees that the terms and conditions of payment as set out in clauses 4, 5, 6 and 7 are reasonable and necessary for the protection of the legitimate interests of Sims and do not constitute a penalty.
- 9. INSPECTION:** Upon delivery, Sims will have the right to inspect the Goods. If Sims determines, acting reasonably, that the Goods have not been supplied in accordance with these terms, or as agreed between the parties, then Sims may give notice to the Supplier that it has rejected the Goods and the Supplier must immediately, at its cost, arrange for the collection of the Goods.
- 10. INDEMNITY:** The Supplier indemnifies Sims against any liability, loss, cost or damage suffered or incurred by Sims as a result of the Supplier's failure to adhere to these terms and any other agreement in relation to the supply of the Goods.
- 11. MICELLANEOUS:** These terms may be varied by Sims on reasonable notice.
- 12.** These terms are governed by the laws of New Zealand, and the Supplier irrevocably submits to the nonexclusive jurisdiction of the courts of New Zealand.
- 13.** The failure of Sims to enforce any of the terms of any time or for any period of the time does not affect its rights to later enforce the same.
- 14.** Any provision of these terms which is prohibited or unenforceable in New Zealand will be ineffective in New Zealand to the extent of the prohibition or unenforceability and may be severed from the terms. This will not invalidate the balance of the terms nor affect the validity or enforceability of the provision in any other jurisdiction.