

TERMS AND CONDITIONS OF SALE

The following terms and conditions (“the terms”) apply to the sale and/or delivery of the goods (“the Goods”) by Sims Pacific Metals Limited Company Number 557908 (“the Seller”) to the person (“the Buyer”) identified on the Seller’s sales docket (“the Sales Docket”).

- 1. DELIVERY:** Delivery times are approximate only, and the Seller accepts no liability for any loss incurred by the Buyer in respect of delays or failure in delivery. Risk in the Goods passes to the Buyer upon delivery.
- 2. PRICE:** The price for the Goods as specified on the Sales Docket is exclusive of all delivery, freight and insurance costs and all other expenses, taxes and duties payable in respect of the Goods, which are payable by the Buyer. The Seller reserves the right to increase prices to take account of increases in costs to the Seller of supplying the Goods, provided that in so doing, the Seller acts reasonably. All clerical errors in prices are subject to correction by the Seller.
- 3. PAYMENT:** Unless otherwise expressly agreed, the Buyer must pay the Seller for the Goods no later than the date specified on the Sales Docket. The Seller is entitled to charge interest on overdue payments at the rate of 8% per annum and/or refuse to make further deliveries to the Buyer until full payment is received. The Seller retains title to the Goods and all other Goods sold by the Seller to the Buyer until payment in full of all monies due in respect of the Goods and all other Goods and services supplied by the Seller to the Buyer from time to time. Goods belonging to the Seller must be stored so as to be identifiable as such. Prior to payment, the Buyer shall not deal in any way with the Goods nor part with possession nor act in any way inconsistent with the Seller’s ownership of the Goods. If the Buyer incorporates the Goods into composite products, title in the composite products shall vest in the Seller until payment in full is received, and the proceeds from any sale or other disposition prior to payment in full shall belong to the Seller to the extent of all sums due. The Seller’s right to retain title shall not affect its rights as an unpaid seller.

- 4. WARRANTY/LIMITATION OF LIABILITY:** Subject to relevant law, these Terms set out the entire liability of the Seller in respect of the Goods and all other conditions or warranties, expressed or implied, are excluded. In no event shall the Seller be liable for consequential loss or special, indirect or consequential damages.

If the Buyer does not give notice to the Seller of any alleged defect in the Goods or non-compliance with the contract specifications within 5 working days of delivery or unless otherwise specified, the Buyer is deemed to have accepted the Goods and the Buyer is bound to pay for the same accordingly. If any Goods delivered to the Buyer are defective or otherwise not in accordance with the contract specifications, and the Seller has received notice in accordance with these Terms, then to the extent permitted by the law, the Seller's liability is limited at its option, either to the replacement of the Goods or the refund of that portion of the price applicable to those Goods.

- 5. TERMINATION:** The Seller has the right to withhold deliveries to the Buyer and to terminate any contract for sale of the Goods and retain any payments already made if:
- 6.** the Buyer defaults in any of these Terms;
 - 7.** the Buyer enters into any scheme of arrangement with its creditors or enters into voluntary administration liquidation or has an administrator receiver or receiver and manager appointed for all or part of its assets.
 - 8.** Termination is without prejudice to the Seller's right to recover payment from the Buyer for Goods or to recover the Goods themselves under clause 3 of these Terms delivered before termination.

The Seller is deemed not to be in breach of these Terms if the performance of the Seller's obligations under these Terms is adversely affected by operation of events beyond its reasonable control.

Upon termination for any reason, the Seller shall be entitled to enter the Buyer's premises with or without notice and to re-take possession of the Goods, or their composite products in respect of which title has not passed to the Buyer at that date.

- 9. MISCELLANEOUS:** These Terms are subject to variation by the Seller, provided that the Seller gives reasonable notice to the Buyer of such variation.
- 10.** The terms of any Advance Agreement entered into between the Seller and the Buyer prevail in the event of any inconsistency with the Terms.
 - 11.** These Terms are governed by the laws of New Zealand, and the Buyer and the Seller irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

The failure of the Seller to enforce any of these Terms at any time or for any period of time does not affect its right to later enforce the same.