



Issue Date: May 2007

Standard Conditions of Purchase

1. Interpretation

In these Conditions -

Confidential Information means these Conditions and any information relating to these Conditions, including, but not limited to, the price paid by the Purchaser to the Supplier for the Goods or Services (or both) and any information of whatever nature and in whatever form relating to the Purchaser's business. Confidential Information does not include information which is in the public domain, becomes part of the public domain without the fault of the Supplier, or is or becomes available to the Supplier by a third party lawfully in possession of such information and who was under no obligation to the Purchaser to maintain such information in confidence.

Contract means the contract constituted by the Supplier's acceptance of this Order.

Goods means the goods supplied by or on behalf of the Supplier pursuant to this Order and includes any other materials supplied by the Supplier for the purposes of this Order and any other matter incidental to the performance of the Supplier's obligations under the Contract.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any related Act or regulation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

OHS Legislation includes but is not limited to all statutes, regulations, international standards, Australian Standards and industry codes of practice.

Order means the purchase order sent, faxed, electronically delivered or otherwise delivered by the Purchaser to the Supplier.

Purchaser means the Australian Tube Mills legal entity named in the Order or a related body corporate (within the meaning of the *Corporations Act 2001*).

Services means the provision of services by or on behalf of the Supplier pursuant to this Order and includes any other matter incidental to the performance of the Supplier's obligations under the Contract.

Supplier means the person, persons, entity, firm or company to whom this Order is addressed and shall include its administrators, successors, sub-contractors and permitted assignees.

2. Order

2.1 This Order by the Purchaser shall be deemed to be an offer to the Supplier to enter into the Contract only upon the Conditions contained herein. The offer set out in this Order will be taken to be accepted by the Supplier accepting this Order in writing, or by delivering the Goods or Services (or both), whichever is the first to occur. Subject only to Conditions 2.2 and 2.3 below:

- (a) this Order is not capable of acceptance on any other terms;
- (b) the Conditions contained herein constitute the entire agreement between the parties in respect of the supply of the Goods or the provision of the Services (or both) in accordance with this Order; and
- (c) the parties agree that the Conditions contained herein shall supersede and replace any other term, condition, agreement, contract, arrangement, understanding, negotiation and correspondence between the parties in respect of the supply of the Goods or the provision of the Services (or both).

- 2.2 The Purchaser may include additional terms into the offer by providing a written copy of them to the Supplier accepting this Order. Upon acceptance of this Order in accordance with Condition 2.1, such additional terms will form part of the Contract.
- 2.3 The Conditions contained in this Order may only be modified or qualified (or both) by writing, signed on behalf of the Purchaser.

3. Price, Payment and GST

- 3.1 The price of the Goods or Services (or both) ordered shall be the price set out in this Order, which may not be varied without the prior written consent of the Purchaser.
- 3.2 Unless otherwise previously agreed to by the Purchaser and subject to Condition 3.6 the Purchaser will pay the Supplier within 62 days after the end of the month in which the Supplier's valid tax invoice is received by the Purchaser or the Supplier has delivered the Goods or Services, whichever is the later.
- 3.3 Any price set out in this Order as payable for a supply to be made under or in connection with this Order is taken not to include an amount in respect of GST unless this Order is described as being inclusive of GST.
- 3.4 Supply under or in connection with this Order or in connection with any matter or thing occurring under this Order to another party (the "Recipient") and the price payable for the Taxable Supply does not include GST, the Supplier will be entitled to recover from the Recipient the amount of any GST payable on the Taxable Supply at the same time and subject to the same conditions as the price.
- 3.5 Where a party is entitled, under or in connection with this Order or in connection with any matter or thing occurring under this Order, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) any Input Tax Credits available in respect of those costs.
- 3.6 A party will not be obliged to pay any amount in respect of GST to the other party unless and until a valid tax invoice (being an invoice that complies with the GST Legislation) has been issued in respect of that Taxable Supply.
- 3.7 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the Taxable Supply (taking into account any Adjustment Events that occur in relation to the Taxable Supply), an adjustment shall be made. If the amount paid by the Recipient exceeds the GST on the Taxable Supply, the Supplier shall refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the Taxable Supply, the Recipient shall pay the deficiency to the Supplier.
- 3.8 In this Condition 3, "Adjustment Event", "GST", "Input Tax Credit" and "Taxable Supply" have the meaning given to them in the GST Legislation.

4. Packaging

- 4.1 The Supplier shall suitably pack or otherwise prepare for shipment all Goods. No charge shall be made for any wrapping, packaging, cartons, crating, boxing or the like, unless expressly provided in this Order. No charge shall be made for any transport or handling costs whatsoever, including, without limiting the generality of the



Issue Date: May 2007

Standard Conditions of Purchase

foregoing, any charges for freight, carriage or shipping, unless expressly provided for in this Order.

- 4.2 The Supplier shall, at its own expense, comply with all applicable Australian and international laws, regulations, standards and other applicable requirements relating to the packaging, storage, handling and use of the Goods, including, but not limited to:
- (a) the *Dangerous Goods Act 1985*, the *Occupational Health and Safety (Hazardous Substances) Regulations 1999*, the *Dangerous Goods (Storage and Handling) Regulations 2000*, and any other associated or related legislation or regulations; Standard Conditions of Purchase - Issue Date: 1 August 2004
 - (b) the *Customs Act 1901*, and any other applicable customs legislation or regulations ;
 - (c) the *Trade Practices Act 1974*, and any other associated or related legislation or regulations;
 - (d) the *Commerce (Trade Descriptions) Act 1905*, and any other applicable trade descriptions legislation or regulations; and
 - (e) the *National Measurement Act 1960*, and any other applicable measurements legislation or regulations.
- 4.3 All hazardous Goods must be clearly marked by the Supplier as hazardous in accordance with international danger symbols, must display the name of the material and be accompanied by applicable Materials Safety Data Sheets.
- 4.4 The Supplier shall, at its own expense, be responsible for preparing and providing all necessary approval documentation, packing declarations and any fumigation treatments prior to delivery of the Goods.

5. Quality and related matters

- 5.1 The Supplier warrants and represents to the Purchaser that the Goods will:
- (a) conform to any blueprints, samples and specifications provided by the Purchaser to the Supplier. Where any such blueprints, samples or specifications are not provided by the Purchaser, the Goods will conform to applicable Australian standards and codes;
 - (b) be of merchantable quality, fit for the purpose for which they were supplied and of a standard of safety persons generally are entitled to expect;
 - (c) be free from defects in materials, workmanship and design; and
 - (d) be free from all liens and encumbrances, and that the Supplier has, and passes to the Purchaser, good title in the Goods.
- 5.2 The Supplier warrants and represents to the Purchaser that any Services will:
- (a) be provided with due care and skill by competent and trained personnel; and
 - (b) any materials supplied in connection with the provision of the Services will satisfy the warranties set out in Condition 5.1 above.
- 5.3 The Supplier warrants and represents to the Purchaser that the Goods or Services (or both) will:

- (a) comply with any conditions or warranties imposed by law;
- (b) not, nor will any use of any of the Goods or other materials supplied for any purpose for which it was supplied, infringe any industrial or intellectual property rights of any third party; and
- (c) comply with any other requirements set out in this Order.

- 5.4 In the event that the Supplier or its servants, agents, independent contractors or sub-contractors receive Confidential Information, the Supplier shall not, and the Supplier will ensure that its servants, agents, independent contractors or sub-contractors do not, use or disclose such information unless with the prior written consent of the Purchaser, such information is already in the public domain (other than as a result of a breach of this condition), or disclosure is required by law.
- 5.5 The Purchaser has the right to cancel the Contract (or any outstanding part thereof) if in its sole opinion the Goods or Services (or both) supplied do not comply with any of the requirements set out in this Condition 5 or are otherwise unsatisfactory, or the Supplier breaches any of these Conditions. In addition to and without prejudice to any other rights or remedies available to the Purchaser, the Supplier agrees to, at the Purchaser's discretion, either replace the Goods or Services (or both) rejected or reimburse the Purchaser for any monies paid for the Goods or Services (or both) rejected, including the costs reasonably incurred by the Purchaser in connection with the rejection of such Goods or Services (or both). All rejected Goods shall be held by the Purchaser at the Suppliers own risk. If the Supplier, after notification of the rejection, fails to provide for prompt collection of the rejected Goods, the Purchaser may return the Goods, to the Supplier, at the Supplier's expense. The Purchaser shall not be liable for any loss, damage, cost or expense howsoever arising from such a cancellation.
- 5.6 The Supplier shall maintain, at its expense, insurance which is reasonable in the circumstances of this Order, including, without limitation, public liability insurance with a minimum cover of \$10,000,000 and product liability insurance, employers liability and workers' compensation insurance, transit and freight liability insurance, and product damage insurance.

6. Delivery, Risk and Title

- 6.1 Goods in transit are at the Supplier's risk and shall be delivered on a Delivered Duty Paid ("DDP") basis as defined in the International Chamber of Commerce Incoterms 2000. Supplier is responsible for all costs and risks involved in delivering and unloading the goods at the Purchaser's named place of destination.
- 6.2 Time is of the essence. The date and place for delivery of the Goods or Services (or both) shall be the date and place set out in this Order unless otherwise agreed between the Supplier and the Purchaser. If the Goods or Services (or both) are not delivered or provided by the Supplier by the date and at the place specified in this Order or as otherwise agreed between the Supplier and the Purchaser, the Purchaser shall be entitled to cancel the Contract (or any outstanding part thereof) in accordance with Condition 5.5.
- 6.3 Any excess transportation costs incurred in ensuring timely delivery will be at the Supplier's expense.
- 6.4 The Supplier shall ensure that all deliveries are accompanied by a delivery docket quoting the Order number. Delivery dockets not



Issue Date: May 2007

Standard Conditions of Purchase

quoting the Order number or the correct Order number will be returned to the Supplier for notation. Such invoices shall be void and of no effect.

- 6.5 The Supplier shall ensure that all Materials Safety Data Sheets applying to any Goods are provided to the Purchaser before delivery of such Goods.
- 6.6 Subject to a satisfactory count and inspection, delivered Goods will be accepted by the Purchaser upon delivery. The Purchaser reserves the right on completion of such a count or inspection to cancel the Contract (or any outstanding part thereof) in accordance with Condition 5.5.
- 6.7 Without limiting the Purchaser's right to cancel the Contract (or any outstanding part thereof) in accordance with these Conditions, title in the Goods delivered passes to the Purchaser upon delivery to the Purchaser.

7. Liability

The Supplier assumes all risks and liability and shall indemnify and keep indemnified the Purchaser, its servants, agents, independent contractors or sub-contractors against any claim, action, loss, damage, injury, expense and any other liability of any kind whatsoever, whether consequential or otherwise, resulting from, arising out of, or in connection with, any act, default, breach, including but not limited to, a breach of any of the Conditions contained in this Order or a breach of a statutory duty, negligence or any tort, by the Supplier or its servants, agents, independent contractors or sub-contractors and against any claim by a third party alleging infringement of any intellectual or industrial property rights.

8. Contractors

In addition to the Conditions set out above, the following terms shall apply if the Supplier's servants, agents, independent contractors or sub-contractors are required to perform any services or work of any kind on any on the Purchaser's premises in connection with, in carrying out or fulfilling this Order ("the Contracting Works"):

- 8.1 The Supplier shall ensure that all persons employed or engaged by the Supplier to carry out the Contracting Works will:
 - (a) possess the necessary skills and experience to carry out the Contracting Works;
 - (b) carry out the Contracting Works in a professional manner and with due care and skill;
 - (c) comply with all workplace policies, including privacy, sexual harassment and discrimination, and occupational health and safety policies of the Purchaser and attend all training provided by the Purchaser in respect of these policies;
 - (d) maintain harmonious industrial relations which are consistent with the Purchaser's standards and practices; and
 - (e) not endanger the health and safety of any person in the Purchaser's premises.
- 8.2 The Supplier shall comply with all legal requirements, including without limiting the generality of the foregoing, all requirements set out in any law, ordinance, regulation, bylaw, order, proclamation and with the lawful requirements (including the obtaining of all

necessary permits) of public, municipal and other authorities, which in any way affect or are applicable to the provision of the Contracting Works.

- 8.3 All intellectual property rights in any report, documentation, information, software, invention, trade mark, design, patent, copy right and any other form of intellectual or industrial property created by the Supplier or the Supplier's servants, agents, independent contractors or sub-contractors in carrying out the Contracting Works shall immediately be assigned to and vest in the Purchaser as such rights are created. The Supplier agrees to do, at the request of the Purchaser, all such acts and execute all such documents that are necessary to give effect to this condition.
- 8.4 The relationship between the Purchaser and the Supplier, including the Supplier's servants, agents, independent contractors or sub-contractors, is that of principal and independent contractor. Nothing in these Conditions shall be taken as constituting the relationship of employer and employee or principal and agent. The Supplier acknowledges that it and its servants, agents, independent contractors or sub-contractors have no claim upon the Purchaser in respect of annual or other leave or claims under worker's compensation legislation, or any other legislation or regulations affecting or relating to the relationship between an employer and employee ("Employee Entitlements"). The Supplier agrees to indemnify and hold harmless the Purchaser against any claim, action, damage, loss, expense or any other liability arising out of, or in connection with, a claim by the Supplier's servants, agents, independent contractors or sub-contractors for Employee Entitlements.
- 8.5 The Supplier shall, at all times and as a minimum, comply with all OHS Legislation and any of the Purchaser's occupational health & safety requirements that are relevant to the supply. Such requirements shall be incorporated into and form part of the Contract. This Condition 8 applies to the Supplier in its capacity as employer, principal contractor, controller of work premises/ plant/substances and designer/manufacture/supplier of plant/substances as applicable for any supply under these Conditions.
- 8.6 Non-compliance by the Supplier or its servants, agents, independent contractors or sub-contractors with the conditions set out in this Condition 8 shall entitle the Purchaser to cancel the Contract (or any outstanding part thereof) and if the Contract is so cancelled, the Purchaser may direct the Supplier's servants, agents, independent contractors and subcontractors to immediately cease all work and to immediately leave the Purchaser's premises.
- 8.7 The Supplier assumes all risks and liability for and shall indemnify and keep indemnified the Purchaser, its property, servants, agents, independent contractors or sub-contractors against any claim, action, loss, damage, injury, expense and any other liability of any kind whatsoever, whether consequential or otherwise, resulting from, arising out of, or in connection with, any act, default, breach, including but not limited to, a breach of any of the conditions set out in this Condition 8 or a breach of a statutory duty, negligence or any tort, by the Supplier or its servants, agents, independent contractors or sub-contractors in carrying out or in connection with the Contracting Works.

9. General



Issue Date: May 2007

Standard Conditions of Purchase

- 9.1 The Supplier shall not assign any of its rights under the Contract. The Purchaser may assign or require a novation to, any financially responsible person ("**the Assignee**") of all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under, or from the Contract provided that the Assignee agrees to assume any duties and obligations of the Purchaser under the Contract so assigned or novated. Thereafter, the Supplier agrees that the Purchaser is released and discharged from all its duties and obligations so assigned or novated. The Supplier agrees to sign or execute any such documents as may be reasonably necessary to give effect to such assignment or novation and such release and discharge. It is agreed that the sale of all or substantially all of the issued shares in the share capital of the Purchaser or the allotment of new shares by the Purchaser shall not be deemed to be an assignment or novation of the Contract and such sale or allotment shall not affect, modify, abrogate or terminate the Contract or the validity or enforceability thereof.
- 9.2 Any provision of these Conditions or Contract that is or becomes illegal, invalid, void or unenforceable in any jurisdiction, is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions or affecting the validity or enforceability of that provision in any other jurisdiction.
- 9.3 The Contract shall be governed and construed in accordance with the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria.
- 9.4 The Purchaser's failure or delay to exercise any right or remedy provided for in the Contract shall not operate as a waiver of that power or right, nor does the Purchaser's single exercise of a right or remedy preclude any other exercise of it or the exercise of any other right or remedy. A right or remedy may only be waived by the Purchaser in writing.