

**In this document ("Terms and Conditions"):**

- (a) "Application" means the application by the Customer to Australian Tube Mills for commercial credit;
- (b) "Contract" means the contract formed between Australian Tube Mills and the Customer by an Order accepted by an Order Acknowledgment;
- (c) "Customer" means the person placing the Order with Australian Tube Mills;
- (d) "Goods" means any goods, products, services or materials to be supplied by Australian Tube Mills;
- (e) "Australian Tube Mills" means Australian Tube Mills Pty Limited (ABN 85 123 160 172);
- (f) "Order" is defined in clause 1(a);
- (g) "Order Acknowledgment" is defined in clause 1(b);
- (h) unless otherwise stated, an expression used or defined in the Corporations Act 2001 has the same meaning in the Terms and Conditions.

**1. Orders, Order Acknowledgments and Contract**

- (a) An order or an offer to purchase can be made by the Customer in writing or verbally.
- (b) An Order is accepted when the Customer receives from Australian Tube Mills an order acknowledgment in writing or if writing is not received, acknowledgment verbally or delivery, whichever first occurs.
- (c) When an Order is accepted by an Order Acknowledgment the Contract will be wholly documented by (in descending order of precedence) any specific term(s) agreed in writing, the Order Acknowledgment and these Terms and Conditions.
- (d) Previous dealings between Australian Tube Mills and the Customer shall not have any effect on the Contract.
- (e) Trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract.
- (f) A Contract constitutes the entire agreement between Australian Tube Mills and the Customer with respect to the Goods supplied under the Contract, all prior negotiations, proposals and correspondence are superseded by that Contract and these Terms and Conditions will in all circumstances prevail over the Customer's terms and conditions of purchase (if any).

**2. Prices**

- (a) Unless otherwise agreed in writing, the price charged for the Goods shall be (i) exclusive of any transaction tax ("transaction tax" includes the goods and services tax as well as any identified or new transaction taxes that come into existence after the effective date of these Terms and Conditions), and (ii) as per the price ruling as determined by Australian Tube Mills at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling as at that date of delivery.
- (b) Where a product margin is included on the invoice for Goods the Customer will pay that product margin in addition to any quoted price.
- (c) Where a transaction tax applies to any supply made under these Terms and Conditions, Australian Tube Mills may recover from the Customer an additional amount on account of that transaction tax.
- (d) Notwithstanding any provision in the Contract, Australian Tube Mills may increase the price of Goods after an Order Acknowledgment and prior to delivery of the Goods if the price increase results from an increase in the price of any inputs which comprise part of the Goods.

**3. Delivery**

Australian Tube Mills will make all reasonable efforts to have the Goods delivered to the Customer or his designated agent as agreed between the parties (or if there is no specific agreement then at Australian Tube Mills' reasonable discretion), but Australian Tube Mills shall not be liable for (a) any failure to deliver or delay in delivery for any reason; or (b) any damage or loss due to unloading or packaging; or (c) damage to property caused upon entering premises to deliver the Goods. Any costs incurred by Australian Tube Mills due to any failure by the Customer to accept the Goods at time of delivery will be reimbursed by the Customer to Australian Tube Mills. Except as required by law, Australian Tube Mills will be under no obligation to accept Goods returned for any reason.

**4. Standard Grades of Material**

- (a) Subject to clause 4(b), Australian Tube Mills will use its reasonable endeavours to:
  - i) supply Goods having the grade of material specified in the Order Acknowledgment; and
  - ii) ensure that the Goods' grade of material as specified in the Order Acknowledgment will, unless otherwise agreed, be in accordance with applicable Australian Standards and/or as detailed in any current, relevant price schedules, product handbooks or other product literature of Australian Tube Mills.

- (b) Goods supplied which are not manufactured by Australian Tube Mills (or to the extent that they are not manufactured by Australian Tube Mills) are subject to the chemical composition, physical properties and product standards of the original manufacturer, and by such warranty as specified by the original manufacturer (if any), and Australian Tube Mills does not, unless specifically required by law, give any warranty beyond such warranty.

**5. Payment**

Payment for the Goods must be made in full (without any set off) and received by Australian Tube Mills by the last business day of the month following the month of delivery unless otherwise identified by Australian Tube Mills on any statement of account or invoice. Payment is only received by Australian Tube Mills when it receives cash or when the proceeds of other methods of payment are credited and cleared to Australian Tube Mills' bank account.

**6. Title and related matters**

- (a) The legal and equitable title to the Goods will only be transferred from Australian Tube Mills to the Customer when the Customer has met and paid all that is owed to Australian Tube Mills on any account whatsoever.
- (b) The Customer acknowledges that until the Customer has met and paid all that is owed to Australian Tube Mills on any account whatsoever, the Customer holds the Goods as bailee for Australian Tube Mills and that a fiduciary relationship exists between the Customer and Australian Tube Mills.
- (c) Until Australian Tube Mills receives full payment of all monies due to it from the Customer, the Customer shall keep the Goods separate and in good condition as a fiduciary of Australian Tube Mills, clearly showing Australian Tube Mills' ownership of the Goods and, shall keep books recording Australian Tube Mills' ownership of the Goods and the Customer's sale or otherwise of them in accordance with paragraphs 6(e) and 6(f). The Customer if required, shall deliver the Goods up to Australian Tube Mills.
- (d) If the Customer defaults, in addition to clause 7(b), Australian Tube Mills may take possession of the Goods wherever the Goods are located and the Customer agrees that representatives of Australian Tube Mills may enter upon the Customer's premises for that purpose.
- (e) Despite paragraph 6(a), the Customer may sell as fiduciary agent for Australian Tube Mills the Goods to a third party in the normal course of the Customer's business provided that where the Customer is paid by that third party, the Customer holds the proceeds of sale to the extent of the amount owing by the Customer to Australian Tube Mills at the time of receipt of such proceeds on trust for Australian Tube Mills. The Customer must keep those proceeds separate on trust for Australian Tube Mills and not mix those proceeds with any other monies.
- (f) If the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as related to the Goods on trust for Australian Tube Mills. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to Australian Tube Mills at the time of the receipt of such proceeds. The Customer must keep that part of the proceeds separate on trust for Australian Tube Mills and not mix those proceeds with any other monies.

Notwithstanding the above, the Customer is still required to pay Australian Tube Mills for Goods already delivered and for Goods manufactured or ordered to specification and not yet delivered.

**7. Default**

- (a) The Customer will be in default if:
  - i) the Customer breaches the Terms and Conditions;
  - ii) payment for the Goods has not been received by Australian Tube Mills by the due date of payment;
  - iii) the Customer being an individual commits an act of bankruptcy or becomes an insolvent under administration;
  - iv) the Customer being a body corporate becomes an externally-administered body corporate or has an application for winding up filed against it;
  - v) Australian Tube Mills forms the opinion that the Customer's credit worthiness or credit standing alters from that indicated in its Application.
- (b) If the Customer defaults, Australian Tube Mills may:
  - i) treat the whole of the Contract and any other Contract with the Customer as repudiated and sue for breach of contract; and/or
  - ii) refuse to supply any Goods to the Customer; and/or

- iii) claim the return of any Goods in the Customer's possession where title has not passed to the Customer; and/or
- iv) without notice to the Customer withdraw or vary any credit Australian Tube Mills has provided to the Customer; and/or
- v) without notice to the Customer make all monies owing by the Customer to Australian Tube Mills on any account immediately due and payable;

**8. Risk.** Risk in the Goods passes to the Customer upon delivery (including all risks associated with unloading) or upon title in the Goods passing to the Customer, whichever is the earlier.

**9. Credit**

- (a) Australian Tube Mills may grant the Customer credit upon the Terms and Conditions on the basis of the Application and such other documents and information as may be required by Australian Tube Mills.
- (b) Until Australian Tube Mills grants the Customer credit by notice in writing, Australian Tube Mills will only supply Goods to the Customer on the basis of cash in advance.
- (c) The granting of credit does not oblige Australian Tube Mills to extend any particular amount of credit to the Customer.
- (d) The Customer must notify Australian Tube Mills in writing if there is any change in the shareholding or ownership of the Customer or any material change in the Customer's financial position.
- (e) The Customer agrees that if requested by Australian Tube Mills the Customer will:
  - i) change in favour of Australian Tube Mills all beneficial interests (freehold and leasehold) in real estate held now or in the future by it as security for payment of all and any moneys payable by the Customer to Australian Tube Mills.
  - ii) execute a mortgage or other instrument of security in form requested by Australian Tube Mills.

**10. Intellectual Property**

- (a) The Customer warrants to Australian Tube Mills that all documents provided by the Customer are accurate and that Australian Tube Mills is entitled to use all such documents for the purposes of the Contract and that such use does not infringe any third party's intellectual property rights.
- (b) The Customer indemnifies Australian Tube Mills against all claims and all losses and damages incurred by Australian Tube Mills as a result of documents provided by the Customer to Australian Tube Mills for the purposes of or in the course of the supply of the Goods breaching a third party's intellectual property rights.
- (c) If the Customer receives any confidential information from Australian Tube Mills the Customer may not use or disclose such information unless it receives the prior written consent of Australian Tube Mills, such information enters the public domain (other than as a result of a breach of this paragraph) or the use or disclosure is required by law.

**11. Force Majeure**

Australian Tube Mills is not liable for failure to perform the Contract to the extent and for so long as its performance is prevented or delayed because of:

- (a) circumstances outside Australian Tube Mills' control;
- (b) failure of Australian Tube Mills' machinery; or
- (c) failure of a supplier to Australian Tube Mills.

**12. Representations and Fitness for Purpose**

- (a) Except as expressly provided to the contrary in the Contract, all representations, warranties, terms and conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- (b) The Customer agrees that if it is aware (or should be aware) that the Goods, the subject of an Order, are for a particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Customer will clearly specify that purpose or those characteristics in any such Order.

**13. Limitation of Liability**

- (a) Subject to clause 12(a), Australian Tube Mills' liability to the Customer (and any party claiming through the Customer against Australian Tube Mills) for any claim for loss or damages (including legal expenses) made in connection with the Contract for contract, tort (including negligence), under statute, in equity or otherwise shall be as follows:
  - i) if Australian Tube Mills is in breach of a Contract Australian Tube Mills' liability is strictly limited to: (A) for goods, products or materials the cost of replacement of the defective Goods as soon as reasonably practicable, or the repair of the defective Goods or the repayment (or allowance) of the invoice price of the defective Goods at the option of Australian Tube Mills; (B) for services, to the provision of the services again or payment of the cost of having the relevant services provided again at the option of Australian Tube Mills;

- ii) Australian Tube Mills' liability for breach of a Contract does not extend beyond the defective Goods to any other Goods that are part of an Order or otherwise;
- iii) where loss or damage is not covered by subparagraph 13(a)(i), Australian Tube Mills is not liable to the Customer under statute, in equity or in tort (including negligence or otherwise) for any loss or damage to person or property arising from or caused in any way by the Goods;
- iv) Australian Tube Mills shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods;
- v) "indirect, special or consequential loss or damage" includes: (A) any loss of income, profit or business; (B) any loss of goodwill or reputation; (C) any loss of value of intellectual property.
- (b) Any claim by the Customer in respect of defective Goods and/or damaged Goods must be made in writing within 14 days of the delivery of the Goods.
- (c) Australian Tube Mills' obligations in the event of paragraph 13(a) applying do not include:
  - i) the cost of removal of defective Goods whether installed or otherwise;
  - ii) the cost of installation of replacement or defective Goods;
  - iii) defects in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.

**14. Waiver**

Australian Tube Mills waives a right under a Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

**15. Severance**

If a provision of a Contract would, but for this clause, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result;
- (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.

**16. Variation**

Australian Tube Mills may vary the Terms and Conditions without notice to the Customer.

**17. Costs**

The Customer must pay Australian Tube Mills all costs and expenses incurred by Australian Tube Mills in connection with the Contract including legal expenses (on a solicitor-client basis), stamp duty and costs incurred in the recovery of monies owing by the Customer to Australian Tube Mills or in otherwise enforcing Australian Tube Mills' rights against the Customer under the Contract.

**18. Applicable Law**

This document is governed by the law of the State or Territory in which the Order is accepted by Australian Tube Mills and the courts of that State or Territory have non-exclusive jurisdiction in connection with this document. The Sale of Goods (Vienna Convention) Act 1986 (New South Wales) (and any similar legislation relating to the Vienna Convention in other States or Territories) does not apply to the Contract.

**19. Australian Tube Mills may Assign**

Without notice to the Customer, Australian Tube Mills may assign to any person this document and any Contract.

**20. Measures**

- (a) Any and all statements made by Australian Tube Mills as to weight, length, quantity or other characteristics of Goods are approximate and Australian Tube Mills may supply Goods on an actual or calculated basis.
- (b) A calculated basis will be in accordance with the applicable Australian standards.
- (c) Australian Tube Mills' statements as to weight, length, quantity or other characteristics are final and Australian Tube Mills is not liable for any errors in such statements unless the Customer gives Australian Tube Mills
  - i) written notice of any error within 14 days of delivery;
  - ii) a reasonable opportunity to examine and re-test the Goods before they are used or dealt with.

**21. Shortages**

- (a) The Customer will inspect and check all Goods received as soon as practicable upon unloading. No claim by the Customer for shortages of Goods may be made unless such claim is notified to Australian Tube Mills with forty-eight (48) hours of such inspection.
- (b) Australian Tube Mills will endeavour to rectify any shortages as soon as practicable after receiving notice but will not suffer any liability from or in respect of such rectification.