

## GENERAL CONDITIONS OF PURCHASE

### 1. CONTRACT

ThyssenKrupp Materials Australia Pty Ltd (ABN 94 078 033 520; NZ Overseas Company Number 5895457) ("**The Purchaser**") will only be bound by the written order appearing on the face of this document and duly signed by an employee or agent duly authorised by the Purchaser. This order together with all documents attached hereto incorporated herein by reference and including these General Conditions of Purchase constitutes the entire terms of the order ("**Order**"). The Purchaser does not and will not accept any counter offer to this Order. The Order shall contain the details relating to the purchase of the goods or the provision of the services ("**the Goods**" or "**the Services**") as well as details of the supplier of the Goods or Services ("**the Supplier**"). If this Order is not accepted by the Supplier then no agreement will be deemed to have been made between the Purchaser and the Supplier (and no servant or agent of the Purchaser is authorised to reach any agreement with the Supplier) in relation to the purchase of the Goods or the provision of the Services or part of the Goods or Services save and except if this Order is amended in writing by the Purchaser and duly signed by an employee or agent duly authorised by the Purchaser which amended or further order is then accepted by the Supplier. Performance of the Services or provision of the Goods by the Supplier shall be deemed as acceptance of the Order. If for whatever reason the Order is read in conjunction with any other terms and conditions, the terms of the Order shall prevail in the event of any conflict.

### 2. PRICE

The price/s specified in this Order ("**the Price**") will remain fixed and shall not be changed by either party unless agreed otherwise in writing.

### 3. TIME

Where any delivery date or other time limit is specified in this Order for the delivery of Goods or performance of the Services by the Supplier, time shall be of the essence and liquidated damages (if applicable) may be claimed by the Purchaser for failure by the Supplier to meet the said date or other time limits set out in the Order.

### 4. PAYMENT

Payment by the Purchaser to the Supplier shall become due and payable at the end of the calendar month following the month in which an invoice is received by the Purchaser. Unless previously otherwise agreed in writing an invoice shall be delivered by the Supplier to the Purchaser only following delivery and final acceptance of all the Goods or inspection and final acceptance of all the Services by the Purchaser including but not limited to any installation and/or fitting that is required under the terms of this Order. Without affecting any other rights of the Purchaser herein, any breach (actual or anticipated) by the Supplier shall entitle the Purchaser to withhold all and any payments due to the Supplier until said breach is rectified.

### 5. DELIVERY

The Supplier shall deliver the Goods or provide the Services to or at the delivery point by not later than the delivery date specified on this Order. The Supplier shall, where Goods are ordered or Services requested more than 72 hours in advance of the specified delivery/performance date, give the Purchaser at least 24 hours' notice of the actual delivery/performance time and allow the Purchaser to inspect the Goods on delivery. Subject to clause 9, property in the Goods shall pass to the Purchaser following delivery and final acceptance by the Purchaser. The Goods shall be delivered by the Supplier with all packaging and cartage costs paid by the Supplier.

### 6. INSPECTION

The Purchaser, its servants and/or agents shall at all times have the right and authority to inspect the Goods including all parts and components used or to be used in the manufacture of the Goods and/or the Services. The Purchaser may, at its sole and absolute discretion, reject all or any part or parts of the Goods and/or Services that do not conform, in any way, manner or form with the terms contained in this Order, and the Supplier shall supply replacement Goods or such part or parts of the rejected Goods or re-provide the Services under the terms of this Order and as if the replacement of Goods or re-provision of Services were the Goods or Services ordered by the Purchaser. Any such replacement shall not relieve the Supplier of any of its obligations under this Order, nor shall the Purchaser, by any inspection, be expressly or impliedly deemed to accept the Goods or Services or parts thereof.

### 7. TITLE

It is a condition of this Order that the Goods are and will be delivered free of all and any charges, liens, and other encumbrances whatsoever and that the Supplier has a good and marketable title to the Goods and that no patent, trademark, design or copyright is or will be infringed by the provision of the Goods or Services. The Supplier indemnifies the Purchaser absolutely and shall keep it indemnified against all and any damages, costs and expenses whatsoever and howsoever arising by reason of any breach by the Supplier of this condition.

### 8. WARRANTY

The Supplier warrants that the Goods and/or Services are, will be, and will remain, fit for the purpose for which they are supplied for a period of 12 months after their first use for commercial purposes following delivery or provision by the Supplier to the Purchaser. All and any materials used in the manufacture of the Goods or the provision of the Services shall be fit for the purpose for which they are used or to be used and all workmanship performed on or in relation to the Goods or the Services by the Supplier shall be carried out in a competent, diligent, professional and workmanlike manner.

The Supplier shall, at the sole and absolute discretion of the Purchaser replace, repair or refund any payments made, relating to any defective or non-conforming Goods.

The Supplier warrants and accepts full responsibility for any Goods or Services that it subcontractors to any subcontractor and this warranty shall be applicable in relation to any such subcontracted Goods or Services.

### 9. PROPERTY IN GOODS

Where the Purchaser has made part or full payment for the Goods, the title to and property in the Goods in respect of which payment has been made and any materials or parts used or to be used to form part of the Goods and then owned by the Supplier shall pass to the Purchaser and such material and/or parts shall be appropriately marked by the Supplier to indicate the Purchaser's title and that property has passed to the Purchaser arising while the Goods or part of the Goods are in the Supplier's possession, custody or control.

### 10. INSTALLATION OR FITTING

The following conditions shall apply where the Supplier provides Services in connection with this Order or with the installation and/or fitting of the Goods.

(a) If any Services and/or materials are considered by the Purchaser, in its sole and absolute discretion, to be defective or not in compliance with the Order in any way, manner or form, and the Supplier fails to remedy any such defect or default to the satisfaction and within the time as set by the Purchaser following the request of the Purchaser, then without limiting the Purchaser's right to claim damages and/or any other remedy as against Supplier, the defect or default may be remedied by the Purchaser or by any contractor of the Purchaser and the Supplier shall pay the Purchaser all and any costs relating to of such remedial work.

(b) The Supplier, shall be liable for, and indemnifies the Purchaser against, any loss, damage, claim or liability whatsoever, arising directly or indirectly out of the performance of the Services or the presence of the Supplier, its servants and/or agents on the Purchaser's premises including but not limited to any claims against the Purchaser whether alleging negligence on the part of the Purchaser or otherwise.

(c) The Supplier shall ensure all personnel it supplies to complete the Services will be suitably competent, and qualified to perform the works. Similarly, all equipment it uses to carry out the works, shall be in good working order and correctly certified and be fit for purpose.

### 11. EXCESS QUANTITY

In the event that the Supplier delivers a quantity of Goods in excess of those required by this Order, or goods not included in this Order, the Purchaser may return the excess quantities or un-ordered goods to the Supplier and the Supplier will be liable for all the costs incurred relating to such return.

### 12. VARIATIONS

(a) The Supplier shall not vary the Goods or Services required under the Order unless specifically requested to do so in writing by the Purchaser.

(b) In the event that the Purchaser requires, and the Supplier performs any variation to this Order, the terms of this Order shall, so far as the context and meaning permit, apply to the Order as varied.

(c) No variation shall vitiate any of the terms contained in this Order.

### 13. INSURANCE

The Supplier is required to obtain and retain during the currency of the Order and for 2 years thereafter, adequate insurances in relation to the Goods and/or Services including but not limited to insurances relating to Professional Indemnity, Motor Vehicle, Plant and Machinery, Storage, Contract Works and Transportation.

### 14. WAIVER

Waiver by the Purchaser of any breach or non-observance by the Supplier of any of the terms and conditions of this Order shall not be construed to be a general waiver, and such waiver shall relate only to the particular breach or non-observance in respect of which it was made.

### 15. LAWS AND REGULATIONS

The Supplier shall comply with all laws affecting the Goods and/or Services and shall obtain all necessary permits, licences and give any notice required and shall pay all and any fees, deposits and/or taxes in connection therewith.

### 16. INTELLECTUAL PROPERTY

"Intellectual Property" means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, inventions, patents, patent applications, know-how, software, moral rights, trademarks, design rights and copyrightable material, including, without limitation, reports, sketches, drawings, designs, plans, records, specifications, models, manuals and computer programs.

All Intellectual Property or other information supplied by the Purchaser shall remain the exclusive property of the Purchaser and shall be regarded by the Supplier, its servant and/or agents as highly secret and confidential. The Supplier shall not copy, publish or disclose to any third party without the Purchaser's prior written consent, nor use any part of such Intellectual Property or information except for the purpose of carrying out this Order. All Intellectual Property shall be returned immediately to the Purchaser on the Purchaser's demand. The Supplier shall remain the owner of all its Intellectual Property but hereby grants to the Purchaser, permission for the Purchaser to include, where applicable in the Purchaser's documentation to be supplied to its clients and/or its agent, any and/or all of the Supplier's Intellectual Property furnished or to be furnished by the Supplier in the provision of the Goods and/or Services.

The Supplier hereby grants to Purchaser an irrevocable, non-exclusive, perpetual, transferable, royalty-free license, for use throughout the world to any invention or other Intellectual Property developed for or used in connection with the Goods and/or Services, including without limitation those based wholly or in part on or derived from proprietary information received from the Purchaser.

### 17. INSOLVENCY

The Purchaser may cancel this Order without notice, payment or compensation to the Supplier if the Supplier becomes bankrupt, or, being a Company, if wound up, or if it passes or purports to pass a resolution to enter into liquidation, or if execution is levied on the Supplier's creditors other than for the purposes of reconstruction, or if a Receiver, or an administrator, is appointed.

### 18. APPLICABLE LAW

This Order and any contract which results from its acceptance shall be governed by and construed in accordance with the laws of New Zealand and Purchaser and Supplier submit to the exclusive jurisdiction of the Courts of New Zealand.

### 19. PURCHASER'S RIGHTS

Nothing contained in this Order shall in any way limit any rights of the Purchaser against the Supplier conferred otherwise than by the terms and conditions contained in this Order. Without limiting the generality of the foregoing, nothing contained in this Order shall in any way, manner or form, limit the rights of the Purchaser against the Supplier arising under statute, at law or in equity.

### 20. LIQUIDATED DAMAGES

If the Supplier fails to deliver the Goods or provide the Services by the date set out in the Order, the Supplier agrees that it shall be liable for liquidated damages at the per day rate and up to the maximum amount as set out in the Order. The Supplier agrees that any amount of liquidated damages as set out in the Order is a genuine pre-estimate of the damages the Purchaser is likely to suffer in the event of delayed delivery of the Goods or provision of the Services and is not a penalty. If no amounts are set out in the Order relating to liquidated damages, then liquidated damages shall not be applicable to the Order.

### 21. LIMITATION OF LIABILITY

Notwithstanding any other provision in this Order express or implied, the Purchaser shall not be liable to the Supplier whatsoever in contract, in tort (for negligence or gross negligence), in common law, in equity, under any indemnity, by operation of statute or otherwise, for any damages for direct or indirect loss of actual or anticipated profits, loss of opportunity, loss of revenue, loss of contract, loss of income, loss of production, loss of goodwill, loss of turnover, loss of business, loss arising from business interruption, loss of sales or any consequential, special, contingent or penal losses or damages whatsoever and (without prejudice to the foregoing) the Supplier shall at all times be limited to recovery of damages which have arisen directly out of this Order. Any liability of the Purchaser shall in any event be limited to the Price.

### 22. PRECEDENCE

This Order shall be understood by the Purchaser and the Supplier to have incorporated the terms and conditions herein written and that such terms and conditions shall take precedence over all and any other terms whether forming part of the offer of the Supplier or known to be included by such contractors to the Supplier.

### 23. SET OFF

Without prejudice to any other rights, the Purchaser may deduct from any monies which may be, or become, payable to the Supplier, any money due from the Supplier to the Purchaser under this or any other contracts or orders between the Supplier and the Purchaser. Nothing in this Order shall affect the right of the Purchaser to recover from the Supplier, the whole of the debt or any balance that remains owing after deduction.

### 24. CANCELLATION

Failure to comply with this Order may result in cancellation of the Order.