

# Terms of Sale

The Terms of Sale set out below ("Terms") are the terms applying to all sales of Pacific Steel products in New Zealand.

Effective as at 1 May 2018

## 1 APPLICATION

- 1.1 These Terms shall apply to all sales of Goods in New Zealand despite any verbal indication to the contrary by any person acting or purporting to act on behalf of Pacific Steel. Accordingly, the Customer must obtain Pacific Steel's written confirmation of all variations to these Terms (including all representations or understandings) which the Customer wishes to make.
- 1.2 Pacific Steel may vary these Terms from time to time and will provide the Customer with replacement Terms. The subsequent placing of an order by the Customer will be deemed as their acceptance of the replacement Terms.

## 2 ACCEPTANCE OF CUSTOMER ORDERS

- 2.1 Subject to Pacific Steel being satisfied (in all respects) with the Customer's order, Pacific Steel will issue an order confirmation ("Order Confirmation") to the Customer which will confirm acceptance by Pacific Steel of the Customer's order. Pacific Steel will not be liable to the Customer or any third party for declining any order. Pacific Steel will make all reasonable attempts to notify the Customer that it declines an order. In the event that the Customer disagrees with any of the information contained in the Order Confirmation, the Customer should notify Pacific Steel as soon as practicable and in any event within 10 (ten) Working Days of the date of the Order Confirmation or before dispatch of the order from Pacific Steel, whichever is earlier.
- 2.2 Unless the Customer so notifies Pacific Steel of any disagreement with the Order Confirmation in accordance with clause 2.1, the Order Confirmation shall be deemed to be correct. Each Order Confirmation constitutes a separate contract for the supply of the particular Goods on these Terms.

## 3 PRICE AND INDEMNITIES

- 3.1 Prices contained in Pacific Steel's price sheets exclude all Taxes, which are to be paid by Customer in addition to the price.
- 3.2 Unless otherwise specified by Pacific Steel, the price of the Goods shall be the price prevailing at the date of the Order Confirmation. If, as at the date the Order Confirmation, Pacific Steel has not set the price for the delivery period requested by the Customer, the price of the Goods will be the price for that delivery period as reasonably determined by Pacific Steel and notified to the Customer by a revised order confirmation.
- 3.3 A written quotation given by Pacific Steel is an offer to sell and the prices set out in such quotation applies in place of the prevailing price sheets issued by Pacific Steel with respect to the goods quoted. A written quotation expires on the date specified in the quotation as the "expiry date" or, if no date is specified, 14 Working Days after the date of the written quotation (unless extended by Pacific Steel in writing).

## 4 DELIVERY

- 4.1 Goods will be delivered by Pacific Steel or its agent to the destination stipulated in the Order Confirmation, with delivery occurring when the Goods arrive at the Customer's site and are ready for unloading. The Customer will provide equipment and facilities for the efficient receipt and safe prompt unloading of Goods.
- 4.2 The Expected Date is quoted in good faith but Pacific Steel reserves the right to despatch orders in whole or by instalments prior to that Expected Date or within a reasonable time thereafter. Any delay will not result in a breach of contract and the Customer shall not be entitled to terminate the order or to any other remedy whatsoever.
- 4.3 Pacific Steel also reserves the right to cancel, suspend, or delay despatch in the event of and during acts of God, wars, strikes, floods, fires, shortages of fuel, electricity, raw materials, transportation or labour, governmental controls or requirements, accidents or breakdowns in or to Pacific Steel's plant or machinery, or any other circumstances of any kind whatsoever beyond Pacific Steel's control affecting or interfering with production or delivery of Goods.
- 4.4 Freight will be charged at the rates contained in Pacific Steel's current price sheet as at the date of delivery.
- 4.5 Delivery will be subject to Pacific Steel's prevailing minimum quantity practice.

## 5 PAYMENT

- 5.1 Subject to clause 5.2, payment is due 30 (thirty) days from the date of invoice. Any payment or balance of any payment which is unpaid by the due date shall accrue interest at Pacific Steel's prevailing overdraft interest rate. Interest will be calculated daily until payment in full is received.
- 5.2 Where the Customer has established an approved credit account with Pacific Steel, payment for the Goods must be made in accordance with any agreed credit terms specified on the relevant invoice or as otherwise agreed by the Parties in writing.
- 5.3 Pacific Steel may, at its option, suspend performance of or terminate an order if, in Pacific Steel's opinion, the credit of the Customer becomes impaired, until such time as Pacific Steel has received full payment or satisfactory security for deliveries made and is satisfied as to the Customer's credit for future deliveries. Pacific Steel reserves the right to cancel any order, re-evaluate all payment terms, or require full or partial payment or adequate assurance of the Customer's performance of its obligations under this agreement without liability to Pacific Steel in the event of a material adverse change to the Customer's financial condition.
- 5.4 Pacific Steel may set off any amount owed by the Customer to Pacific Steel against any amount of money that is owed, or may become owing, by Pacific Steel to the Customer. The Customer waives any right to set off any amount that is, or may become, owing by the Customer to Pacific Steel against any amount owing by Pacific Steel to the Customer. This clause overrides any other document or agreement to the contrary.
- 5.5 Where the Customer is in default of its obligations in relation to payment, then notwithstanding any other rights and remedies available under this document, at law or otherwise, Pacific Steel will be entitled to:
- (a) charge interest in accordance with clause 5.1.
  - (b) recover costs representing overdue amounts, such as legal or debt collection costs;
  - (c) terminate or suspend, without incurring liability to the Customer, any contract in force between Pacific Steel and the Customer for the sale or supply of Goods and withhold any deliveries of Goods the subject of any order accepted by Pacific Steel, whether under these Terms or otherwise; or
  - (d) review any rebates, discounts or incentives that may otherwise be available to the Customer.

## 6 CLAIMS

- 6.1 Claims in respect of defective or damaged Goods (whether as a result of damage during transit or otherwise) are to be lodged with Pacific Steel's representative within 10 (ten) days of receipt of the goods affected. No claim will be recognised unless lodged within the period prescribed with a "Claused" carriers receipt for damage during transit. In determining the date of delivery, the date of the carrier's receipt will be final and binding.
- 6.2 Notwithstanding the above, where Goods are delivered in fully enclosed wrapping, the date of receipt will (for the purpose of this clause only) be regarded as the date on which the wrapping might reasonably be expected to be removed.

## 7 ORDER VARIATION

The Order Confirmation will confirm acceptance by Pacific Steel of the Customer's order. However, reasonable changes in Goods ordered (but not a cancellation) may be requested and, if practicable, accommodated by Pacific Steel. Pacific Steel accepts no obligation to agree to such changes as its position must at all times be governed by programmed production. No order variation shall be binding on Pacific Steel until receipt by the Customer of Pacific Steel's written confirmation of the change (which will be deemed to accurately record the variation) unless the Customer notifies Pacific Steel to the contrary within 10 (ten) days of the date of the confirmation or before despatch of the order from Pacific Steel, whichever is earlier.

## 8 TOLERANCES

Unless otherwise agreed in writing or specifically prescribed by an applicable specification or standard, all Goods are sold subject to:

- (a) manufacturer's normal tolerances, variations and limitations in respect of dimensions, mass, straightness, composition, mechanical properties, surface and internal conditions, chemical composition and quality;
- (b) deviations from such tolerances, variations and limitations consistent with practical testing and inspection methods;

- (c) normal mill practice of up to 10% (ten per cent) over and under consignment weight; and
- (d) Pacific Steel's normal packaging practice and reasonable quality deviations arising from damage during transit.

## **9 RISK AND OWNERSHIP**

- 9.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on delivery in accordance with clause 4.1.
- 9.2 Ownership of the Goods remains with Pacific Steel and does not pass to the Customer until the Customer:
- (a) pays the Amount Owing in full and Pacific Steel has released the Security Interest; or
  - (b) resells the Goods pursuant to the authority granted by these Terms.
- 9.3 Upon the Goods entering the Customer site and while ownership of the Goods remains with Pacific Steel:
- (a) the Customer must store the Goods separately and clearly identify them as belonging to Pacific Steel;
  - (b) the Customer must not create any encumbrance over the Goods which is inconsistent with Pacific Steel's title and ownership to the Goods;
  - (c) the Customer must keep the Goods in good and merchantable condition and fully insure the Goods against loss or damage, however caused;
  - (d) Pacific Steel authorises the Customer, in the ordinary course of the Customer's business, to use the Goods or sell them for full consideration. This authority is revoked immediately if:
    - (i) an Event of Default occurs; or
    - (ii) Pacific Steel notifies the Customer in writing that this authority is revoked;
  - (e) the Customer must advise Pacific Steel immediately of any Event of Default or any action by third parties (including any of its creditors) affecting Pacific Steel's interest in the Goods.
- 9.4 Pacific Steel may apply any payments received from or on behalf of the Customer in reduction of the Amount Owing in such order and manner as Pacific Steel thinks fit (despite any direction to the contrary and whether before or after the occurrence of an Event of Default).
- 9.5 If the Customer resells or uses any Goods before ownership of the Goods has passed to the Customer, the proceeds of such sale or use shall be received and held by the Customer (in whatever form) in trust for both the Customer and Pacific Steel. Pacific Steel's interest as beneficiary under that trust shall be that portion of the proceeds which does not exceed the Amount Owing. The balance of the proceeds (if any) shall be the Customer's beneficial interest under that trust.
- 9.6 Pacific Steel may bring an action for the price of the Goods sold even where ownership of the Goods may not have passed to the Customer.
- 9.7 If the Customer is in default of its obligations under these Terms or in Pacific Steel's reasonable opinion the payment of any amount in respect of the Goods supplied by Pacific Steel is in jeopardy, then the Customer irrevocably authorises a representative of Pacific Steel to enter upon any site where the Goods are located to take possession of the Goods without any prior notice, and the Customer indemnifies Pacific Steel against any action, claim or demand arising out of any act lawfully done by Pacific Steel in the exercise of its powers and Pacific Steel shall be further entitled to resell any Goods which it has so taken into possession.

## **10 PERSONAL PROPERTY SECURITIES ACT 1999**

- 10.1 Without limiting anything else in these Terms, the Customer acknowledges that:
- (a) these Terms create, in favour of Pacific Steel, a Security Interest in all present and after-acquired Goods (being, for the avoidance of doubt, all the Customer's present personal and after-acquired property except for any item of personal property which has not (or which is exclusively the proceeds of any item of personal property which has not) been supplied by Pacific Steel to (or for the account of) the Customer) to secure the payment by the Customer to Pacific Steel of the Amount Owing;

- (b) these Terms will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Customer; and
- (c) the Security Interest shall continue until Pacific Steel gives the Customer a final release.

10.2 The Customer undertakes to:

- (a) promptly do all things, sign any further documents and/or provide any information which Pacific Steel may reasonably require to enable Pacific Steel to perfect and maintain the perfection of its Security Interest (including by registration of a financing statement);
- (b) give Pacific Steel (addressed to the financial controller or equivalent) not less than 14 Working Days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).

10.3 The Customer waives its right to receive a verification statement in respect of any financing statement relating to the Security Interest.

10.4 To the extent permitted by law, the Customer and Pacific Steel contract out of:

- (a) section 114(1)(a) of the PPSA; and
- (b) the Customer's rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.

10.5 The Customer agrees that the Security Interest has the same priority in relation to all amounts forming part of the Amount Owning, including future advances.

10.6 Unless the context otherwise requires, words and phrases have the meanings given to them in, or by virtue of, the PPSA.

## 11 LIMITATION OF LIABILITY

11.1 Pacific Steel's liability in respect of any Goods which are proved to be damaged during delivery or defective due to faulty workmanship or materials or otherwise are proved not to conform with the terms of the order, is limited to whichever is the greater amount of, either:

- (a) the replacement of any such Goods at the original destination as set out in the Order Confirmation free of charge; or
- (b) a refund of the sale price.

11.2 Pacific Steel accepts no responsibility for labour, material and other costs incurred in removing defective Goods and refitting their replacement or for any loss or damage, however arising from and whether directly or indirectly attributable to, any defect in any Goods supplied or any failure to deliver within a stipulated period.

11.3 As Pacific Steel has no control over toll processing methods which may affect mechanical and other properties of Pacific Steel Goods, Pacific Steel accepts no liability for toll processed material.

11.4 "Downgrade" material is sold without warranty as to quality or compliance with specification.

11.5 Pacific Steel may choose to make available product test certificates for certain of its Goods to the Customer. Any representation in relation to the provision of such certificates is expressly limited to what is explicitly stated on such certificates and any implied or statutory conditions, statements or warranties are expressly excluded. Moreover, save as herein provided, all other implied conditions, statements or warranties, whether statutory or otherwise, in relation to the Goods are expressly excluded.

11.6 Pacific Steel will not be liable to the Customer for:

- (a) any loss or damage to the Goods resulting from any act or omission on the part of the Customer or any of its officers, employees, agents or contractors;
- (b) business interruption, loss of revenue, loss of income, loss of production, loss of use, loss of product, loss of business, loss of profits, loss of opportunity, loss of contracts, loss of investment or any indirect or consequential loss arising in connection with, or as a result of, the supply or non-supply of the Goods or otherwise in connection with these Terms;

- (c) any statement or recommendation made or advice, supervision or assistance given by Pacific Steel, its employees, agents, transport contractors or representatives whether oral or written;
- (d) any loss or damage to the Goods or of any liability which arises during the loading or unloading of the Goods;
- (e) a delay in delivering the Goods;
- (f) any claim, action or proceeding by a third party against the Customer (or any loss, damages or liability incurred or suffered by the Customer as a result of any such claim, action or proceeding);
- (g) any loss or damage relating to the fitness or suitability of the Goods for the Customer's purpose (including a third party purpose) unless such purposes are known and agreed by Pacific Steel.

11.7 Notwithstanding anything else contained in these Terms or in any agreement that incorporates these Terms, the maximum liability of Pacific Steel to the Customer whether under contract, at law, in equity or otherwise for any Loss in connection with these Terms or any agreement that incorporates these Terms is an amount equal to the price paid for the Goods the subject of the Loss.

11.8 The Customer agrees that if it knows (or ought reasonably to know) that the Goods are to be used for a particular purpose (including 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 writing in the order. If the Customer does not specify the particular purpose or the special or uniform characteristics for the Goods and Pacific Steel does not expressly confirm in the order acknowledgement or otherwise in writing that the material is reasonably fit for the specified purpose or that it possesses the specified characteristics, then the Customer agrees:

- (a) that it did not rely on the skill or judgment of Pacific Steel in relation to the suitability of the Goods for a particular purpose or the special or uniform characteristics possessed by the Goods; and
- (b) not to use, sell or offer for sale the Goods as though they are reasonably fit for the specified purpose.

11.9 The Customer indemnifies and will keep indemnified Pacific Steel and each of its officers, employees and agents (for each of whom Pacific Steel holds the benefit of this indemnity upon trust) against any Loss which any such person may incur or be subjected to in respect of or arising from:

- (a) the occurrence of an Event of Default;
- (b) registering or maintaining a financial statement;
- (c) the negligence, wrongful act or omission, breach of statutory duty, breach of contract or wilful default of the Customer or its officers, employees, agents or contractors;
- (d) any injury to or death of any person or any damage to or loss of property connected with the conduct, operations or performance of the business of the Customer;
- (e) transport, storage, slitting, roll-forming, repackaging or other handling of the Goods by the Customer;
- (f) misuse of Goods by the Customer; or
- (g) representations made by the Customer in relation to the Goods.

## 12 USE OF INFORMATION

12.1 The Customer agrees that Pacific Steel may obtain information about the Customer from the Customer or any other person (including any credit or debt collection agencies) in the course of Pacific Steel's business, including credit assessment, debt collecting and direct marketing activities, and the Customer consents to any person providing Pacific Steel with such information.

12.2 The Customer agrees that Pacific Steel may use any information it has about the Customer relating to the Customer's credit worthiness and give that information to any other person, (including any credit or debt collection agency) for credit assessment and debt collection purposes. The Customer agrees that any other information collected by Pacific Steel about the Customer is accessed or collected for use in the course of its business, including direct marketing activities.

12.3 The Customer must notify Pacific Steel of any change in circumstances that may affect the accuracy of the information provided by the Customer to Pacific Steel or any company related to Pacific Steel. If the Customer is

an individual (i.e. a natural person) the Customer has rights under the Privacy Act 1993 to access and request the correction of any personal information which Pacific Steel holds about the Customer.

12.4 Pacific Steel retains the Intellectual Property Rights in any Goods, promotional literature, technical documents or other information provided by Pacific Steel to the Customer under these Terms.

12.5 The Customer must:

- (a) differentiate between Pacific Steel's products and those manufactured by its competitors through the correct use of the Intellectual Property Rights;
- (b) where practicable, indicate prominently in written form that the Intellectual Property Rights are owned by Pacific Steel and that the Customer is a user of the Intellectual Property Rights;
- (c) not represent or pass off as products made from Pacific Steel products, any products containing products not obtained from or manufactured by Pacific Steel;
- (d) provide Pacific Steel (at Pacific Steel's expense, unless due to Customer's breach, in which case at Customer's expense) with reasonable assistance in identifying, prosecuting and defending claims with respect to the Intellectual Property Rights;

### 13 WAIVER

If Pacific Steel exercises or fails to exercise any right or remedy available to it, this shall not prejudice Pacific Steel's rights in exercising that or any other right or remedy. Waiver of any term of these Terms must be specified in writing and signed by an authorised officer of Pacific Steel.

### 14 ASSIGNMENT

Pacific Steel may, at any time and at its discretion, assign to any other person all or part of any debt owing by the Customer to Pacific Steel.

### 15 SEVERABILITY

If any part of these Terms is held by any Court to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of these Terms.

### 16 RIGHTS, POWERS AND REMEDIES

The rights, powers and remedies provided for in these Terms are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to Pacific Steel by law.

### 17 GOVERNING LAW

These Terms shall be construed and governed by the laws of New Zealand, and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.

### 18 CONFIDENTIALITY

18.1 The Customer must keep all confidential and proprietary information provided or disclosed by Pacific Steel to the Customer confidential and must ensure that its employees, agents and contractors assume the same obligations.

18.2 For the purposes of these Terms, confidential and proprietary information includes information relating to the Goods, Pacific Steel's business affairs or method of carrying on business or details of any pricing or supply arrangement between the Customer and Pacific Steel.

### 19 CONFLICT

In the event of any conflict between these Terms and any other document (including any additional terms stated on Pacific Steel's price sheets), these Terms shall prevail.

### 20 DEFINITIONS

20.1 In these Terms:

**Amount Owing** means, at any time, the unpaid price charged by Pacific Steel for the Goods, and any other sums which Pacific Steel is entitled to charge under these Terms or which are otherwise owing by the Customer to Pacific Steel (in whatever capacity).

An **Event of Default** means an event where:

- (a) the Customer fails to comply with these Terms or any other agreement with Pacific Steel; or
- (b) the Customer is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership, or which generally precedes such an event; or
- (c) an event occurs or information becomes known to Pacific Steel, which in Pacific Steel's opinion, might materially affect the Customer's creditworthiness, the value of the Goods the subject of the Security Interest, or the Customer's ability or willingness to comply with its obligations under these Terms or any other agreement with Pacific Steel; or
- (d) any guarantor of the Customer's obligations under these Terms is in default under any agreement with Pacific Steel (in any capacity).

**Customer** the relevant company or other legal person who has submitted an order for certain Goods to Pacific Steel and has thereby become subject to these Terms.

**Expected Date** means the date on which Pacific Steel reasonably expects the Goods to be delivered to the Customer.

**Goods** means all goods supplied from time to time by Pacific Steel to the Customer, provided that:

- (a) where the goods supplied are inventory of the Customer, then all references to Goods in these Terms shall, for the purposes of the PPSA, in respect of those goods, be read as references to inventory for so long as they are held as inventory; and
- (b) where the goods supplied are not inventory of the Customer, then all references to Goods in these Terms shall, in respect of those goods, mean the goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) prepared by Pacific Steel and relating to those goods, on the basis that each such order form, packing slip or invoice (or its equivalent) is deemed to be assented to by the Customer, incorporated in, and form part of, these Terms,

and (unless the context requires otherwise) includes all proceeds of such Goods and any product or mass which the Goods subsequently become part of.

**GST** has the meaning given to that term in the Goods and Services Tax Act 1985.

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, inventions and confidential information, and other results of intellectual activity in any field whether or not registrable, registered or patentable. These rights include rights in applications to register these rights and all renewals and extensions of these rights.

**Loss** means any claim, demand, loss, liability, damage or expense incurred by a party in connection with these Terms or any agreement incorporating these Terms.

**Pacific Steel** means Pacific Steel (NZ) Limited.

**person** includes a corporation, association, firm, company, partnership or individual.

**PPSA** means the Personal Property Securities Act 1999.

**Security Interest** means the security interest provided for by these Terms.

**Tax** means GST, sales taxes and any other tax, excise, charge or government impost upon the Goods or upon their manufacture, sale or delivery.

**Working Day** means any calendar day other than Saturday, Sunday or any statutory public holiday in Auckland, New Zealand.