

## Flexitallic Australia PTY LTD (ABN20 659 183 196) STANDARD TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

1.1. "Customer" means the person, firm or corporation to which Flexitallic Australia Pty Ltd supplies goods upon request.

1.2. "Goods" means the articles, goods, merchandise and/or materials or services supplied by Flexitallic Australia Pty Ltd to the Customer.

### 2. INCORPORATION OF TERMS

2.1. "All quotations or submissions given and orders accepted for goods by Flexitallic Australia Pty Ltd are given or accepted subject to these terms and conditions.

2.2. There shall be no variation to these Terms and Conditions unless specifically agreed to in writing by Flexitallic Australia Pty Ltd

2.3. Sales of Goods by Flexitallic Australia Pty Ltd are made on the specific condition that the customer is aware of the Terms and Conditions of Sale.

2.4. Any terms or Conditions included in the Customer's order are expressly excluded in the favour of these Terms and Conditions of Sale.

### 3. QUOTATIONS AND SUBMISSIONS

3.1. No quotation or submission by Flexitallic Australia Pty Ltd shall constitute a contractual offer.

### 4. PRICES

4.1. Prices for Goods quoted in published price lists or by representatives of Flexitallic Australia Pty Ltd are subject to change without notice and are not binding on Flexitallic Australia Pty Ltd. Flexitallic Australia Pty Ltd reserves the right to increase process to take account of cost escalation between the time of order and delivery. All Goods are sold at the applicable ruling price at the date of despatch but where the price of Goods increases between the time of order and the time of delivery the Customer shall be entitled to cancel the order upon returning the goods to Flexitallic Australia Pty Ltd in an undamaged condition.

4.2. Freight charges will be applied unless otherwise agreed to in writing. Delivery surcharges will apply in the following situations:

- a) Same day, courier or express delivery
- b) Special conditions specified by the customer
- c) Loading or unloading times at the Customer's designated site exceeding the allowed one hour period for a full truckload.
- d) The cost of additional equipment required for the purpose of loading and unloading at the Customer's designated site.

4.3. Prices quoted or published on the official price lists do include a good and services tax or other imposts.

4.4. Prices are subject to the Customer's order being the whole quantity mentioned in the quotation unless otherwise negotiated.

4.5. Where goods are imported, prices are based on existing rates of freight, exchange, insurance, customs, and other duties. Any increases in such rates between the time of quotation and the time of payment will be to the Customer's account.

## 5. PAYMENT TERMS

5.1. Unless otherwise agreed, all sums owing to by Flexitallic Australia Pty Ltd are due for payment in Australian dollars within thirty (30) days from the day in which the goods are supplied and invoiced and the Customer will have no right of set-off in respect to any claim against Flexitallic Australia Pty Ltd.

5.2. It is agreed to use a letter of credit as means of payment, the letter of credit shall be a confirmed, irrevocable letter of credit in favour of Flexitallic Australia Pty Ltd. The letter of credit must cover the total price of goods and confirmation must be given to by Flexitallic Australia Pty Ltd Australian bank. The letter of credit shall be subject to the "Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication no. 400".

5.3. All legal and other costs incurred by Flexitallic Australia Pty Ltd due to non-payment by the Customer, including fees paid to third parties employed by Flexitallic Australia Pty Ltd to pursue the debt, shall be for the Customer's account.

5.4. Flexitallic Australia Pty Ltd shall be entitled before delivery or continuing delivery, to stipulate that sufficient security for the fulfilment of the payment obligations is

provided or payment made in advance by the Customer.

5.5. Flexitallic Australia Pty Ltd reserves the right to immediately cancel any order or suspend any delivery without incurring any liability to the Customer if the Customer is overdue with any payment, enters into bankruptcy, liquidation, a composition with its creditors, has a receiver or manager appointed over all or any part of its assets or becomes insolvent.

5.6. Flexitallic Australia Pty Ltd reserves the right to suspend any delivery without incurring any liability to the Customer upon becoming aware of any factors which in the opinion of by Flexitallic Australia Pty Ltd affect the Customer's financial stability. Resumption of deliveries will depend on the Customer being able to satisfy Flexitallic Australia Pty Ltd that has the capacity to pay its debts as they fall due.

## 6. RETENTION OF TITLE

6.1. Title in the Goods shall be retained by Flexitallic Australia Pty Ltd until it receives payment in full for the Goods. Until title in the Goods passes to the Customer, the Customer shall keep the Goods as bailee for Flexitallic Australia and if required shall store the Goods in a manner that clearly shows the ownership of Flexitallic Australia Pty Ltd.

6.2. The customer may sell the Goods as Flexitallic Australia Pty Ltd' Bailee to a third party in the course of business and deliver them to that party subject to the Customer accounting to Flexitallic Australia Pty Ltd in accordance with parties' fiduciary relationship. Proceeds of the sale should be paid in a separate bank account with separate records being maintained. Where the Customer delivers the Goods to a third party and is not paid by the third party the

Customer may, at the option of Flexitallic Australia Pty Ltd, assign its claim against the party to Flexitallic Australia Pty Ltd upon Flexitallic Australia Pty Ltd giving the Customer notice in writing to that effect.

6.3. If any amount due by the Customer to Flexitallic Australia Pty Ltd under the terms of this agreement remains unpaid after thirty (30) days from the day in which the goods are supplied and invoiced, and Flexitallic Australia Pty Ltd has not expressly agreed to an extension of time for its payment, or having regard to such extension the charge or amount or any part thereof still remains unpaid or if the Customer becomes insolvent or commits an act of bankruptcy or makes an assignment for the benefit of its creditors or if the Customer, being a Company, is placed under official management or into liquidation or a receiver or receiver and management shall be appointed in respect at any of its assets, then Flexitallic Australia Pty Ltd may take possession of Goods wherever they are located from the Customer's premises for that purpose without any Court action or other process of law and may furthermore recover the costs of such repossession from the Customer as a debt due under this agreement in addition to all other merits rightfully due to it hereunder provided however that nothing in the clause or any action taken hereunder shall operate to relieve the Customer of any obligation or liability incurred under this agreement and still existing at the date of such repossession or to restrict or prejudice any right or remedy available to Flexitallic Australia Pty Ltd from the same date.

6.4. The Customer shall effect and maintain at all times adequate insurance against all risks for which it is liable to Flexitallic Australia Pty Ltd under these Terms and Conditions of Sale and ensures that the insurer holds Flexitallic Australia Pty Ltd covered for its interest under such insurance. Such insurance shall be at the Customer's cost and Flexitallic Australia Pty Ltd may require the Customer to produce evidence of compliance with this Clause at any time and/or after delivery.

## 7. DOCUMENTATION REQUIREMENTS:

Any customer requirement for product certification must be requested prior to processing of any order.

Due to a number of factors and as part of Flexitallic Australia Pty Ltd's ISO accreditation, it is not practicable or possible to produce required certification post manufacture or despatch of customer orders.

It is the responsibility of the buyer to ensure that all requirements are declared prior to or at time of order placement.

In the event that it is possible for Flexitallic Australia to produce necessary documentation post manufacture/order delivery, additional costs will be incurred by the buyer.

## 8. AVAILABILITY AND DELIVERY

8.1. Depending upon availability, Flexitallic Australia Pty Ltd will use its reasonable endeavours to meet the Customer's requested delivery date. However, Flexitallic Australia Pty Ltd shall not be liable to the Customer for any loss or damage (including consequential loss) caused by any delay or failure to delivery any Goods due to any cause or circumstances beyond its reasonable control. In the event of

any delay in delivery as aforesaid, the delivery date may be deferred for a period at least equal to the time lost by reason of the intervening cause of or circumstance.

8.2. It is the Customer's responsibility to ensure adequate equipment is on hand to unload the transport vehicle in a safe and efficient manner. If, in the opinion of the transport driver, conditions are not adequate to ensure safety of all concerned in the unloading operation, the Goods will be returned to Flexitallic Australia Pty Ltd as the Customer's expense.

## 9. FORCE MAJEURE

9.1. Flexitallic Australia Pty Ltd will use its reasonable endeavours to fulfil any contract based on quotations given, but the due performance is subject to variation or cancellation owing to Acts of God; War; Strikes; Lockouts; Fire; Flood; Drought or any other cause beyond our control of Flexitallic Australia Pty Ltd

## 10. CLAIMS

10.1. It is the Customer's responsibility to inspect all Goods promptly upon delivery. Flexitallic Australia Pty Ltd shall not be liable for short delivery; delivery of incorrect Goods; damaged Goods or non-delivery of Goods unless the Customer submits a written claim to Flexitallic Australia Pty Ltd within two (2) working days of the delivery to which the claim relates.

10.2. Where Goods are delivered by Carriers appointed by Flexitallic Australia Pty Ltd, the Customer must also notify the Carrier in accordance with the Carrier's conditions of carriage.

10.3. Flexitallic Australia Pty Ltd shall not recognise claims for incorrect application or use of the Goods. The responsibility to verify the Goods have or will be used in the correct application rests with the Customer.

## 11. CANCELLATIONS AND RETURNS

11.1. Goods may not be returned more than fourteen (14) days after the date of the applicable invoice.

11.2. The Customer may return for credit (against subsequent orders) Goods of current standing provided the following conditions are met:

- a) Flexitallic Australia Pty Ltd' written approval has first been obtained and the original invoice
- b) number and date have been quoted for reference.
- c) The goods are returned in original condition.
- d) The Customer agrees to pay, if required by Flexitallic Australia Pty Ltd, a retesting and/or handling charge which shall be charged to the Customer's account at the rate of no less than fifteen per cent (15%) of the original price for the Goods.

10.3. The following Goods will not be accepted for return:

- a). All non-standard items manufactured to order by the Customer.

## 12. GUARANTEE BY CUSTOMER

12.1. The Customer in ordering specific Goods from Flexitallic Australia Pty Ltd guarantees that in manufacturing such Goods Flexitallic Australia Pty Ltd will not be liable to any infringement of letters or patent, trademarks, registered designs, copyright or other registered or unregistered intellectual property.

## 13. WARRANTY

13.1. The liability of Flexitallic Australia Pty Ltd is limited in all circumstances to:

- a) In the case of goods proved under proper care and use to be of faulty manufacture, any one of the following:

- 1) The replacement of the goods or supply of equivalent goods;
- 2) The repair of the goods;
- 3) The payment of the cost of replacing the goods or of acquiring equivalent goods;
- 4) The payment of the cost of having the goods repaired.

13.2.. To the extent permitted by law, Flexitallic Australia Pty Ltd is not bound by any other warranty (express or implied), clause or statement whatsoever by whomsoever made unless the same set out herein. All liability in contract, tort or arising under any legislation or otherwise or any consequential loss, injury, damage or expense whatsoever is expressly excluded to the full extent possible.

13.3. Unless full specifications and application details are made available to Flexitallic Australia

Pty Ltd, the Customer acknowledges and agrees that Flexitallic Australia Pty Ltd does not warrant that the Goods supplied against the Customer's written or verbal order will be fit for the purpose for which they are used. It is the Customer's responsibility at all times to seek expert advice to ensure goods selected fit the purpose.

13.4. Flexitallic Australia Pty Ltd warrants that Goods manufactured by it and branded with the applicable Australian or international quality standard to which they were produced will conform to those standards.

## 14. JURISDICTION

14.1. This agreement shall be governed by the laws of the State of Western Australia and the parties hereby submit to the exclusive jurisdiction of the courts of the State.