

Australian Metals Terms and Conditions

Australian Metals Pty Ltd known and referred to as (**Australian Metals**) in this document, Terms and Conditions of Sale apply to all purchases and sales of items offered through and on behalf of Australian Metals and through our other sales channels. Your purchase means you have accepted our Terms and Conditions of Sale in effect as of the date of purchase.

We disclaim any other Terms and Conditions contained in any customer purchase order, order form or otherwise unless expressly agreed to by us in writing. Purchase orders must be strictly in conformity with these Terms and Conditions of Sale. Inconsistent or conflicting terms in any purchase order or sale acknowledgment are rejected and shall be controlled by these Terms and Conditions unless agreed to by the customer and Australian Metals in a separate mutual written agreement. Additional terms are not binding unless agreed to by a managing director or approved representative from Australian Metals in separate writing. We reserve the right to decline fulfilling orders at our discretion.

Australian Metals Guarantee

Australian Metals has operated since 1994. That experience comes with the knowledge that issues can always arise which are out of our control. As long as the order is not customized for/to you, we will happily and quickly provide an exchange or refund provided we are notified prior to your order being shipped. If the order/s were custom made or custom cut, then the exchange or refund will be reviewed on a case by case basis. All other orders will also be reviewed on a case by case basis.

1.0 Purpose and Scope

Any order implies the acceptance without reservation by the Customer and its full adherence to these General Terms and Conditions of Sale (**GTCS**) which prevail over any other document of the Customer, and in particular over all other General Terms and Conditions of Purchase (**GTCP**), unless Australian Metals' has expressly agreed otherwise. These GTCS apply to the sales of all products and services by Australian Metals', unless a prior agreement in writing has been reached between the parties.

2.0 Placing of Order

2.1 The orders are only valid after written acceptance by Australian Metals.

2.2 Should the Customer place an order without having paid for the previous orders already delivered, or have incurred overdue accounts, Australian Metals may refuse to honour the order without the Customer having any redress to claim any compensation, for whatever reason.

2.3 Australian Metals reserves the right to set a minimum quantity per line of order corresponding to a minimum quantity necessary to begin production. These minimum quantities by type of products are available upon request from Australian Metals' sales department.

2.4 Any request for a modification to an order (quantity, technical modification, inspection, test certificate or packaging, etc...) may only be considered by Australian Metals, if the request is made to it in writing and reaches it within four (4) working days from receipt of the initial order.

In this case, the changes may be subject to a price revision and Australian Metals shall no longer be bound by the initially agreed deadlines for delivery. A corresponding new order confirmation will then be sent.

2.5 The orders sent by the Customer are irrevocable, unless Australian Metals agrees in writing otherwise, notwithstanding the payment of costs already incurred.

3.0 Intellectual Property and Confidentiality

3.1 The delivery of the parts does not entail the transfer to the Customer of the property rights of the rolling, annealing or slitting concerning Australian Metals' manufacturing research, its software, patents, and any other development work that it may have undertaken. Similarly, the price of the manufacturing equipment designed by Australian Metals, whether or not it was produced by Australian Metals, shall not include the value of its intellectual property, which is to say the research, patent or technical investment that it has made in respect of its development. The same shall apply to any adjustments that Australian Metals may have made to the equipment supplied by the Customer in order to ensure the proper production of the parts.

3.2 Under no circumstances, may the Customer use Australian Metals' research for itself or for another party, nor disclose it without having expressly purchased the ownership of the research work. Except for information which is already in the public domain, any documents and drawings sent by Australian Metals to the Customer as part of the preparation and fulfilment of the contract shall be deemed "confidential". As such, the Customer undertakes to keep all of this information confidential.

4.0 Price

4.1 The prices are subject to specific conditions.

4.2 The prices correspond to the quantities and schedules specified in the offers and may be modified in case they are changed. They are in accordance with the economic, fiscal and social conditions which are known on the day of the offer and only commit Australian Metals in respect of the specifications contained in the offer.

4.3 Should the transport be organized by Australian Metals, there will be a special quotation for the transport, or it will be specifically addressed prior to time of order listed via a free in store (**FIS**) statement in the quotation.

4.4 Prices are given in AUD Dollars, unless special provisions are specified in the contract.

4.5 The customer agrees to pay the full and total purchase price as stated in the invoice supplied to them by the terms agreed upon in the supplied credit application. Where a credit application has not been completed the customer's terms will revert to payment of invoice prior to the start of manufacturing of goods, or in the case of ready materials, release of goods.

4.5 Australian Metals reserves the right, without reason or explanation, to revoke trading terms and will revert to payment of invoice prior to the start of manufacturing of goods, or in the case of ready materials, release of goods.

4.6 The only accepted payment terms to Australian Metals are Cash, Direct Bank Deposit, Electronic Funds Transfer (EFT) or credit card. Credit cards will incur an at cost merchant fee on VISA or MasterCard, alternative company credit cards can be accepted with any additional card fees being absorbed by the customer

4.7 The Customer undertakes to take delivery within five (5) days following the notice of the goods being ready for collection. Once this deadline has expired, the Customer may be charged for the financial costs on the basis of 2.0% per month unless otherwise agreed to by Australian Metals. In this case, the products

will be handled and stored at the expense and risk of the Customer, without Australian Metals being responsible.

5.0 Validity of the offer and price revision

5.1 Unless otherwise specified, the validity of the offer is limited to two (2) days from the date on which it was sent to the Customer. Prices may be revised at any time after the two (2) day period.

5.2 All castings are sold as To Finish To (**TFT**) or Finished Machined Size (**FMS**) the dimensions listed within the quotation, unless otherwise indicated.

5.3 Should the Customer have specific requests on the material such as heat treatment, special analysis, chemical and / or mechanical testing, additional test bars, pressure testing, X-ray inspection, etc., the inquiry shall set forth such requirements in detail at time of quotation. In some events these requirements will not be able to be retrospectively supplied e.g. mechanical test certificate after order production completion.

5.4 All specific requests shall be at the customer's expense and MUST be requested at time of quotation. Due to the additional requirements in preparing documentation this will likely result in additional charges.

5.5 The variation of the costs referred to above may not, under any circumstances, be a reason for cancelling the order.

5.6 Any increase in fees, taxes, and stamp duty, subsequent to the signing of the order, shall be the responsibility of the Customer, even in the case of "duty paid" sales.

6.0 Delivery

6.1 Unless there is a special agreement, products which are sold by weight, by the length measurement or by item are invoiced on the basis of the quantities actually delivered, which may vary by +/- 10% from the quantities ordered above 250kg and vary by +/- 50% on product under 250kg, Australian Metals will advise the customer of expected supply quantity at time of order acceptance.

6.2 The delivery times indicated by Australian Metals are understood as being ex-works, the delivery time for transport being added to the ex-works date. Australian Metals shall make every effort to meet these delivery times, which are however given on a purely indicative and informative basis and subject to matters beyond our control.

6.3 Special production service to secure unusual deliveries, not in accordance with original Purchase Order delivery instructions, shall be given on written request and at the customer's expense if required.

6.3.1 In any case, Australian Metals is released from any commitment concerning delivery times,

- When the terms and conditions of payment are not complied with;
- When the information to be provided by the Customer has not arrived in good time;
- In the event of force majeure (section 12.0).

6.4 A delay in delivery may in no case be justification for the cancellation of the order.

6.5 The goods shall be deemed collected and approved in Australian Metals' factories or stores, where, as of their release the transfer of risks to the Customer takes place, unless organized by Australian Metals unto which arrival at the customers requested address is deemed collected. Australian Metals cannot be held responsible in any way shape or form for any delays related to transport.

6.5.1 Additionally upon receipt of goods any damage is to be immediately noted and goods where possible are not to be accepted when visual and apparent damage is seen to packaging materials.

6.6 Any charges for transport will be displayed on the invoice unless prior agreement of FIS is made.

6.7 Where transport is organised by Australian Metals transfer of goods is not completed until the customer receives the goods.

6.8 Australian Metals will not be held liable for any expenses, damages or cost outside of replacement of goods and transport or alternatively a full refund of costs limited to and not to exceed under any circumstances the maximum value of the invoiced amount.

7.0 Acceptance, Warranty, Suitability & Certificates

7.1 With the exception of damaged or missing goods, any claim concerning a visible non-conformity of the product must be made in writing with acknowledgement of receipt or rejected by the customer upon delivery or collection from our site, and returned to Australian Metals within a maximum period of fourteen (14) days from the date delivery. After this time, the customer is deemed to have accepted any visible defects of the product.

7.2 The entirety of this warranty agreement is based on complete and full payment of the respective invoice unless otherwise agreed to by Australian Metals.

7.3 Australian Metals liabilities in respect to any purchase made through them is limited to any of the below options as decided by Australian Metals with no single or combined option to exceed the cost of the original purchase order;

- Replacement of the goods;
- Repair of the goods;
- Full refund of the purchase order value ; and
- The cost to have the goods repaired.

7.4 In the case of services supplied;

- A repeat of the service supplied at no cost; and
- Full refund of the service supplied.

7.5 Australian Metals accepts **NO** additional costs, damages, responsibility or financial penalty of **ANY** description for **ANY** reason under **ANY** condition that will exceed the original purchase order value and in the event the customer is unable to accept these terms the sale will **NOT** proceed.

7.6 Any claim must be sent to Australian Metals' sales or quality manager. It is the responsibility of the customer to prove the existence of any defects or anomalies that have been observed. The customer must provide Australian Metals with any necessary assistance for recording these defects and for remedying them. The customer shall refrain from intervening itself or involving a third party for this purpose. Any action carried out by the Customer to make Australian Metals' product compliant without the Australian Metals' prior agreement shall result in the forfeiture of any right to guarantee/warranty and request to claim.

7.7 Any return of products must be accepted beforehand by Australian Metals. If Australian Metals is deemed responsible upon mutual agreement, Australian Metals will be responsible for the goods to be returned to the Australian Metals location. If the customer is deemed responsible but an agreement for return is made then the customer will be responsible for the safe return of goods to Australian Metals location including any risks/further damage that may occur.

7.8 To maintain warranty all stored goods must be kept elevated from the ground, in a dry and low humidity location so as to avoid surface oxidation to the product.

7.9 Customers of product supplied with removable PVC film are advised to keep the product out of UV exposure and in a dark, dry location free of moisture. PVC film may leave minor adhesion marks once removed and it is to be reasonably expected that the film will degrade over time with a life expectancy once exposed to UV of approximately 3 months (from the date of packaging by Australian Metals).

7.10 The customer acknowledges by providing a written purchase order or by payment of goods, despite anything else that,

7.10.1 Prior to ordering the goods the customer satisfied themselves as to the products suitability for purpose; and

7.10.2 Australian Metals has made **NO** express warranty, condition or representation about the goods' quality, fitness for purpose, safety or suitability for application.

7.10.3 Under no circumstance will Australian metals, their representatives or employees be held accountable for **ANY** and **ALL** claims for loss, damage, failure of goods to perform a certain task/particular result or to comply with a particular specification and the customer acknowledges they should not rely on **ANY** of the above opinions, skill, judgment or suggestions in deciding if the material is fit for purpose.

7.11 Australian Metals will offer one of the options below, any request for certificate **MUST** expressly be made **PRIOR** to placing of orders due to a number of factors, Australian Metals will on request when applicable provide at a minimum a certificate of conformance, additional requirements must be made known at time of order, if the order is placed and test certificates requested at the same time, Australian Metals reserves the right to reject the purchase order regardless of prior agreements. If a request for test certificates are made post order acceptance Australian Metals reserves the full right under any circumstances to reject this request and revert to a certificate of conformance.

7.12 A Certificate of Conformance shall accompany each shipment of material upon request defined in the purchase order.

7.12.1 The Certificate of Conformance shall be legible and at a minimum, include the Australian Metals invoice number or customers purchase order number, quantity, part number, and where applicable the mill heat, batch, or lot number.

7.13 Every attempt will be made to supply raw material of the same lot but is not a requirement unless otherwise stated and agreed to prior to purchase order acceptance. When multiple lots of material are used in completing a shipment, all material lot numbers or mill heat numbers shall be reported and kept separate upon request and prior agreement. When processing is performed against an Australian Metals Invoice, parts shall not be mixed and traceability shall be maintained if specified.

7.14 Physical and chemical test report certifications shall be supplied with each shipment if requested and agreed to at time of quotation.

7.14.1 Test reports can include the following information;

- the material grade;
- specification with latest revision;
- results of all specified testing requirements;
- the typed name, title and signature of the quality representative (if agreed to by Australian Metals);
- the manufacturer's heat, batch, or lot number (if requested and agreed at the time of quote); and
- Any other requirements specified on the purchase order (if agreed to by Australian Metals).

7.15 Certificate EN10204 / 2.2 (Expectation)

- Not batch specific
- Gives average values for the material from that mill over a period

7.16 Certificate EN10204 / 3.1 (expectation)

- Batch specific
- Essential for critical applications
- Cannot be issued by the mill in retrospectively.

7.17 Certificate EN 10204 / 3.2

- As per 3.1 Certificate but with independent witnessing of testing at mill production stage by appropriate inspection authority

7.18 Australian Metals are a semi-finish copper based alloys. Feedstock is imported and mechanically altered to meet customer specifications.

7.18.1 Original supplier certificates are used to confirm chemical specification.

7.18.2 All mechanical specifications are made to AS1566, hardness certificates are issued internally and calibrations are compared to hardness blocks in house every 12 months.

7.18.3 In the event an order is found not to meet specification, Australian Metals will provide replacement material or a full refund, liabilities in respect to any purchase made through Australian Metals is limited to and not to exceed the cost of the original purchase order under any circumstances providing the invoice has been paid in full and all confirmations of certificates and specifications are the responsibility of the customer and customer only.

8.0 Payment and Non Payment

8.1 Australian Metals will invoice the customer on delivery of the Goods.

8.1.1 Unless otherwise agreed in writing by Australian Metals, payment by the customer to Australian Metals will be made prior to release of goods. The agreement for payment is the essence of the Contract.

8.1.2 Where payments are overdue, Australian Metals may, in addition to any other rights it may have, in its sole discretion, either cancel orders or suspend delivery of outstanding Goods.

8.2 If the invoice price is not paid by the due date then interest will accrue on that amount from the date of delivery of the Goods until the price is paid in full. Interest will be paid at a rate of 2.0% per month. Interest will accrue on a daily basis and be payable on demand.

8.3 If the customer defaults in payment or breaches these Conditions then it will be liable for all costs incurred by Australian Metals and will indemnify Australian Metals against any loss, liability, charge, expense, outgoing or payment which Australian Metals suffers, incurs or is liable for in respect of the recovery of monies owing by the customer to Australian Metals

8.4 In addition, the failure for whatever reason to pay either partially or in full an invoice which is due, also authorizes Australian Metals, without notice and any other formality, to suspend or cancel the fulfilment of the orders in progress and to require payment prior to the shipment of any new goods, irrespective of the conditions previously agreed for these goods.

8.5 Any delay in payment shall give rise to the payment by the Customer of penalties which are applicable to the sum incl. GST at the monthly rate of 2.0 %.

8.6 The Customer will be liable to Australian Metals for all costs incurred as part of the recovery of the sums due. Under no circumstances may the payments be suspended or be subject to any offsetting without the prior written agreement of Australian Metals.

9.0 Delivery

9.1 Australian Metals will deliver Goods purchased by the Customer to the customer's nominated warehouse or location upon request or to such other place as the Customer specifies and Australian Metals agrees.

9.2 If the address for delivery is unattended between working hours of 7am to 9am, Monday to Friday, or delivery cannot otherwise be effected by Australian Metals, the customer accepts the cost of transport and associated expenses that result.

9.3 If Australian Metals delivers the Goods then, unless otherwise agreed in writing by Australian Metals, the Goods must be unloaded by the Customer immediately on arrival at the specified destination.

9.4 Australian Metals reserves the right to withhold deliveries if:

9.4.1 Australian Metals, in its sole discretion, considers that the financial condition of the Customer so warrants and that such action is advisable to protect Australian Metals interests; or

9.4.2 The terms of payment for any Goods are not strictly adhered to by the Customer.

10.0 Title, Ownership and Retention Clause

10.1 The goods delivered shall remain the property of Australian Metals until the payment in full of the invoice and, if applicable, of the penalties and interest for late payment have been received. Any clause to the contrary, in particular inserted in the GTCP, shall be deemed as non-written.

10.2 The Customer is responsible for any damages or losses occurring after the delivery and undertakes to take all appropriate measures to allow the goods which have been sold to be identified at any time. As long as the ownership of the products has not been transferred to the Customer, the latter shall refrain from granting a guarantee to a third party for these products, and from transforming or reselling them without the prior written consent of Australian Metals.

10.3 Australian Metals reserves the right to lay claim to any goods which have not been paid for by the due date.

10.4 The customer undertakes to return them, all at its own expense, when first asked to do so. Should the customer become insolvent, go into liquidation or be concerned by any court enforced or amicable receivership, it undertakes to notify Australian Metals immediately.

10.5 Australian Metals may, with the title of retention, claim from the sub-customers the price or the part of the goods sold by it, which has neither been paid, nor settled at its value by the Customer. The latter undertakes to provide Australian Metals, upon first request, with the information on the sub-customers so that Australian Metals can exercise this right.

10.6 Australian Metals reserves the right to register a security interest on any goods supplied to the customer where credit has been extended; this process will be completed on the personal property security register (**PPSR**)

10.7 The customer agrees to waive all rights to receive any and all notices of registration of the goods on the PPSR unless required by Victorian law to do so.

10.8 The customer agrees to absorb all costs associated with registering the goods on the PPSR and take specific note that the customer will not allow any other person, party or business to register a security interest against these goods without prior written permission from Australian Metals, if this does occur without the permission of Australian Metals, they must be made aware immediately.

10.9 Separation of goods must be maintained by the customer at all times prior to honouring payment against outstanding invoices, during that period no mixing or contamination of goods will be accepted as a storage method

10.10 With respect to the above agreement and outstanding invoice amounts the customer understands and conveys to any party involved that access to any location or premises is permitted at any and all times under any circumstances in anyway without being liable to the customer or any party involved. In the event this right is exercised the customer indemnifies Australian Metals from any claims made by any third party

11.0 Guarantees & Liability

11.1 Unless otherwise specified, the orders are fulfilled on a case by case basis, either in accordance with the standards and technical specifications contained in customers purchase order, or in accordance with the drawings and specifications of the customer. In this second case, the liability of Australian Metals shall not be extended in any case to the design or the description of the product.

11.2 Any liability concerning the errors or omissions regarding the drawings and specifications given by the Customer shall be the responsibility of the Customer. The Customer is required to check the parts when they are delivered and any claims must be made in accordance with the conditions specified under section 7.0.

11.3 In the case of a product that is recognized by both the Customer and Australian Metals as being defective, the Australian Metals is only liable in any eventuality for the repair or the pure and simple replacement of these products, at the lowest possible transport price or if an agreement between Australian Metals and customer cannot be reached for full refund.

11.4 In addition to any of the above options without any other compensation, the defective products which have thus been replaced shall remain the property of Australian Metals. Any defects resulting from storage, assembly or use of the products by the customer in conditions which are either abnormal or non-compliant with professional standards shall not be covered by any guarantee.

12.0 Force Majeure

12.1 Any event beyond the control of Australian Metals and over which it cannot reasonably have control is to be considered as force majeure.

12.2 This shall apply to war, embargo, total or partial strike, natural disaster, fire, interruption or disruption to transport or any events impeding the operation of the business of Australian Metals or its sub-contractors such as industrial accident, loss/damage of goods in transit, administrative ban, interruption of supply of energy or raw materials or spare parts.

12.3 These events shall exempt Australian Metals, which will not have to pay any compensation, from the fulfilment of its contractual obligations and this until the end of the effects of the force majeure.

13.0 Applicable Law

13.1 ANY and ALL matters of law are to be heard in the State of Victoria, Australia