

## **Wakefield Metals Limited Terms and Conditions of Sale**

### **1. Terms Used**

"goods" means all present and after acquired property that is supplied to the buyer by Wakefield Metals including (but not so as to restrict this clause) all metal products including stainless steel, aluminium, brass, copper and zinc, being coils, sheet, plate, bars, rods, angles and tube. All metal fasteners including nuts, bolts, screws, drills, adhesives and any other goods as described in any invoice rendered by Wakefield Metals to the Buyer.

"Officer of Wakefield Metals" means a person holding one of the following company positions: [Managing Director, Finance Manager, Service Centre Manager]."

"The Act" means The Personal Property Securities Act 1999.

"The buyer" refers to any legal entity or person purchasing from Wakefield Metals.

### **2. General**

Wakefield Metals supplies all goods to every buyer on the following Terms and Conditions of Sale ("Terms and Conditions") which shall constitute the entire agreement between Wakefield Metals and the buyer and it is expressly agreed

that there are no other understandings, representations or warranties of any kind (expressed or implied) forming part of this contract. In particular:

(i) Any condition contained in the buyer's order which is inconsistent with, qualifies or is contrary to these conditions shall have no effect unless that condition is expressly accepted in writing by an officer of Wakefield Metals.

(ii) Any variation, waiver or cancellation of the buyer's order shall have no effect unless accepted in writing by an officer of Wakefield Metals. Where Wakefield Metals accepts cancellation Wakefield Metals may levy a handling charge of up to 10% of the price.

(iii) Where the buyer and Wakefield Metals agree to a variation in the quantity of the goods, the goods shall be priced either at the rate applicable to the original quantity or the revised quantity at the absolute discretion of Wakefield Metals.

### **3. Prices and Terms of Payment**

(i) All prices listed or quoted are subject to alteration without prior notice, listed or quoted prices charged will be those current at the time of despatch of the goods.

(ii) Wakefield Metals' prices are exclusive of taxes, duties and other imposts which, if chargeable, are payable by the buyer whether they are imposed or brought into force before or after acceptance of the buyer's order.

(iii) Payment is due in full on the 20th of the month following the month the goods are supplied.

(iv) If payment is not received by the due date Wakefield Metals reserves the right to charge interest at the rate of 2% per month commencing from the due date of payment. Any interest so levied shall accrue on a daily basis and shall accrue until all monies owing are paid in full. The buyer shall also be liable to pay all expenses and costs of Wakefield Metals in relation to recovery of the debt. The levying of interest shall not extend the due date of payment.

(v) The buyer shall make all payments due to Wakefield Metals whether in respect of the purchase price or otherwise in full without deductions of any nature whatsoever.

(vi) Wakefield Metals shall be entitled to deduct from and set off against any payments due to Wakefield Metals by the buyer (or any branch or related company of the buyer) any credits, or amounts outstanding to the buyer or any branch or related company of the buyer.

(vii) Wakefield Metals reserves the right to restrict or withhold the sale of goods on credit at its sole discretion and without explanation.

(viii) Wakefield Metals may in its absolute discretion allocate any sum received from the buyer towards any invoice or amount owing by the buyer, whether goods supplied under this invoice or otherwise. Wakefield Metals shall not be obliged to make such allocation at the time of receipt but may do so upon any subsequent accounting between the parties. In the absence of any such allocation, payments shall be deemed to be applied first towards any sum that is not secured by a security interest and secondly towards any other sum owing to Wakefield Metals.

### **4. Delivery**

(i) Wakefield Metals reserves the right to despatch the buyer's order in one delivery or by instalments. Where Wakefield Metals accepts an order which provides for delivery by instalments Wakefield Metals shall be entitled to payment for each instalment delivered (as if it were a separate contract) but failure to deliver any instalment shall not entitle the buyer to repudiate the contract as to any remaining instalments.

(ii) Any quotations of delivery times by Wakefield Metals are made in good faith but are estimates and Wakefield Metals shall not be bound by such quotations.

(iii) Wakefield Metals will select the method of delivery and reserves the right to charge the cost of delivery to the buyer. Where the buyer requests another method of delivery and Wakefield Metals agrees in writing then the buyer shall meet the cost of that delivery.

### **5. Shortages, Damage or Loss in Transit**

(i) Liability for shortages in the quantity of goods delivered is limited to making up the shortages. No claim for shortages in quantity will be allowed unless the customer gives notification of the shortage in writing within 7 days of the delivery and provides a reasonable opportunity for Wakefield Metals to investigate the claim.

(ii) Goods leaving Wakefield Metals' premises are adequately packed. Claims for damage or loss in transit must be made against the carrier in the prescribed manner:

(a) Prior to acknowledging delivery to the carrier, the buyer must ensure that the complete consignment as per the carrier's note has been received.

(b) Should there be a shortage or visible damage to outer packaging the carrier's note must be endorsed accordingly.

(c) Within 7 days of receipt of consignment the buyer must ensure that all goods received are in good order and condition.

(iii) No claims will be considered after 7 days of receipt of goods. While no liability for goods damaged or lost in transit will be accepted by Wakefield Metals, details of any claim should be advised to Wakefield Metals.

### **6. Return of Goods for Credit**

(i) Goods supplied in accordance with the buyer's order can only be returned with the express approval of an officer of Wakefield Metals.

(a) Requests to return goods must be submitted within 10 days from date of supply and the original invoice number must be quoted.

(b) Where goods are accepted for credit they must be delivered at the buyer's expense into Wakefield Metals' store from where they were purchased in original condition and packaging.

(c) Wakefield Metals reserves the right to levy a restocking fee against any returns it may agree to accept. Such fees may be up to 15% of the invoice price and levied at Wakefield Metals absolute discretion.

(ii) Goods specifically imported, procured or manufactured on behalf of the buyer can only be returned on such terms and conditions as Wakefield Metals may agree.

### **7. Wakefield Metals' Liability and Maintenance Guarantee**

(i) If the Consumer Guarantees Act 1993 ("CGA") applies to any purchase, these Terms and Conditions of Sale shall be interpreted subject to the purchaser's rights under the CGA, to the intent that no provisions shall in any way limit or purport to limit the purchaser's rights under the CGA.

(ii) The buyer shall ensure that the goods ordered are fit and suitable for the purpose for which they are required and Wakefield Metals is under no liability if they are not.

(iii) In the case of goods not of Wakefield Metals' own manufacture, the buyer is entitled to only such benefits as Wakefield Metals may receive under any guarantee given to Wakefield Metals by the manufacturer of the goods.

(iv) In lieu of any warranty, condition, or liability by law, Wakefield Metals' liability in respect of any defect in or failure of the goods supplied, or for any loss, injury, or damage attributable thereto, is limited to making good the replacement

or repair of defects arising under normal proper use and maintenance solely from faulty design, materials, or workmanship within the guarantee period, if stated, or otherwise within 12 months of the date of supply, provided always

that such defective parts are promptly returned to Wakefield Metals, unless otherwise arranged. Wakefield Metals shall not be liable for consequential or special damages under any circumstances. At the termination of the appropriate

period all liability on Wakefield Metals' part ceases.

(v) Wakefield Metals is not liable under clause 7(iv) for damage from misuse, accident, neglect or improper operation, maintenance, installation, modification or adjustment.

(vi) Wakefield Metals' liability under this contract and the warranty in this clause is confined to the buyer named in this contract, it being agreed that Wakefield Metals has no liability to any purchaser of the goods from the buyer in that the buyer's rights under the contract are not assignable without the prior written consent of Wakefield Metals.

#### **8. Default**

(i) For the purposes of these Terms and Conditions a Default Event shall be one or more of the following:

(a) Any default by the buyer under the Terms and Conditions including a failure to make payment.

(b) The buyer becomes insolvent or is adjudged bankrupt.

(c) The buyer ceases or threatens to cease to carry on its business.

(d) A receiver, liquidator, administrator, official assignee or statutory manager of the buyer's assets is appointed.

(e) The buyer makes or proposes an arrangement or compromise with creditors

(f) Any judgment of any court which is not stayed or satisfied.

(g) A change in the effective control and/or management of the buyer.

(h) Any other event which in the sole discretion of Wakefield Metals gives rise to concern as to the timely payment of the buyer's debts.

(ii) Where Wakefield Metals has reasonable cause to believe that a Default Event has occurred or is likely to occur then Wakefield Metals may at any time, without prejudice to any other remedies Wakefield Metals might have:

(a) Demand payment of any monies owing to it, which shall be immediately due and payable, as well as demand payment in advance for any undelivered goods before delivery of those goods;

(b) Cancel this contract and any other contract between Wakefield Metals and the buyer, suspend or cancel the buyer's account, and/or cancel any outstanding order by the buyer;

(c) Appoint a receiver in respect of the goods (including the proceeds of the same). Any receiver so appointed may take possession of the goods and re-sell them and otherwise exercise the rights conferred by law on a receiver;

(d) At any time without notice, directly or by its agents or servants enter upon any land, premises or property where it believes such goods may be and, despite section 109 of the Act and in addition to the rights there under, remove the goods. If the goods are removed, then:

(a) The right of the buyer or any agent of the buyer to possession of any goods and right to sell or otherwise dispose of the goods shall immediately and without the necessity of any notice terminate; and

(b) The value of all such goods seized shall be assessed as the lesser of current market value or the invoice value at the time of sale of the goods and may be subject to a restocking fee as provided at clause 6 above.

(iii) Notwithstanding the passing of time since the Default Event Wakefield Metals may invoke the provisions of this clause at any time.

(iv) The buyer will reimburse, indemnify and hold harmless Wakefield Metals, its agents and servants in respect of any costs, expenses, loss or damage (including such to any third parties and including legal costs on a solicitor/client basis)

in respect of the exercise or attempted exercise of Wakefield Metals' remedies.

#### **9. Property and Risk**

(i) Risk (including insurance responsibility) shall pass to the buyer on collection of the goods by the buyer or on delivery to the buyer or his agent or to a carrier for delivery to the buyer.

(ii) Ownership of all goods sold by Wakefield Metals and any proceeds in respect of a disposition of the goods is retained by Wakefield Metals until full payment is received for all amounts owing in respect of all goods supplied.

(iii) Until payment is made for the goods the buyer shall hold or deal with the goods and any proceeds of the goods as a fiduciary of Wakefield Metals and the buyer agrees to:

(a) Enable the goods to be readily identifiable as the property of Wakefield Metals.

(b) Maintain the goods so supplied in good order and condition and to return the goods immediately if called upon to do so by Wakefield Metals.

(c) On a sale or other realisation of the goods the buyer shall identify and keep the proceeds of sale in a separate account.

(iv) Where Wakefield Metals has reasonable cause to believe a Default Event has occurred then Wakefield Metals may at any time without notice, directly or by its agents or servants enter upon any land, premises or property where it

believes such goods may be and, despite section 109 of the Act and in addition to the rights there under, remove the goods. If the goods are removed then:

(a) The right of the buyer or any agent of the buyer to possession of any goods and right to sell or otherwise dispose of those goods shall immediately and without the necessity of any notice terminate; and,

(b) The buyer will reimburse, indemnify and hold harmless Wakefield Metals, its employees and agents in respect of any costs, expenses, loss or damage (including such to any third parties) in respect of the exercise or attempted exercise of Wakefield Metals' remedies; and,

(c) Wakefield Metals may cancel any or all contracts with the buyer and Wakefield Metals will not be liable to the buyer therefor; and,

(d) All monies owing by the buyer to Wakefield Metals on any account whatsoever shall become immediately due and payable, and

(e) The value of such goods seized shall be assessed as the lesser of current market value or the invoice value at the time of sale and may be subject to a restocking fee as for Return of Goods for Credit above,

#### **10. Errors or Omissions**

Clerical errors or omissions, whether in computation or otherwise in any quotation acknowledgements or invoice, shall be subject to correction.

#### **11. Disputes**

Any claim or dispute arising hereunder shall be subject to arbitration in accordance with the Arbitration Act 1996.

#### **12. Force Majeure**

Wakefield Metals shall not be liable to the buyer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods, or failure to perform any term of this contract where such delay or failure

is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour, materials, facilities, accidents, interruptions of, or delay in transportation or any other cause beyond Wakefield Metals' control.

#### **13. Compliance**

The buyer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the goods.

#### **14. Change of Legal Entity**

The buyer shall notify Wakefield Metals in writing of any change in legal entity of the buyer or change of name of the buyer and the buyer shall complete a new Credit Application form for the new legal entity if requested by Wakefield Metals.

#### **15. Change of Terms and Conditions**

Wakefield Metals has the right to unilaterally change these Terms and Conditions by 7 days' notice in writing to the buyer.

#### **16. Orders and Credit**

Wakefield Metals reserves the right not to accept an order placed by the buyer, and to change the buyer's credit limit, decline credit or close the account.

#### **17. Security Agreement and the Act**

(i) The buyer agrees the terms of clause 9 above constitute a security interest in the goods and their proceeds for the purposes of the Act.

(ii) The buyer shall promptly execute any document and provide any information required from time to time by Wakefield Metals to enable them to take a perfected security interest in the goods and their proceeds in priority to all other secured parties.

(iii) The buyer shall meet all costs Wakefield Metals incur in filing a financing statement or financing change statement under the Act in relation to goods supplied under these Terms and Conditions.

(iv) The parties agree that nothing in sections 114(1)(a), 133 and 134 of the Act shall apply to these Terms and Conditions.

(v) The buyer waives its rights as a debtor under section 120(2), 121, 125, 126, 127, 129, 131, and 132 of the Act.

(vi) The buyer waives its right to receive a verification statement confirming registration of a financing statement or a financing change statement relating to a security interest created by this document.

#### **18. Proper Law**

The contract and these conditions of sale shall be governed by New Zealand Law.