

CONDITIONS OF SALE

1. DEFINITIONS

“**Complete Mill Bundles**” means 100 lengths, or, where the product size is 28.6mm and larger, 50 lengths.

“**Goods**” means any goods supplied or provided by us to you and includes without limitation any related equipment, parts, components or associated services, fees or charges from us to you.

“**GST**” means goods and services tax as defined in A New Tax System (Goods and Services Tax) Act 1999.

“**Order**” means an order or instructions to provide Goods and Services submitted by you or any of your representatives to us for the purchase of Goods or Services, whether written or unwritten and whether by email, facsimile, in person, or by telephone.

“**Price**” means the total amount payable by you for the Goods and Services including the price of the Goods and Services being supplied, including import/export costs, insurance costs, delivery, carriage, and freight costs (as applicable) and any other fees, charges or disbursements payable by you.

“**Services**” means any services provided by us to you and any related or associated services, fees or charges from us to you.

“**Terms**” means these Conditions of Sale as amended from time to time.

“**we**”, “**us**”, “**our**” and “**Industrial Tube**” means Industrial Tube Manufacturing Australia, ABN no. 23297735975, and its related companies (as that term is defined in the Corporations Act 2001), agents, successors, or assigns.

“**you**” and “**your**” means the person/s or entity/ies named or identified as the Customer on the Order.

2. AGREEMENT

- 2.1 These Terms apply and are incorporated into any agreement for the supply of Goods and Services by us to you. All other terms and conditions are expressly excluded unless otherwise agreed in writing. If there is any conflict between an Order and these Terms, these Terms prevail.
- 2.2 Our agents, employees, contractors and representatives have no authority to make any oral representations, statements, warranties, conditions, or agreements that conflict with these Terms.
- 2.3 On submitting an order you are deemed to have accepted these Terms. Any person holding him/herself out as your agent, employee or representative is authorised by you to submit an Order.
- 2.4 A binding contract is deemed to be formed between us and you when we notify acceptance of your Order by email, facsimile, in person, or by telephone or otherwise act on your Order.
- 2.5 If you are more than one legal person or entity then your liability is joint and several. We will treat any

person holding him/herself out as your agent, employee or representative as authorised by you to sign for delivery of the Goods.

- 2.6 You authorise us to collect, retain, disclose, and use any information about you for the purpose of assessing your creditworthiness, or enforcing any rights under this agreement.

3. PRICE

- 3.1 Quoted Prices are exclusive of GST and delivery costs unless specifically stated otherwise and are based on rates and charges in effect at the date of the Order. You will pay all applicable GST and delivery costs in addition to the Price. We reserve the right to alter the Price if exceptional circumstances arise beyond our control. If our costs, rates and changes increase after the date of your Order, such increase will be charged to your account and form part of the Order. The costs, rates and charges referred to above include, but are not limited to:
 - (a) the rates of currency exchange, freight, insurance, and customs duty; and
 - (b) the costs of labour, wharfage, clearing, handling, and delivery.
- 3.2 Unless otherwise agreed by us or provided below, the Price will be specified on acceptance of your Order. Where no Price is specified, the Price will be the current price at which such Goods and Services are sold by us at the time of the Order, plus all cost, expenses and disbursement incurred by us.
- 3.3 If our prices increase or decrease after the date of your Order, but before actual despatch from our mill, such variation will be charged to your account and the Order varied.

4. DEPOSIT AND PAYMENT

- 4.1 Subject to clause 4.2, full payment of the Price will be required on the 25th of the following month following invoice or as otherwise specified on our invoice/s. The method of payment will be as directed by us.
- 4.2 A deposit may be payable if agreed. In that case the deposit must be received by the due date we specify, and we will not order Goods from our suppliers or begin work on your behalf until such time as the deposit is received by us.
- 4.3 You must pay all amounts owing to us without set off or deduction. We may, in our discretion, allocate any payment received from you towards any invoice that we determine and may do so at the time of receipt or at any time afterwards.
- 4.4 Without prejudice to our other rights and remedies under these Terms or at law if you fail to make payment of any amount due to us, we may refuse to supply the Goods and Services and/or charge interest on the amount owing at the rate of 2.5% per month or part month from the due date for payment until payment is received in full.

4.5 Any expenses, disbursements and legal costs incurred by us in the enforcement of any rights contained in these Terms will be paid by you, including our reasonable solicitor's fees or debt collection agency fees.

5. DELIVERY

- 5.1 Unless agreed otherwise, delivery of the Goods shall take place when the goods are given to a carrier by us for the purpose of transporting the Goods to you.
- 5.2 All costs associated with delivery including but not limited to carriage insurance and freight will be payable by you.
- 5.3 We will use our reasonable endeavours to supply the Goods by the delivery date specified, however, we will not be liable for any costs, losses, damages or claims in relation to any failure or delay in supply. If we are unable to supply the Goods as agreed solely due to any action or inaction of yours then we will be entitled to charge a reasonable fee for re-supplying the Goods at a later time and date.
- 5.4 Risk in the Goods will pass from us to you on loading for delivery.

6. WARRANTY AND LIABILITY

- 6.1 Nothing in these Terms will restrict, negate, modify or limit any of your rights under the Competition and Consumer Act 2010 where you are not acquiring the Goods or Services for the purpose of a business or in trade.
- 6.2 To the extent that our liability is not otherwise limited or excluded, and to the fullest extent permitted by law, our aggregate liability to you whether in tort, contract or otherwise for any loss, damage or injury in relation to the Goods and Services is limited to the Price paid by you. If the Goods are defective due to faulty workmanship or materials or do not materially conform with the Order, we may, at our option, elect to:
- provide a refund;
 - repair the Goods;
 - replace the Goods; or
 - re-perform the Services.
- 6.3 Despite anything else contained in these Terms:
- no claim relating to the Goods and Services will be considered unless made within (7) days of delivery;
 - no Goods will be accepted for return unless they are returned in a resaleable undamaged condition and in the original packaging, with all relevant instruction manuals included; See Para 10
 - unless these Terms expressly provide or we have agreed otherwise (for example, under a written warranty), to the fullest extent permissible by law all warranties, conditions or other terms implied by law are excluded; and
 - for the purposes of this clause you acknowledge that you had a reasonable opportunity to review

these Terms, discuss them with us, and receive advice from your legal advisor, if you wished to do so.

6.4 Except as otherwise provided in these Terms:

- we will not be liable for any loss or damage of any kind whatsoever arising from the inspection or repossession or supply of Goods or Services by us to you;
- we will not be liable for any indirect or consequential loss, loss of profit or special loss whether suffered or incurred by you or another person or entity and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by us to you; and
- you indemnify us against all claims and loss of any kind whatsoever however caused or arising and whether caused or arising as a result of your negligence or otherwise, brought by any person in connection with any matter, act, omission, or error by us or our agents, employees and representatives in connection with the Goods and Services.

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

- manufacturers normal tolerances, variations and limitations in respect to dimension, mass, straightness, composition, mechanical properties, surface and internal conditions, chemical composition and quality;
- diversion from such tolerances, variations and limitations consistent with practical testing and inspection methods;
- normal mill procedure of up to 10% over and under consignment; and
- our normal packaging practices.

6.6 Goods which are 'Seconds' are sold without warranty as to product quality or compliance with specification.

7. TERMINATION

7.1 We may immediately terminate any contract between us and/or any Order if:

- you do not make payment of any amounts due to us on or before the due date for payment;
- you indicate to us that you will not pay any sums on the due date;
- any Goods are damaged or determined by us to be at risk before you have paid for the Goods or Services in full;
- you fail to comply with your obligations under the Order or these Terms; or
- you suffer any bankruptcy, liquidation, receivership, insolvency, compromise with

creditors, re-entry by a landlord or other similar event.

- 7.2 On such suspension or termination, we may retain or reorder any Goods subject to outstanding orders that remain unpaid and all amounts owing to us and all fees become immediately due and payable in their entirety. On termination, the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected.

8. MISCELLANEOUS

- 8.1 These Terms constitute the sole understanding of the parties in relation to its subject matter and supersede all prior understandings, written or oral, which will be of no further force or effect.
- 8.2 No alteration or variation of these Terms will be binding on us unless authorised by us in writing. To the extent permitted by law, we may alter or change these Terms by notice to you.
- 8.3 You must not assign or transfer all or any part of your rights or obligations under these Terms without our prior written consent. We may assign any rights or obligations without your approval as well as subcontract any obligations to third parties.
- 8.4 Every notice given under these Terms will be sufficiently given if delivered personally, posted or successfully transmitted by email or facsimile to the intended recipient at his/her/its last known address or email address or facsimile number.
- 8.5 No waiver of any provision of these Terms will serve as a waiver of any other provision of these Terms and we will not have waived or be deemed to have waived any provision of these Terms unless such waiver is in writing and executed by us.
- 8.6 We will not be liable for any delay or failure in the performance of any of the obligations imposed by these Terms, provided that the failure is beyond our reasonable control. This clause does not excuse the consequences of insolvency, financial difficulty, or the non-payment of monies due.
- 8.7 These Terms will be deemed to be made in Australia and will be construed and governed by the laws of Australia. The parties submit to the exclusive jurisdiction of the courts of Australia.
- 8.8 If any provision in these Terms will be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

9. RETURN POLICY

- 9.1 We do accept returns subject to:

- (a) The product is prime condition and resaleable. We will inspect the goods before accepting them. Our decision will be final.

- (b) The product was not manufactured to customer specification on a mill run or purpose built (Cut to Length).
- (c) Customer pays for outgoing freight (this may be pro-rated if partial return) and return freight.
- (d) Bank online payment commission fees/ Online Payment Gateway fees will be deducted from the refund.

- 9.2 A restocking fee of \$45 will be charged for less than 20 lengths. There after \$90 per 100 or part thereof. This includes the inspection. If tube needs to be polished or re-sleeved there will be an extra charge depending on the size of the stainless tube.

10. CANCELLATION POLICY

- 10.1 We do accept cancellations subject to:

- (a) The product has not left the premises/ picked up by the freight provider. Our decision will be final.
- (b) The product was not manufactured to customer specification on a mill run or purpose built (Cut to Length).
- (c) Bank online payment commission fees/ Online Payment Gateway fees will be deducted from the refund.
- (d) The customer will be notified by the freight provider on the delivery date. No refunds will be provided for late deliveries.