

## Steel Co Limited - Terms and Conditions of Sale

### 1. CONTRACT

1.1 Each sale of Goods by the Company to the Buyer will, unless otherwise expressly agreed in writing by the Company and the Buyer, be governed by these Terms and Conditions and any invoice or other document evidencing or describing the particular Goods (together, the “**Contract**”).

### 2. PAYMENT

2.1 Subject to any provision to the contrary in the Contract, payment of the Price, and any other amounts payable under the Contract, shall be made within 7 days of delivery of the Goods.

2.2 The Buyer shall not be entitled to withhold payment or to make any deductions from the Price.

2.3 Steel Co Ltd reserves the right to charge interest on any invoice remaining unpaid in part or full beyond the due date. Interest will be at an annual rate of the Indicator Lending Rate (RBNZ, FILRSBVSO) for the month the invoice was due plus 2%. Should it be necessary to take further action to recover the debt, all additional costs and fees will be to the account of the debtor.

### 3. TAXES AND DUTIES

3.1 Unless expressly included in any quotation given by the Company, GST and other taxes and duties assessed or levied in connection with the supply of the Goods to the Buyer are not included in the Price and shall be the responsibility of the Buyer or, where the payment of such taxes or duties is the responsibility of the Company at law, the Price shall be increased by the amount of such taxes or duties.

3.2 Where GST or other taxes or duties are expressly included in any quotation given by the Company, any increase in the amount of such GST or other taxes and duties between the date of quotation and the date of delivery of the Goods shall be the responsibility of the Buyer and the Price shall be increased accordingly.

### 4. DELIVERY

4.1 Delivery shall be made at the place indicated in the Contract or, if no place shall be indicated in the Contract, delivery shall be made at the Company’s premises.

4.2 If the Buyer fails or refuses or indicates to the Company that the Buyer will fail or refuse to take or accept delivery, then the Goods shall be deemed to have been delivered when the Company was willing to deliver.

4.3 In the case of export sales, delivery on a sale FOB, CIF or CFR shall, unless otherwise stated in the Contract, be complete when the Goods effectively pass the ship’s rail at the port of shipment or arrive at the airport for despatch or earlier leave the Company’s custody for shipment to the Buyer.

4.4 Without prejudice to any other rights and remedies which it may have, the Company may charge storage and transportation expenses if the Buyer fails or refuses to take or accept delivery or indicates to the Company that it will fail or refuse to take or accept delivery at the time specified in the Contract or at any other times that the Company is able to deliver the Goods.

### 5. RISK

5.1 Risk of any loss, damage or deterioration of or to the Goods shall be borne by the Buyer from the time the Goods are delivered to the Buyer in accordance with section 4.

### 6. DELAY

6.1 If any time for delivery of the Goods or completion of the Contract or any part thereof shall be stated in the Contract, such time shall be approximate only and shall not be deemed to be of the essence of the Contract. The Company shall not be liable for failure to deliver the Goods or for any delay in delivery of the Goods where such failure or delay is occasioned by strike, combination of workmen, lockout, difficulty in procuring components or materials, shortage of labour, shortage of power, lack of skilled labour, delays in shipping or other transit, failure or delay by the Buyer in performing any of its obligations hereunder, failure or delays by suppliers or subcontractors, failure or delays or inability to obtain any necessary import or export licence, foreign exchange control authorisation or similar authorisation, legislative governmental or other prohibitions or restrictions, fire, flood, hostilities, commotions or other causes whatsoever (whether similar in nature or not to the foregoing) beyond the Company’s reasonable control.

6.3 If the delivery of the Goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, the Company may, without prejudice to its other rights and remedies, require payment by the Buyer of such portion of the Price as represents the extent to which the Company has performed the Contract up to the date such payment is required together with any expenses or additional costs incurred by the Company as a result of such delay. In the event of such delay continuing beyond a reasonable time, the Company may, without prejudice to its other remedies, terminate the Contract.

### 7. OWNERSHIP

7.1 Subject to clause 7.2, ownership of the Goods remains with the Company and does not pass to the Buyer until the Buyer pays the Price for the Goods and all other moneys owing to the Seller from time to time (“**Buyer’s Indebtedness**”).

7.2 Where the Goods are processed prior to the payment of the Buyer’s Indebtedness, ownership of those processed goods and/or such part or parts as are identifiable as being substantially derived from the Goods (“**Processed Goods**”) shall remain with the Company until the earlier of:

- (a) the payment of the Buyer’s Indebtedness; or
- (b) such time as such processed Goods have been sold by the Buyer as permitted by this Contract.

7.3 While ownership of the Goods or Processed Goods remains with the Seller:

- (a) The Buyer shall hold them as bailee and has a fiduciary duty to the Company in respect of them, including any proceeds derived from them.
- (b) The Buyer must, if required by the Company, store them separately and clearly identify them as belonging to the Company.
- (c) The Company authorises the Buyer to use the Goods in the ordinary course of its business and to sell the Processed Goods for full consideration in the ordinary course of its business, provided that this authority will be revoked immediately upon any Event of Default occurring (without the need of the Company to give any notice).
- (d) The Buyer irrevocably authorises the Company (without the necessity for giving any notice) to enter any premises where the Goods and/or Processed Goods are stored and remove them without in any way being liable to the Buyer or any person or company claiming through the Buyer.

7.4 If the Buyer uses the Goods or sells any Processed Goods before ownership of the Goods or Processed Goods has passed to the Buyer, the proceeds of such sale or use shall be received and held by the Buyer (in whatever form) in trust for both the Buyer and the Seller, and in respect of which:

- (a) the Seller’s interest as beneficiary under that trust shall be that portion of the proceeds which does not exceed the Buyer’s Indebtedness; and
- (b) the balance of the proceeds (if any) shall be the Buyer’s beneficial interest under that trust.

### 8. PPSA

8.1 The Buyer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to the Contract, or to any security interest which arises under the Contract, and waives the Buyer’s rights under section 121, 125, 129, 131 and 132 of the PPSA.

8.2 The Buyer waives the right to receive a copy of the verification statement confirming registration of a financing statement / financing change statement relating to any security interest which arises under the Contract.

8.3 The Buyer agrees to do anything that the Company reasonably requires to ensure that the Company:

- (a) has a perfected security interest in the Goods and the Processed Goods;
- (b) has a purchase money security interest in the Goods and the Processed Goods to the extent to their purchase price; and
- (c) is able to exercise all of its rights and powers under the Contract, whether or not on the enforcement of the security interest hereunder (including but not limited to, permitting the Company to enter any premises where the Goods and any goods into which the Goods are processed are stored and removed them following the occurrence of an Event of Default).

### 9. LIABILITY

9.1 The Company shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Buyer arising directly or indirectly from any breach of any of the Company’s obligations arising under or in connection with the Contract or from any cancellation of the Contract or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors.

9.2 Notwithstanding anything hereinbefore contained in this section 9 or contained elsewhere in the Contract, the liability of the Company, whether in contract or pursuant to any cancellation of the Contract or in tort or otherwise howsoever, in respect of all claims for loss, damage or injury arising from breach of any of the Company’s obligations arising under or in connection with the Contract, from any cancellation of the Contract or from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors, shall not in aggregate exceed the Price.

### 10. DEFAULT

10.1 If an Event of Default occurs, the Company may, without prejudice to any other right or remedy it may have, suspend or terminate the Contract, and all moneys payable to the Company shall immediately become due and payable.

### 11. NO ASSIGNMENT

11.1 The Buyer may not assign or otherwise transfer all or any of its rights or obligations under the Contract without the prior written consent of the Company.

### 12. CONFLICT/EXCLUSIONS

12.1 In the case of any conflict between an order submitted by the Buyer or any other document evidencing or describing any Goods, and the Company’s confirmation of order and these Terms and Conditions, the Company’s confirmation of order and these Terms and Conditions shall prevail. Further, if there is any other document or arrangement which conflicts with the Contract, the Contract shall prevail.

12.2 In relation to the Contract, all conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise which are not expressly included in writing in the Contract are expressly excluded. No agent or representative of the Company is authorised to make any representation, warranties, conditions or agreement not expressly confirmed by the Company in writing and the Company is not in any way bound by any such unauthorised statement nor shall any such statements be taken to form a contract or part of a contract with the Company collateral to the Contract.

### 13. LAW AND JURISDICTION; DISPUTES

13.1 The Contract is governed by the laws of New Zealand and the Buyer submits to the non-exclusive jurisdiction of the New Zealand courts.

13.2 If a dispute arises between the parties as to the meaning or application of the Contract or any other matter in connection with, or which may have an effect on the Contract, the parties will endeavour to resolve the dispute by negotiation in good faith. The parties will attend at least one meeting with a view to resolving the dispute before taking any other steps concerning the dispute (including but not limited to commencing any legal proceedings other than an application for injunctive relief).

13.3 Pending resolution of any dispute, the parties shall continue to perform their respective obligations under the Contract.

### 14. INTERPRETATION

14.1 **Definitions:** In these Terms and Conditions, unless the context otherwise requires:

“**Buyer**” means the person, firm, company or other entity buying the Goods from the Company.

“**Company**” means Steel Co Limited.

“**Event of Default**” means the occurrence of any of the following (whether or not within the control of the Buyer):

- (a) the Buyer fails to pay all or any part of the Buyer’s Indebtedness on the due date for payment; or
- (b) the Buyer defaults in the performance of all or any part of its obligations to the Company, whether under the Contract or otherwise; or
- (c) the Buyer enters into any composition or arrangement with its creditors; or
- (d) the Buyer does anything which would make it liable to be put into liquidation; or
- (e) a resolution is passed or proceedings are commenced for the liquidation of the Buyer; or
- (f) a receiver, administrator, or statutory or official manager is appointed over the Buyer or all or any of the Buyer’s assets; or
- (g) the Goods or any of them are at risk.

“**Goods**” means all steel products and any other goods from time to time supplied by the Company to the Buyer.

“**GST**” means goods and services tax in terms of the Goods and Services Tax Act 1985.

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

“**Price**” means, in relation to any Goods, the price of those Goods as agreed between the Company and the Buyer.

The terms “**at risk**”, “**default**”, “**financing statement**”, “**financing change statement**”, “**perfected**”, “**personal property**”, “**proceeds**”, “**purchase money security interest**”, “**rights**”, “**security interest**” and “**verification statement**” shall have the respective meanings give to them under, or in the context of, the PPSA.