



# AUST YIEH STAINLESS PTY LTD

ABN 80 076 379 587

3 Coral Crescent  
Unanderra, NSW 2526  
Tel: 0419 406 192 Fax: 61 2 4272 8030

## TERMS AND CONDITIONS OF SALE

January 2012

1. All Orders given to and goods supplied by Aust Yieh Stainless Pty Ltd (hereafter AYS), ABN No 80 076 379 587 are subject to the following Terms and Conditions. AYS and the Customer agree that, to the full extent permitted by law, AYS shall have no liability whether in tort, contract or otherwise in respect of such goods save as imposed by these Terms and Conditions or by the terms of any statute. These Terms and Conditions supersede all previous terms and conditions imposed by AYS and may only be varied in writing by AYS.

### 2. Definitions and Interpretations

2.1 In these Terms and Conditions:

“Delivery Address” means the delivery address of the Customer stated in an Order;

“Contract” means the contract resulting from the acceptance by AYS of an Order in accordance with clause 2.3;

“Credit Application Form” means AYS credit application form by which a Customer can apply for credit account with AYS in respect of the sale of Goods;

“Customer” means any person who enters into a Contract with AYS for the sale and purchase of Goods;

“Delivery Time” means the time of delivery of the Goods either to the Delivery Address of the Customer or to the carrier of the Customer;

“GST” means any amount paid or payable under any GST law as that expression is defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“Loss” means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental;

“Order” means an order placed with AYS for the sale and delivery of Goods;

“Order Confirmation” means a written confirmation of the Order by AYS which may be in the form of an invoice provided to the Customer by facsimile transmission or email or delivered to the Customer upon delivery of the Goods;

“Price” means the price for the Goods specified in the Order Confirmation;

“Goods” means the goods supplied or to be supplied by AYS to the Customer from time to time pursuant to the Contract; Unless otherwise specified by AYS, the quantity of goods supplied may vary by up to 10% over or under the amount ordered.

“Terms and Conditions” means these terms and conditions as amended from time to time by AYS

2.2 In these Terms and Conditions (including defined terms), unless the context otherwise requires:

## Aust Yieh Stainless Pty Ltd Terms and Conditions of Sale

- (a) the singular includes the plural and vice versa and each gender includes each other gender;
- (b) headings are included for convenience only and do not affect the interpretation of these Terms and Conditions.

### **3. Formation of Contract of Sale of Goods**

- 3.1 Each Order will constitute an offer by the Customer to acquire Goods from AYS upon and subject to the Terms and Conditions and to the exclusion of all other terms and conditions and notwithstanding any qualifications of the Terms and Conditions (including any terms and conditions contained in any purchase Order or other document of the Customer) unless expressly agreed by AYS in writing. Any price lists or quotations given by AYS to a Customer are an invitation to the Customer to place an Order only.
- 3.2 A contract will only be made between AYS and the Customer for the sale and purchase of Goods if and upon the acceptance of the Order by AYS by the provision to the Customer of an Order Confirmation.
- 3.3 An Order may only be made by the Customer to AYS in writing, by facsimile transmission, by electronic data interchange or by telephone.
- 3.4 The Contract resulting from the provision of the Order Confirmation cannot be cancelled by the Customer without AYS' written consent and AYS may, at its discretion, impose a reasonable cancellation charge.

### **4. Delivery**

- 4.1 The Delivery Time shall be a time or during a period agreed by AYS and the Customer.
- 4.2 AYS reserves the right to withdraw an Order Confirmation at any time before the Delivery Time and will not be liable for any Loss whatsoever arising from its failure to deliver any or all of the Goods.
- 4.3 Any term of the Contract relating to the quantity of Goods is not the essence of the Contract. AYS reserves the right to make partial deliveries against an Order and to invoice each partial delivery separately and the Customer cannot reject Goods on the basis of partial delivery.
- 4.4 Where Goods remain in the possession of AYS after the Delivery Time (including where the Customer fails for whatever reason to take delivery of the Goods), AYS is entitled to charge the Customer for all Loss occasioned by the Customer not accepting delivery together with any costs and Loss in respect of the carriage, care and custody of the Goods.
- 4.5 Unless otherwise agreed by AYS, all Goods will be delivered to the Delivery Address.
- 4.6 Unless prior arrangements have been made to leave the items at the Customer's premises, the Customer must ensure that it or its employees or agents are in attendance at the Delivery Address at the agreed time or agreed period for delivery to accept delivery of the Goods and to acknowledge receipt upon the consignment note or invoice accompanying the Goods.

### 5. Inspection, Acceptance of Goods and Customer's obligations

- 5.1 The Customer must inspect the Goods within 2 business days of the Delivery Time and if no inspection is so made, is deemed to have accepted the Goods.
- 5.2 Any non-delivery or Loss in transit must be notified or claimed in writing to the carrier and AYS within 3 days of the dispatch date. Any damage or short delivery must be notified or claimed in writing on receipt of goods to the carrier and AYS within 3 days of receipt.
- 5.3 The Customer has no claim for non delivery, shortages, defects or any Loss in respect of Goods apparent on inspection unless:
  - (a) a complaint is made to AYS within 3 business days of the Delivery Time specifying the shortage or defect; and
  - (b) AYS is, after receipt of the complaint, permitted to inspect the Goods and investigate the complaint.
- 5.3 If a complaint is not made to AYS in accordance with clause 5.2, the Goods delivered will be deemed to be in accordance with the Contract, and AYS will not be held liable for any future Losses regarding the use or application of the Goods, and the Customer is bound to pay for them accordingly.
- 5.4 AYS will only accept the return of Goods from the Customer where:
  - (a) the Customer has complied with clause 5.2 and AYS is satisfied as to the claim by the Customer; and
  - (b) the Goods are returned to AYS in the same condition as when first delivered to the Customer.
- 5.5 Where incorrect Goods are Ordered, an incorrect item number for Goods is used, an incorrect unit of issue or pack size is Ordered, an Order exceeds the Customer's requirements, an incorrect account number is used, or an Order is duplicated, the Customer may after receiving written authority from AYS, return the Goods to AYS subject to the Goods being returned in the same condition as when first delivered to the Customer.
- 5.6 Where Goods are returned to AYS in accordance with the above provisions AYS must issue a credit note in respect of any amounts paid by the Customer in respect of those Goods.
- 5.7 All claims for any expenses incurred by the Customer in relation to Goods supplied MUST be fully discussed and the full amount quoted and agreed before any expense is incurred or paid. Any re-imbusement for such a claim must happen within seven days of the customer taking delivery of the goods.

### 6. Payment Terms

- 6.1 The Customer agrees to pay to AYS the Price in full upon the delivery of the Goods, unless the Customer has completed and returned a Credit Application Form and AYS has agreed to extend credit to the Customer, in which case the Customer agrees to pay the Price in full on or before the expiry of 30 days from the date of delivery of the Goods or as otherwise agreed with AYS.
- 6.2 If the Price is not paid in full as and when due in accordance with clause 6.1, then AYS shall have the right to charge interest at a rate of 1.25% per month from the due date to the date that the account is paid in full and should the account be

## Aust Yieh Stainless Pty Ltd Terms and Conditions of Sale

referred to a collection agency the Applicant shall pay a 15% collection fee plus legal costs on a solicitor/own client basis.

- 6.3 If AYS agrees to extend credit to the Customer, the Customer agrees to the terms stated in the Credit Application Form as terms and conditions of the Contract.
- 6.4 The Price is GST exclusive unless stated otherwise. The Customer must pay to AYS any GST which AYS is liable to pay in respect of supplies made by AYS under these Terms and Conditions, at the same time and in the same manner as first payment is made for the supply to which the payment relates.
- 6.5 Prices, fees and charges are subject to change without notice.

### 7. Liability

- 7.1 Legislation such as the *Trade Practices Act 1974* (Cth) may imply into these Terms and Conditions warranties or conditions or impose obligations which cannot be excluded, restricted or modified and these Terms and Conditions are read subject to such statutory provisions.
- 7.2 AYS shall not be liable for any loss or damage direct or indirect or howsoever in relation to the fitness for use, merchantable quality or lack of correspondence with any sample or description or arising from the failure of the Customer to satisfy itself that the goods supplied are of the description, quality and character ordered gives no warranty as to the use of the goods under those specifications. All other conditions, warranties, representations, liabilities, and obligations, whether implied or imposed by statute, including any conditions or warranties as to merchantability, fitness for purpose or correspondence with description are excluded to the extent permitted by law.
- 7.3 AYS warrants all Goods supplied are of acceptable quality at the time of delivery and warrants all Goods supplied against any defect of material for a period of six months from the date of delivery. In all cases other than a breach of a condition or warranty implied by Section 69 of the Trade Practices Act 1974, the liability of AYS shall be limited to any one or more of the following, at its election:-
  - (a) the replacement of the Goods or the supply of equivalent goods;
  - (b) the repair of the Goods;
  - (c) the payment of the cost of replacing the Goods or acquiring equivalent goods;
  - (d) the payment of the cost of having the Goods repaired, or
  - (e) a refund for a major failure.In the event that the Goods are defective and AYS undertakes to replace the Goods, AYS will not be held liable for any costs incurred due to the time taken to replace the Goods.
- 7.4 AYS shall not be liable for any loss or damage (including without limitation consequential loss) resulting from the supply or use of such Goods. This warranty shall not extend to any person other than the Customer.
- 7.5 In the event that the production or delivery of the goods is hindered, impaired or prevented by any cause whatever outside its reasonable control, AYS may notify the Customer that it is unable to fulfil all or part of the contract and may cancel the contract in whole or in part without incurring any liability whatsoever.

- 7.6 In the event that AYS breaches its obligations referred to in clause 7.1, to the extent allowed by law, its liability is limited
- 7.7 The total liability of AYS under these Terms and Conditions is, to the extent permitted by law, expressed in this clause 7 and AYS will under no circumstances be liable to the Customer for any Loss incurred by the Customer or any other party resulting directly or indirectly out of the supply by AYS to the Customer or out of any breach of AYS under these Terms and Conditions or out of the negligence of AYS.
- 7.8 Nothing in these Terms and Conditions shall exclude or modify any conditional warranty implied by law where to do so would render these Terms and Conditions void.

### **8. Title to Goods and Risk**

- 8.1. Risk of Loss or damage to the Goods will pass to the Customer at Delivery Time. The Customer shall, at its cost, insure the same, in AYS's name, against such risks as a prudent owner of the goods would insure, and for their full insurable value.
- 8.2 All goods delivered by AYS remain the property of AYS until all debts owing by the Customer to AYS have been paid, and notwithstanding that payments may be made for the purpose of settlement of specifically designated claims. Until payment of all debts owing as aforesaid, the Customer may sell the goods in the ordinary course of business, as AYS fiduciary and agent (but the Customer shall not hold itself out as such), and may for the purpose of such sale part with possession of the goods.
- 8.3 These provisions apply notwithstanding any arrangements under which AYS provides credit to the Customer. To the extent that there is any inconsistency, these provisions prevail.
- 8.4 Until payment in full of all debts owing to AYS, AYS may, without prejudice to any of its other rights, without prior notice, re-take and resume possession of any goods which remain AYS property and, by its servants and bailees, enter upon the Customer's premises or any other place where the goods may be, for that purpose if:
  - (a) There is any breach of any contract between AYS. and the Customer, or
  - (b) The Customer commences to be wound up or is placed under official management, or a receiver, or a receiver and manager, or a voluntary administrator is appointed in respect of the Customer, its undertaking or property or any part thereof, or an encumbrancer, by itself or by an agent, taken possession of the Customer's undertaking or property or any part thereof; or
  - (c) The Customer parts with possession of the goods or any of them otherwise than by sale to a Customer in the ordinary course of business.
- 8.5 Unless AYS has required the return of the goods or has determined this contract in accordance with these Terms and Conditions, the Customer (acting on its own account and not as a bailee of AYS) may use, incorporate with other materials or agree to sell any of the goods in its possession in the ordinary course of business notwithstanding that the property in the goods has not passed to it.
- 8.6 Where the Customer re-sells any of the goods before property in the goods has passed to it and as a result property in any of the goods passes from AYS or where any of the goods are incorporated with other materials so as to lose their separate

## Aust Yieh Stainless Pty Ltd Terms and Conditions of Sale

identity and the end product is subsequently sold, the Customer shall keep apart and hold on trust for AYS such part of the proceeds of such sale as represents the amount owed by the Customer to AYS in respect of the goods so sold.

- 8.7 AYS may recover the price of the goods by action, and may file an application for the appointment of a liquidator to the Customer, if the goods are not paid for within AYS's usual credit terms, or any separate arrangement for credit made by AYS with the Customer, notwithstanding that property in the goods has not passed to the Customer.

### 9. General

- 9.1 These Terms and Conditions take effect, are governed by and will be construed in accordance with the laws of the State of New South Wales, Australia.
- 9.2 These Terms and Conditions are subject to change without notice.
- 9.3 The parties agree that any action arising out of, or relating to these terms may only be brought by a court of competent jurisdiction in the State of New South Wales, Australia.
- 9.4 If any of these terms and conditions are found by a court of competent jurisdiction to be invalid or unenforceable, it will be struck out and the remaining terms and conditions will remain in force.
- 9.5 If we do not act in relation to a breach by you of these terms and conditions, this does not waive AYS's right to act with respect to subsequent or similar breaches.
- 9.6 The Customer may not assign or transfer any rights or benefits received under these terms and conditions to any other person or entity without the prior written consent of AYS.