

## TERMS OF SALE

### BETWEEN

ALL METAL (AUSTRALIA) PTY LTD A.C.N. 151 527 383 and their officers and any subsidiary or associated entity and as trustee of any trust ("ALL METAL")

AND

THE CUSTOMER

### DEFINITIONS

The following definitions will apply for the purposes of these Terms of Sale:

**"Account Customer"** means a customer who has a current credit account with ALL METAL and the Customer's subsidiaries, holding companies and other related entities.

**"Australian Consumer Law"** means the law as set out in Schedule 2 of the *Competition and Consumer Act 2010*.

**"Consumer Contract"** means a contract for the acquisition of goods or services as a "consumer" as that term is defined in the Australian Consumer Law.

**"Contract"** means each and every contract from time to time made between ALL METAL and the Customer in respect of which credit and/or Products and Services are supplied by ALL METAL to the Customer at the Customer's request.

**"Customer"** means the Account or Non-Account Customer ordering, buying, or hiring the Products and/or Services.

**"Event of Default"** means any of the following events:

- (i) the Customer fails to pay for any Products and Services and/or the Customer breaches these Terms of Sale;
- (ii) the Customer ceases or threatens to cease carrying on business;
- (iii) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer, or the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator is appointed, or the Customer goes into liquidation or makes an assignment or an arrangement or composition with the Customer's creditor, or the Customer stops payment or is deemed unable to pay the Customer's debts within the meaning of the *Corporations Act 2001 (Cth)*; if the Customer is a natural person: an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs, or an order is applied for or made to place the assets and affairs of the Customer under administration;

**"Non-account Customer"** means a person or entity that does not have a current credit account with ALL METAL and their subsidiaries, holding companies and other related entities.

**"Officer"** means each director, secretary, credit manager and authorised representative of ALL METAL.

**"PPSA"** means the *Personal Property Securities Act 2009 (Cth)*.

**"Price"** means the total price payable to ALL METAL under the Contract and/or Quotation.

**"Products"** means any goods supplied by ALL METAL to the Customer and includes Custom Building Products.

**"Quotation"** means a quote for Products and/or Services issued to the Customer by ALL METAL.

**"Site"** means any place to which the Customer requests the supply of Products and Services by ALL METAL.

**"Services"** means any services provided by ALL METAL to the Customer in relation to any Products.

**"Custom Building Products"** means any building products supplied by ALL METAL to the Customer which the Customer requests ALL METAL manufacture, purchase materials necessary to manufacture and/or supply according to any plans, drawings, specifications, engineering requirements, reinforcement schedule and/or any other documents, operational information, details or special instructions provided by the Customer.

**"Works"** refers to Services.

### OPERATIVE PART

#### 1. Incorporation of these Terms of Sale:

- (a) ALL METAL and the Customer agree that these Terms of Sale are and shall be incorporated into each and every Contract between them.
- (b) ALL METAL may at ALL METAL's complete discretion change, modify, add or remove portions of these Terms of Sale at any time.
- (c) The Customer acknowledges and agrees that their continued contracting with ALL METAL following changes to these Terms of Sale is to be construed as deemed acceptance by the Customer of those changes.
- (d) Previous dealings between ALL METAL and the Customer shall not have any effect on the Contract.
- (e) Trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract.
- (f) No Terms and Conditions of the Customer apply to any agreement between the Customer and ALL METAL.

**2. Quotations:** All Quotations provided by ALL METAL will, subject to clauses 3 and 4 of these Terms of Sale, remain current for the period stated in the Quotation. If no period is stated, a Quotation will, subject to clauses 3 and 4 of these Terms of Sale, remain current for 30 days from the date of the Quotation.

**3. Escalation and price variation:** ALL METAL may increase or decrease the Price of Products and Services during the term of the Contract where it incurs an increase or decrease in its costs of supplying the Products and Services. ALL METAL reserves the right to charge additional administration fees as determined by ALL METAL from time to time. ALL METAL reserves the right to increase the Price of Custom Building Products during the term of the Contract where its costs of the supply increases as a result of: -

- (a) any testing or inspection of Custom Building Products or any materials used or intended to be used in the manufacturing process (supplied by the Customer or otherwise) undertaken by ALL METAL at its complete discretion; or
- (b) any delay in processing caused by any defect in, or by the nature of, the materials used or intended to be used in the manufacturing process.

**4. Extras:** Unless stated in the Quotation the Price quoted does not include items such as installation or delivery of Products, provision of vehicle escorts if required for the delivery of oversized loads, on-Site scheduling, on-Site accommodation, provision of traffic control or any other item(s) specified in the Quotation as excluded. All extras will be charged by ALL METAL to the Customer.

**5. Acceptance of Quotations:** All Quotations are only capable of acceptance by the Customer in writing.

- 6. Payment:** The Customer must pay for all Products and Services supplied by ALL METAL as follows: -
- (a) **Account Customers:** within 30 days after the end of the month of supply or within any alternative period granted in writing by ALL METAL; and
  - (b) **Non-Account Customers:** on a cash basis prior to the commencement of supply.

7. **Interest:** ALL METAL is entitled to charge the Customer interest on amounts not paid on or before the due date specified by ALL METAL at a rate equivalent to 3% more than the business overdraft commercial interest rate of ALL METAL's principal bankers per annum from the invoice date until the payment of the debt.
8. **GST:** Each amount payable by the Customer in respect of a Taxable Supply by ALL METAL is a GST exclusive amount and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. "Taxable Supply" and "GST" have the meanings set out in the *A New Tax System (Goods and Services) Act 1999 (Cth)*.
9. **Expenses:** The Customer must pay to ALL METAL any costs, charges and expenses (including all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by ALL METAL in connection with any supply by ALL METAL to the Customer, the exercise or attempted exercise of any power, right or remedy under these Terms of Sale and/or the failure of the Customer to comply with these Terms of Sale.
10. **Provision of information:** The Customer acknowledges and agrees that it must provide ALL METAL with all information reasonably necessary (including without limitation all necessary plans, specifications, engineering requirements, details, and/or special instructions) to enable supply and/or performance by ALL METAL of the Products and Services requested by the Customer before the commencement of supply and/or performance. The Customer warrants that all documents provided to ALL METAL are accurate, that ALL METAL is entitled to use all such documents for the purposes of the Contract and that such use does not infringe any third party intellectual rights. The Customer indemnifies ALL METAL against all claims, costs, liabilities and expenses incurred by ALL METAL as a result of, or related to: -
- Any inaccuracy, omission or error in the documents supplied by the Customer or a third party; and
  - Any documents supplied by the Customer or a third party for the purposes of, or in the course of the supply of, the Products or Services that breach a third party's intellectual property rights;
11. **Changes to Customer requirements:** The Customer acknowledges and agrees that where the Customer proposes any variations, substitutions, additions and deletions to specifications, engineering requirements or special instructions, including without limitation, any changes to Product quantities, weight, dimension, finish, composition, or any other characteristics (collectively referred to in this clause as "variations") after a Quotation has been accepted by the Customer and/or an Order placed with ALL METAL: -
- The Customer must obtain ALL METAL's written consent to the variations;
  - The provision of ALL METAL's consent or otherwise is in ALL METAL's complete discretion; ALL METAL is not liable for any loss, damage, cost or expense incurred by the Customer as a result of any refusal by ALL METAL of consent;
  - The Customer must pay ALL METAL for any expenditure commitment, work done, and material provided under the contract up to the date ALL METAL is notified in writing of any proposed variation;
  - If the variations are accepted by ALL METAL, the Customer must pay ALL METAL for any increase(s) in the Price of Products and Services supplied and any additional delivery and/or collection expenses, and the date of delivery or completion of work by ALL METAL will be extended to any date nominated by ALL METAL.
12. **Site measurement:**  
ALL METAL does not carry out Site measurements. The Customer acknowledges and agrees that where a Customer requests a Site visit by ALL METAL to check Site measurements ALL METAL may charge to the Customer travel time and time spent on Site by an ALL METAL representative at an hourly rate.
13. **Measures:** The Customer acknowledges and agrees that: -
- any statements made by ALL METAL as to any dimensions, weights, specifications or other characteristics of Products (whether made verbally, contained in any document including any quotation, catalogue or publicity material produced by ALL METAL, or by way of any sample provided by ALL METAL) are approximate only and ALL METAL may supply Products on an actual or calculated basis. A calculated basis will be in accordance with the applicable Australian Standards;
  - any statements made by ALL METAL as to any dimensions, weights, specifications or other characteristics of Products are final and ALL METAL is not liable for any errors in such statements unless the Customer provides ALL METAL with: -
    - written notice (at the address specified on the Delivery Docket or Invoice) of any error within 14 days of the date of delivery of the Products; and
    - a reasonable opportunity after ALL METAL's receipt of that notice to examine and test the Products before they are used or otherwise dealt with in any manner whatsoever by the Customer or any third party; and
  - ALL METAL may at its complete discretion alter the material specifications shown in its promotional material to reflect changes made after the date of publication.
14. **Standard Grades of Material**
- The Customer acknowledges that: -
    - ALL METAL may not be the manufacturer of the Products (or all of the components of the Products) supplied; and
    - Products supplied by ALL METAL which are not manufactured by ALL METAL (or to the extent that they are not manufactured by ALL METAL) are subject to the chemical composition, physical properties and product standards of the original manufacturer.
  - Subject to clause 14(c) below, ALL METAL will use its reasonable endeavours to: -
    - supply Products having the grade of material specified by the Customer in his/her request for the supply where those Products are the subject of the Contract;
    - ensure that the Products' grade of material as specified by the Customer in his/her request for supply where those Products are the subject of the Contract will, unless otherwise agreed, be in accordance with applicable Australian Standards and/or as detailed in any current, relevant price schedules, product handbooks or other product material of the manufacturer.
  - Except as required by law, ALL METAL does not give any warranty in respect of Products (or any part of Products) which ALL METAL supplies but were not manufactured by ALL METAL.
15. **Fitness for Purpose:** The Customer agrees that if the Customer is aware, or should be aware, that the Products the subject of a Contract are for a particular purpose or are required to possess uniform or special characteristics, the Customer will clearly notify ALL METAL in writing of that purpose or those characteristics. The Customer agrees that, unless expressly agreed otherwise by ALL METAL in writing, that it has made its own enquires in relation to the suitability of the Products and does not rely upon any representations made by ALL METAL in relation to their suitability for a particular purpose or any particular steps which must be taken in respect of the use of the Products.
16. **Property and Risk**
- Property and title in the Products shall not pass until the Customer has paid all moneys owing to ALL METAL in full (whether or not Products are delivered in instalments, some of which have been paid for by the Customer). Risk in the Products passes to the Customer at the time of delivery (including all risks associated with unloading).
  - Until payment of all moneys owed by the Customer to ALL METAL, the Customer holds the Products as fiduciary bailee and agent for ALL METAL and must keep the Products physically separate from all other good of the Customer, and clearly identified as owned by ALL METAL.
  - If an Event of Default occurs, then without prejudice to ALL METAL'S other rights, ALL METAL may without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of the Products (including without limitation removing and detaching the Products from any structure to which the Products is affixed in any manner ALL METAL considers appropriate), and ALL METAL may at its complete discretion resell the Products on any terms and conditions it considers appropriate and for ALL METAL's exclusive benefit. All costs and expenses incurred by ALL METAL in recovering possession must be paid by the Customer.

- (d) The Customer must not sell or otherwise dispose of any Products or things (including land or structure) to which the Products have been affixed while money is owed to ALL METAL by the Customer without first obtaining the written consent of ALL METAL. If in breach of this condition the Customer sells any of the Products, then without prejudice to ALL METAL's other rights, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- (e) If the Customer uses the Products in some manufacturing or construction process of its own or of some third party while money is owed to ALL METAL, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to such Products in trust for ALL METAL. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to ALL METAL and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged.
- (f) If the Products are resold or goods and services using the Products are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for ALL METAL. Such part of the book debts and proceeds will be deemed to equal in dollar terms the amount owed by the Customer to ALL METAL at the time of the receipt of such book debts. The Customer must not assign or grant a security interest in respect of such book debts without ALL METAL's prior written consent.

**17. Personal Property Securities Act:**

**"Financing statement", "financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled"** and all related terms have the meaning given to them by the PPSA.

- (a) In consideration of ALL METAL supplying the Products to the Customer at the request of the Customer, the Customer:
  - (i) grants to ALL METAL a "Purchase Money Security Interest" ("PMSI") in all Products supplied by ALL METAL to the Customer from time to time as security for payment of the purchase price of such Products;
  - (ii) grants to ALL METAL a "Security Interest" ("SI") in all Products supplied by ALL METAL to the Customer from time to time and in all of the Customer's personal property as security for payment of any other amount owed by the Customer to ALL METAL and as security for the performance by the Customer of the obligations set out in these Terms of Sale;
  - (iii) agrees that any Products or proceeds of sale of the Products coming into existence after the date of these Terms of Sale will come into existence subject to the PMSI and SI granted herein and these Terms of Sale without the need for any further action or agreement by any party;
  - (iv) acknowledges that the Customer has received valuable consideration from ALL METAL and agrees that it is sufficient;
  - (v) agrees that the PMSI and SI has attached to all Products supplied now or in the future by ALL METAL to the Customer and that the attachment of the PMSI has in no way been deferred or postponed.
- (b) ALL METAL reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these Terms of Sale.
- (c) The costs of registering a financing statement or a financing change statement can be charged to the Customer by ALL METAL at ALL METAL'S complete discretion, and may, where applicable, be charged to the Customer's credit account with ALL METAL.
- (d) The Customer must promptly, on request by ALL METAL, execute all documents and do anything else reasonably required by ALL METAL to ensure that the PMSI and SI created under these Terms of Sale constitutes a perfected security interest.
- (e) The Customer must not agree to allow any person to register a financing statement over any of the Products in which ALL METAL has any PMSI and/or SI without the prior written consent of ALL METAL and will immediately notify ALL METAL if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to any such Products.
- (f) The Customer must not allow the Products in which ALL METAL has any PMSI or SI to become accessions or commingled with other goods unless ALL METAL has first perfected any PMSI or SI that ALL METAL has in relation to the Products.
- (g) If ALL METAL perfects any PMSI and/or SI that ALL METAL has in relation to the Products, the Customer must not do anything that results in ALL METAL having less than the security or priority granted by the PPSA that ALL METAL assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage.
- (h) The Customer irrevocably grants to ALL METAL the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if ALL METAL has cause to exercise any of ALL METAL's rights under Chapter 4 of the PPSA, and the Customer will indemnify ALL METAL for any claims made by any third party as a result of such exercise.
- (i) The Customer acknowledges and agrees that:
  - (i) nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these Terms of Sale;
  - (ii) sections 92, 95(1)(a), 97, 118(1)(b)(i), 121(4), 130(1)(a), 132(4), and 135(1)(a) of the PPSA will not apply to the enforcement of any PMSI and SI created under these Terms of Sale and the Customer waives any rights given to the Customer by, and obligations imposed on ALL METAL in relation to the Customer under, the said sections;
    - (i) the Customer waives its right to receive notice of a verification statement in relation to any registration event (including registration of a financing statement or a financing change statement) relating to the PMSI and SI created under these Terms of Sale under section 157 of the PPSA; and
    - (ii) the Security Agreement created by these Terms of Sale may be reinstated on the terms considered appropriate by ALL METAL at its complete discretion.

**18. Delivery:** ALL METAL will deliver Products to the Site notified by the Customer subject to the following conditions: -

- (a) ALL METAL will endeavour to deliver Products to the Customer when the Customer requires them but will not be responsible for any delays in delivery of any nature. The Customer cannot reject Products due to late delivery.
- (b) Products will be at the Customer's risk upon delivery. If the Site is unattended the delivery docket/manifest signed by the cartage contractor will be prima facie evidence of due delivery.
- (c) Delivery to Carriers' depots are subject to availability of suitable materials handling equipment. Products delivered to, and acceptance at, carrier's depots will be at the Customer's risk upon acceptance of the Products by the nominated carrier.
- (d) ALL METAL may in ALL METAL's complete discretion deliver by instalments. Failure to deliver an instalment, or late delivery of an instalment, will not entitle the Customer to repudiate the contract and the Customer cannot reject further deliveries of the balance of the Products.
- (e) If the Customer fails to accept a delivery agreed to between ALL METAL and the Customer, the Customer will pay all costs incurred, including the costs of returning the Products to ALL METAL and any subsequent re-delivery of such Products to the Customer.
- (f) All delivery, freight and other transport costs (including any insurance of the Products) are at the Customer's expense and will be charged to the Customer, unless ALL METAL expressly agrees otherwise in writing. Any additional costs associated with particular delivery instructions are at the Customer's expense and will be charged to the Customer even if the cost(s) have been omitted from any Quotation.
- (g) If ALL METAL delivers and/or performs only part of the Products and/or Services, then it may invoice the Customer and the Customer must pay for, that part of the Products delivered and/or Services performed, unless otherwise agreed in writing between the parties.

**19. Site access:** The Customer acknowledges and agrees that provision of clear, adequate and unobstructed access to the Site for semi-trailers, delivery vehicles and body trucks is the sole responsibility of the Customer. The Customer acknowledges and agrees that all costs incurred by ALL METAL or its contractors for, amongst other things and without limitation:

- (a) recovery of bogged vehicles;
  - (b) local Council fines issued to ALL METAL, its Contractors or the Customer;
  - (c) delays to ALL METAL vehicles once on Site resulting in increased costs;
- that are caused whether directly or indirectly by difficulties associated with access to the Site will be charged to the Customer.

- 20. Supply claims:** The Customer will inspect and check all Products received as soon as practicable upon collection or unloading. Any claim by the Customer of a short supply of Products must be notified to ALL METAL at the time of delivery. The Customer acknowledges and agrees that any claim by the Customer for short supply of Products by ALL METAL after the time of delivery to the Site is waived. ALL METAL accepts no liability for any loss, damage, costs or expenses incurred by the Customer in relation to an alleged short supply of Products notified to ALL METAL after the time of delivery. All claims must be forwarded to ALL METAL at the address specified on the front of the Delivery Docket or Invoice. ALL METAL will endeavour to rectify any shortages as soon as practicable after receiving notice but will not accept any liability from or in respect of such rectification.
- 21. Rectification and Claims:** Requests by the Customer to ALL METAL for approval to undertake rectification works in relation to Products or Services supplied to the Customer (including but not limited to faulty Products) must:
- be made in writing and sent to ALL METAL at the address specified on the Delivery Docket or Invoice;
  - where the request relates to Services, be made within 28 days of the Services being supplied by ALL METAL;
  - where the request relates to a claim Products are defective and/or damaged, be made within 14 days of delivery of those Products;
  - clearly identify the ALL METAL Delivery Docket or Invoice number to which the proposed rectification works or faulty Products relates; and
  - where the request relates to rectification work, provide sufficient details of the rectification work proposed to be undertaken by the Customer and the contractor or other party the Customer proposes to engage to undertake the work.
- All claims by the Customer in respect of Products are subject to clause 23 of these Terms of Sale. ALL METAL accepts no obligation or liability in respect of claims for faulty Products and/or to undertake rectification works requested by the Customer in the absence of a written request made in accordance with the requirements of this clause. ALL METAL accepts no liability for any costs, loss, damage or expense incurred by the Customer associated with rectification works undertaken by the Customer or its agents or contractors without prior written approval from ALL METAL. ALL METAL may in its complete discretion approve or refuse a written rectification request made by the Customer.
- 22. Site Inspection:** If the Customer makes a complaint and requests an ALL METAL representative to visit a Site to inspect Products and/or Services supplied, ALL METAL will arrange for a representative to attend the Site. In the event that the subject of the complaint is in no way attributable to the Products and/or Services supplied by ALL METAL, ALL METAL is entitled to charge the Customer for expenses, travel time and time spent on Site by ALL METAL's representative at an hourly rate.
- 23. Liability:** The Customer acknowledges and agrees that: -
- Non-excludable Rights:** The parties acknowledge that there are statutes that may imply certain representations, terms, conditions and warranties into a contract between ALL METAL and the Customer for the supply of Products or Services, and also avoid or prohibit the exclusion, restriction or modification of the application of, or exercise of rights conferred under, those representations, terms, conditions and warranties ("**Non-excludable Rights**"). Nothing in clause 23 or any other provision of these Terms of Sale is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010 (Cth)* except to the extent permitted by that statute where applicable.
  - Exclusion of implied Terms, Conditions, Warranties and Representations:** All representations, warranties, undertakings, terms and conditions, whether express, implied, statutory or otherwise, relating in any way to the Products and/or Services supplied under the Contract are excluded to the full extent permitted by law.
  - Limitation of liability for Non-Excludable Rights:** To the extent permitted by law, the liability of ALL METAL for any breach of any Non-Excludable Right (including any breach in relation to Products or Services supplied under a Consumer Contract that are not of a kind ordinarily acquired for personal, domestic or household use or consumption) is strictly limited, at the option of ALL METAL, to:-
    - if the breach relates to Products:
      - the replacement of the Products or the supply of equivalent Products;
      - the repair of the Products;
      - the payment of the cost of replacing the Products or of acquiring equivalent Products; or
      - the payment of the cost of having the Products repaired; and
    - if the breach relates to Services:
      - the re-supplying of the Services; or
      - the payment of the cost of having the Services re-supplied.
  - Losses:** Subject to clauses 23(a), (b), and (c) above and to the full extent permitted by law, ALL METAL is not liable to the Customer (or any third party claiming through the Customer) in contract, tort (including without limitation negligence), breach of statute, equity, or otherwise, for any claim for loss and damage for:
    - any death, injury, loss or damage to any person;
    - any damage to property or the Products; or
    - any consequential, special, incidental or indirect loss or damage of any nature whatsoever (including but not limited to loss of income, profit, or business, any loss of goodwill or reputation, and any loss of value of intellectual property)
 caused, directly or indirectly, as a result of: -
    - the Products (including without limitation any defects in the Products and/or workmanship caused by modification of the Products by the Customer or any third party without ALL METAL's written approval, or caused by subjecting the Products to unusual physical stress);
    - any defect in or failure of any materials supplied by the Customer for use in the manufacture of Custom Building Products or the Custom Building Products themselves, and any damage caused by or connected with the Custom Building Products or materials used in the manufacture of Custom Building Products at any time during or after processing;
    - any technical advice given by its employees in connection with the design, installation and use of Products manufactured and/or supplied by ALL METAL;
    - the Customer or any person other than ALL METAL installing the Products (including without limitation any failure of the Customer to ensure that the Products are installed and used in accordance with the manufacturer's specifications and user guide for installation and use);
    - the improper use by the Customer of the Products, incorrect positioning of the Products, or the performance of Products;
    - any use of or dealing with the Products whatsoever, whether arising from any defect in the Products or the Products unsuitability for the particular purpose for which they were purchased;
    - any inaccuracies in weights, measurements, capacities and other characteristics of Products specified by ALL METAL;
    - an act or omission (including negligent acts or omissions) of ALL METAL or any of ALL METAL's employees, contractors or agents, or in any other way caused by any fault or negligence by ALL METAL, its employees, agents or subcontractors in the manufacture and/or supply of the Products, or in performing the work; or
    - any failure or omission on the part of ALL METAL to comply with its obligations under the Contract.
 Where ALL METAL's liability in respect of a claim arising out of the Contract is not excluded, ALL METAL's liability shall in no event exceed the total price payable by the Customer to ALL METAL for the sale of Products and supply of Services.
  - Force Majeure:** ALL METAL is not liable for any failure to perform the Contract to the extent and for so long as its performance is prevented or delayed because of:
    - circumstances outside ALL METAL's control;
    - any failure of ALL METAL's machinery; or
    - any failure of a supplier to ALL METAL;

and if any such circumstance delays or prevents the performance by ALL METAL of its obligations under the Contract, ALL METAL may at its complete discretion extend the date of delivery of Products and/or the date for completion of work to enable the delivery of the Products or Completion of the work, or terminate the contract without liability to the Customer and recover all amounts owing to ALL METAL in respect of Products delivered and/or work performed up to the date of termination.

- (f) **Indemnity:** In addition to all other indemnities set out in these Terms of Sale, the Customer indemnifies ALL METAL, its employees, agents and contractors:
- (i) against any claims made against ALL METAL by any third party in respect of any loss, damage, death or injury to any person, except to the extent the liability arises out of an act or omission of ALL METAL, its employees, contractors or agents;
  - (ii) in respect of any cost, loss, damage or liability (including consequential loss, loss of profits or pecuniary or special damages) incurred by ALL METAL resulting from any claim arising from or in connection with any design, installation or use of Products;
  - (iii) against all claims made against ALL METAL by any third party in respect of any cost, loss, damage or liability (including consequential loss, loss of profits or pecuniary or special damages) in any manner whatsoever connected with Customer Building Products (including without limitation any claim arising from or in connection with any design, defect, installation or use of Custom Building Products or associated with the manufacture of those Products);
  - (iv) against all claims made against ALL METAL by any third party in respect of any exercise by ALL METAL of its rights to recover possession of the Products under these Terms of Sale; and
  - (v) against all losses and expenses which ALL METAL may suffer or incur due to the failure of the Customer to fully observe its obligations under these Terms of Sale.
- 24. Expenses:** The Customer must pay to ALL METAL any costs, charges and expenses (including all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by ALL METAL in connection with any supply by ALL METAL to the Customer, the exercise or attempted exercise of any power, right or remedy under these Terms of Sale and/or the failure of the Customer to comply with these Terms of Sale.
- 25. Suspension or Ceasing of Supply:**
- (a) ALL METAL may in ALL METAL'S complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products and Services to the Customer or amend these Terms of Sale. The Customer must pay to ALL METAL all amounts owing in respect of deliveries of Products made and/or services performed prior to the date of cessation or suspension.
  - (b) Without limiting clause 25(a), if an Event of Default occurs, ALL METAL may, without prejudice to ALL METAL'S other rights, call up moneys owed to ALL METAL by the Customer, retain all moneys paid on account, or cease further deliveries and recover from the Customer all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any Products for which payment remains outstanding.
- 26. Service of Notices and Documents:** All notices or documents required to be given to ALL METAL for the purposes of the PPSA must be given in accordance with the PPSA. Any notices or documents required to be given by ALL METAL to the Customer for the purposes of the PPSA or for any other purposes will be effectively 'given', 'served' and 'delivered' if sent by ALL METAL to the Customer by pre-paid ordinary post to any one of the following addresses: -
- (a) the last address for the Customer known to ALL METAL;
  - (b) if the Customer is a Company, the registered office or principal place of business; or
  - (c) if the Customer trades under a registered business name, any address contained on a current business extract for that business name.
- 27. Application of Monies:** If ALL METAL receives or recovers money in respect of a debt of the Customer, ALL METAL may use the money to pay off whichever debt or part of a debt ALL METAL chooses and is not compelled to apply the money as directed by the Customer or any other person. ALL METAL may at any time set-off amounts owed by ALL METAL to the Customer against amounts owed by the Customer to ALL METAL.
- 28. Waiver:** The failure by ALL METAL to insist upon the compliance with any of these Terms of Sale does not constitute a waiver and ALL METAL is entitled to insist upon compliance with all provisions of these Terms of Sale at any time.
- 29. Assignment:** The Customer may not assign any of its rights and obligations under these Terms of Sale or otherwise transfer the benefit of them or any right or remedy under them without the prior written consent of ALL METAL.
- 30. Severance:** Each clause, subclause and part of these Terms of Sale is separate and independent. If any clause or subclause or part is found to be invalid or unenforceable the other clauses or subclauses or parts will not be adversely affected.
- 31. Application of Laws:** These Terms and Conditions are governed by the laws of the State of Queensland. The Customer submits to and consents to the central Courts of Brisbane having jurisdiction over these Terms of Sale.