

TERMS AND CONDITIONS OF SALE

A. APPLICABILITY

- (a) These Terms and Conditions of Sale ("Conditions") govern the supply of all goods and services by voestalpine High Performance Metals (Australia) Pty Limited ACN 000 013 052 ("vHPM – Australia") to the customer (the "Customer").
- (b) These Conditions prevail over any other terms and conditions that may be expressed or implied to the contrary by the Customer, whether in an order, letter, tender document, in negotiations or otherwise.
- (c) No variation of these Conditions shall bind vHPM – Australia unless made in writing, expressed to be a variation of these Conditions and signed by a duly authorised officer of vHPM – Australia.

B. QUOTATIONS

- (a) A quotation by vHPM – Australia shall not be binding on vHPM – Australia until the Customer's order has been accepted by vHPM – Australia at which point a contract ("Contract") will exist between the parties..
- (b) Any modification to a quotation will be effective only if it is expressed in writing and signed by a duly authorised officer of vHPM – Australia.

C. ADVICE

Any advice, recommendation, information or assistance (collectively referred to as "advice") provided by vHPM – Australia in relation to the goods sold or services supplied by it, or any advice in relation to the use, application suitability, performance or tolerance (collectively referred to as "performance") of the goods or services is subject always to the particular purpose made known by the Customer for which the goods or services are being acquired and is given in good faith but, to the extent permitted at law, without any liability or responsibility on the part of vHPM – Australia.

D. PRICES

- (a) The Customer is required to pay the price for the goods and services to vHPM – Australia in Australian dollars. If vHPM – Australia quotes subject to exchange rate variation then any variation from the rate quoted to the rate paid by vHPM – Australia to its supplier shall be the benefit or detriment of the Customer.
- (b) All prices for the goods and services exclude the following costs:-
 - (i) any statutory charges, goods and services or other taxes, duties or imposts levied in respect of the goods or services and their supply; and
 - (ii) the costs of freight, delivery, transportation, packaging, shipping, clearance fees and other costs, charges and expenses incurred by vHPM – Australia in the course of delivering or supplying the goods and services to the Customer.
- (c) If any of the costs in Clause D(b) are incurred by vHPM – Australia but have not been allowed for by vHPM – Australia or the manufacturer in calculating the price, then they are to the Customer's account.
- (d) If vHPM – Australia has not specified the price to be charged to the Customer at the time that the Customer places its order, the prices(s) charged to the Customer shall be the prices(s) ruling as at the date of delivery.
- (e) The Customer acknowledges that vHPM – Australia's prices are subject to alteration from time to time.

E. DELIVERY OF THE GOODS

- (a) Delivery is to be effected either by delivery of the goods to the Customer's premises or nominated delivery site or by collection of the goods from vHPM – Australia's premises by the Customer or its common carrier.
- (b) The Customer acknowledges that:-
 - (i) delivery dates are estimates only and vHPM – Australia shall not be liable for any delay in delivering goods ordered by the Customer; and
 - (ii) delivery of the goods will be delayed by a period commensurate with the Customer's delay in providing vHPM – Australia with all necessary specifications.
- (c) If the Customer is unable or fails to accept delivery of the goods, vHPM – Australia may deliver them to a place of storage nominated by the Customer and, failing such nomination, to a place determined by vHPM – Australia. Such delivery shall be deemed to be delivered to the Customer. The Customer shall be liable for all costs, charges and expenses incurred by vHPM – Australia on account of storage, detention, double cartage/delivery or similar causes if these costs are caused by the Customer's ability or failure to accept delivery of the goods when delivered or ready for delivery by vHPM – Australia.
- (d) The Customer agrees that it will be obliged to and shall pay for the goods on the due date for payment notwithstanding that delivery is made after the delivery date specified.
- (e) Unless otherwise specified in writing signed by a duly authorised officer of vHPM – Australia, vHPM – Australia reserves the right to supply ten per cent (10%) more or less than the quantity of goods ordered.

F. RISK

- (a) All risk in the goods shall pass to the Customer upon delivery.
- (b) The Customer's assumption of risk in the goods so delivered shall not be interpreted as inconsistent with the retention of vHPM – Australia's title in those goods pursuant to Clause I.

G. CANCELLATION

- (a) Subject to Clause L, the Customer may not cancel or suspend any part of an order or sale without vHPM – Australia's written consent.
- (b) If an order or sale is suspended or cancelled, the Customer must reimburse vHPM – Australia what vHPM – Australia considers to be a fair and reasonable amount to fully compensate vHPM – Australia for any costs, charges, expenses, loss of profit and consequential damage that vHPM – Australia has or may suffer in relation to such suspension or cancellation.
- (c) The Customer acknowledges that in the event that it:-
 - (i) becomes insolvent; or
 - (ii) enters into any form of external administration; or

(iii) is named as a debtor to any winding up or bankruptcy petition or commits any act bankruptcy, HPM–Australia shall, in its absolute discretion, be entitled to cancel or suspend the sale as it thinks fit.

H. PAYMENT

- (a) The Customer must pay the full price of all goods and services ordered by the Customer from vHPM – Australia within 30 days from the end of the month following the date of the invoice.
- (b) The Customer shall pay for the whole of the value of the order as invoiced when the same is due for payment notwithstanding that the Customer may have directed that delivery of the goods be staggered over different times, to different addresses or that the Customer may not have signed a receipt for the whole or any part of the goods.
- (c) Time for such payment shall be the essence of the Contract.
- (d) In the event that vHPM – Australia considers the credit of the Customer is unsatisfactory or the Customer fails to pay any amounts when due, then:-
 - (i) vHPM – Australia may:
 - require security for the payment of the price and may without notice withhold delivery of goods or supply of services until such security is received;
 - terminate any or all subsisting contracts between vHPM – Australia and the Customer without liability to vHPM – Australia;
 - (ii) the Customer must, in addition to the amount owing and without prejudice to all or any of the vHPM – Australia's other rights and remedies under the Contract, pay:-
 - (A) interest on all amounts outstanding, due and payable to vHPM –Australia at the rate equal to that specified from time to time by vHPM – Australia's primary bank as its "Overdraft Reference Rate" and if no such rate then exists, at the rate charged by vHPM – Australia's primary bank on overdrafts in excess of \$100,000.00 calculated from the date such amount falls due until it is received in full by vHPM – Australia; and
 - (B) all costs, charges and expenses incurred by vHPM – Australia in recovering unpaid amounts or otherwise enforcing or attempting to enforce any of its rights under these Conditions, including all legal costs calculated on a "solicitor and own client" basis; and
 - (iii) the Customer shall deliver up the goods to vHPM – Australia upon receipt of a demand in writing. In the event that the Customer does not comply with the demand within 1 business day of receipt of the demand, vHPM – Australia shall be entitled to enter upon the Customer's premises at any time to do all things necessary in order to take possession of the goods. The Customer shall be liable for all costs of and associated with the exercise of vHPM – Australia's rights under this clause, which shall be payable on demand.

I. RETENTION OF TITLE

- (a) Subject to Clause I (b), and unless otherwise notified in writing, the Customer is authorised to sell the goods in the ordinary course of its business.
- (b) Until full payment in cleared funds is received by vHPM – Australia for all goods sold and supplied by it to the Customer, as well as all other amounts owing to vHPM – Australia by the Customer:-
 - (i) title and property in the goods shall remain vested in vHPM – Australia and shall not pass to the Customer;
 - (ii) the Customer shall hold the goods as fiduciary, bailee and agent for vHPM –Australia; and
 - (iii) the Customer shall keep all goods supplied and delivered to it by vHPM – Australia separate from its other property, and in a manner to enable them to be identified.
- (c) If the Customer sells, disposes of or uses the goods before full payment in cleared funds is made to vHPM – Australia, until such full payment is made, all monies resulting from such sale, disposal or use shall be held on trust for vHPM –Australia specifically earmarked in the accounts of the Customer as the property of vHPM – Australia.
- (d) The goods remain vHPM – Australia's goods notwithstanding that they may have been machined, cut or attached to other goods not the property of vHPM – Australia.
- (e) If the Customer combines or incorporated the goods with other goods (not being the property of vHPM – Australia) before full payment in cleared funds is made to vHPM – Australia, so that vHPM – Australia's goods become mixed with goods of others, the Customer hereby authorises vHPM – Australia to dismantle and remove its goods from the other goods.
- (f) The Customer acknowledges that vHPM – Australia may have a common law or statutory lien over the goods. In the event that there is no such lien, Customer agrees that vHPM – Australia shall have a general lien over all goods including the right to sell the same where the Customer is in default under these Conditions.

J. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

- (a) Defined terms in this clause J have the same meaning as given to them in the PPSA.
- (b) vHPM – Australia and the Customer acknowledge that these Conditions constitute a Security Agreement and give rise to a Purchase Money Security Interest (PMSI) in favour of vHPM – Australia over the goods supplied or to be supplied to the Customer pursuant to these Conditions.
- (c) The goods supplied or to be supplied under these Conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Conditions.
- (d) vHPM – Australia and the Customer acknowledge that vHPM – Australia, as Secured Party, is entitled to register its interest in the goods supplied or to be supplied to Customer, as Grantor, under these Conditions on the PPSA Register as Collateral.
- (e) To the extent permissible at law, the Customer:
 - (i) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to vHPM – Australia;
 - (ii) agrees to indemnify vHPM – Australia on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
 - A. registration or amendment or discharge of any Financing Statement registered by or on behalf of vHPM – Australia; and
 - B. enforcement or attempted enforcement of any Security Interest granted to vHPM – Australia by the Customer.
 - (iii) agrees that nothing in sections 130 and 143 of the PPSA will apply to these Conditions or the Security under these Conditions;.

- (iv) agrees to waive its right to do any of the following under the PPSA:
 - A. receive notice of removal of an Accession under section 95;
 - B. receive notice of an intention to seize Collateral under section 123;
 - C. object to the purchase of the Collateral by the Secured Party under section 129;
 - D. receive notice of disposal of Collateral under section 130;
 - E. receive a Statement of Account if there is no disposal under section 132(4);
 - F. receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
 - G. receive notice of retention of Collateral under section 135;
 - H. redeem the Collateral under section 142; and
 - I. reinstate the Security Agreement under section 143.

K. LIMITATION OF LIABILITY

vHPM – Australia’s liability is limited, to the extent permissible by law and at vHPM – Australia’s option to:

- (a) in relation to goods;
 - (i) replacing the goods or the supply of equivalent goods; or
 - (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods;; and
- (b) in relation to services;
 - (i) re-supplying the services;
 - (ii) reimbursing the Customer for paying someone else to supply the services.

To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Conditions are excluded and vHPM – Australia is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:

- (i) any increased costs or expenses;
- (ii) any loss of profit, revenue, business, contracts or anticipated savings;
- (iii) any loss or expense resulting from a claim by a third party; or
- (iv) any special, indirect or consequential loss or damage of any nature whatsoever caused by Our failure to complete or delay in completing the order to deliver the goods.

Any warranty supplied to Customer with goods shall be subject to payment in full in accordance with the particulars stated on your invoice. To the extent permissible by law, nothing herein or in any warranty given by vHPM – Australia shall impose any liability on vHPM – Australia in respect of any defect in the goods arising out of acts, omissions, negligence or default of Customer, its agents or servants including without limitation any failure by Customer to comply with vHPM – Australia’s recommendations as to performance.

L. CLAIMS AND RETURNS

(a) Patent Defects

The Customer shall inspect all goods immediately upon receipt of delivery and, within 7 business days of receipt of the goods, shall give notice in writing to vHPM – Australia of:

- (i) the relevant packaging slip/consignment note number and date in respect of the goods the subject of the proposed claim;
- (ii) the date and place of delivery in respect of the goods the subject of the proposed claim; and
- (iii) the grounds upon which the Customer alleges that the goods do not comply with the Contract.

- (b) In the event that the Customer does not give written notice of any proposed claim within 7 days of receipt of delivery, the goods shall be deemed to comply with the specifications of the Contract and the Customer shall be bound to accept and pay for the goods in accordance with these Conditions.
- (c) Disposal or use of any part of the goods in an order which is the subject of a claim shall constitute acceptance by the Customer of the whole of the order. The Customer acknowledges and agrees that it cannot and will not make a claim against vHPM – Australia unless at the time of the claim all the goods the subject of the relevant Contract remain intact as a whole.
- (d) Upon giving written notice referred to in Clause L(a), the Customer hereby grants to vHPM – Australia full and unimpeded access to the premises of the Customer to enable representatives of vHPM – Australia to investigate any claim by the Customer. Such investigation shall not constitute or be construed as an admission of liability by vHPM – Australia.
- (e) After receipt of the said notice and after investigation by its representatives, vHPM – Australia may accept the return of the goods the subject of the claim.
- (f) Any liability incurred by vHPM – Australia as a consequence of the Customer’s claim shall be limited in accordance with Clause K of these Conditions, notwithstanding that that liability may have been incurred by reason of vHPM – Australia’s error, omission, negligence or recklessness. In the event that vHPM – Australia grants a credit for or replaces the goods, vHPM – Australia shall have the right to retake possession of the goods and the Customer shall deliver up those goods to vHPM – Australia.

(g) Latent Defects

In the event that any defect in the goods is not apparent until after the goods have been machined, worked or cut, the Customer shall give written notice of the alleged defect to vHPM – Australia as soon as it becomes aware of that defect. Upon giving the written notice referred to herein, the terms of clauses L(d), L(e) and L(f) shall apply. In the event that vHPM – Australia is inclined to credit the invoiced value of or replace the goods, vHPM – Australia shall have the right to take possession of the machined, worked or cut goods, and the Customer shall deliver up those goods to vHPM – Australia.

M. RESOURCE IMPAIRMENT

- (a) The parties acknowledge that the performance of any obligations or delivery concerning any order confirmation, offers or any other declarations or undertakings by vHPM-Australia may be subject to a delay due inter-alia (but without limiting the generality of this clause) to the unavailability of

alloys, graphite electrodes, refractories, gas, electricity, fuels or any other factors required for the manufacture of materials, their delivery, or the fulfilment of any obligations or delivery (hereinafter referred to as “**Resource Impairment**”

- (b) **Subject to (d)**, the Customer acknowledges that vHPM-Australia shall not be in breach of the Contract between it and the Customer nor be liable to the Customer (for any losses whether direct or consequential) if a Resource Impairment causes a temporary delay in vHPM-Australia performing its obligations or delivery of the goods, the subject of this Contract **PROVIDED THAT** vHPM-Australia shall give written notice as soon as reasonably practicable (such notice may be given to the customer by email to the email address previously provided to vHPM-Australia by the Customer) to the Customer of the reasons and anticipated or possible duration of the delay or performance of the contract by vHPM-Australia **AND IN SUCH EVENT** the Customer shall make no objections requisitions or claims of any kind arising out of the delay or performance of vHPM-Australia due to any Resource Impairment and the performance of the contract
- (c) Upon the service of the notice referred to in (b) the parties shall negotiate in good faith for a period of delay or suspension of the delivery of the goods or performance of the Contract by vHPM-Australia, due to the Resource Impairment.
- (d) Notwithstanding the provisions of (c) and the provisions of Clause N, in the event that the parties cannot agree on the period of delay or suspension of the delivery of the goods or performance of the Contract due to the Resource Impairment or if the period negotiated has expired, and if the Resource Impairment persists, then after a period of two (2) weeks, commencing on the date of the written notice given pursuant to Clause M (b) or on the date when the period of negotiation has ended, either party shall be at liberty to terminate the Contract in whole or in part, and except for the costs of part delivered goods for which the Customer shall be liable, vHPM-Australia shall refund or reimburse all moneys paid by the Customer to vHPM-Australia and neither party shall have any further action against the other eye arising out of such termination.
- (e) the parties agree that the provisions of Clause N shall apply other than in relation to Resource Impairment.

N. FORCE MAJEURE

If for reasons beyond its control vHPM – Australia is prevented or hindered from delivering the goods or supplying the services (or any part thereof) by reason of any acts of god, wars, insurrection or internal disturbances, fire, floods or accidents, breakdowns of plant or machinery, unavailability of or delays in shipping or other transport strikes or lock-outs of workmen, shortages or other default by suppliers of fuel, power or raw material, priority for supplies claimed by the Federal or State Governments of the Commonwealth of Australia or any overseas government, or any other happening or event, then:

- (i) any delay in such delivery or supply thereby suffered shall not give rise to any cause of action by the Customer against vHPM –Australia;
- (ii) during the period such delay continues, and subject always to clause G, vHPM – Australia and the Customer shall each have the option to suspend or cancel any outstanding obligations of the sale on either of their parts provided that:-
- (A) the delay has continued for no less than 180 days after the delivery date specified by vHPM – Australia;
 - (B) written notice shall be given by the party exercising such option;
 - (C) on any such suspension or cancellation by the Customer, any goods or services appropriated to the Contract by vHPM – Australia, whether partly or fully processed at the time of such suspension or cancellation, shall be accepted by the Customer when delivered by vHPM – Australia;
 - (D) In the case of cancellation the Customer shall be entitled to a credit against purchases in relation to any sums paid by the Customer in respect of goods or services subject to the cancellation and not subsequently delivered by vHPM – Australia pursuant to Clause L(ii) (C); and
- (iii) the Customer shall accept and pay for all of the goods or services which vHPM – Australia has supplied or which vHPM – Australia in its judgement is then able to supply.

O. MISTAKE

Any mistake on any quotation, order, invoice, delivery docket or other document issued by vHPM – Australia in relation to the Contract shall not be binding on vHPM – Australia and vHPM – Australia may in its discretion issue such amended document as is required to rectify such mistake. The Customer shall comply with vHPM – Australia's amended document.

P. ACCESS

The Customer irrevocably grants to vHPM – Australia authority to enter into, forcibly or otherwise, all of the owned and leased premises of the Customer for the purpose of inspecting or removing (subject to the terms of the Contract) any goods of vHPM – Australia.

Q. LAW

- (a) The Contract is to be interpreted according to the laws of the State or Territory of Australia from which vHPM – Australia's goods are supplied to the Customer.

R. SALES TO IRANIAN OIL & GAS INDUSTRY

The Customer is aware of (i) the regulation (EC) No 961/2010 on restrictive measures against Iran replacing Regulation (EC) No 423/2007, (ii) the U.S. Iran Sanction Act of 1996, as amended by the Comprehensive Iran Sanction Accountability, and Divestment Act 2010, (iii) similar regulations and statutory provisions in this respect in place globally and (iv) vHPM – Australia's group policy to prevent delivery of its goods into the oil and gas industry of the Islamic Republic of Iran (collectively “Regulations”). The Customer will fully obey these Regulations no matter if they are applicable on him or not and will not deliver the goods, directly or indirectly, into the oil and gas industry of the Islamic Republic of Iran or resell the goods to anyone he knows will do so or to circumvent this agreement in any other way.

S. SALES OF IDENTIFIED OIL & GAS MATERIALS TO IRAN

The Customer is aware of (i) statutory provisions and acts in place worldwide regarding export regulations concerning deliveries to the Islamic Republic of Iran and (ii) vHPM – Australia's group policy to prevent the delivery of its goods, directly or indirectly, into the oil and gas industry of the Islamic Republic of Iran (collectively “Regulations”). The Customer shall fully comply with these Regulations no matter if they are applicable on him or not and will in particular not deliver the goods purchased from vHPM – Australia, directly or indirectly, into the oil and gas industry of the Islamic Republic of Iran or circumvent these Regulations in any other way. In case of breach by Customer of this Article vHPM – Australia is entitled to claim compensation for all costs, damages and losses suffered as a consequence of the said breach and/or to terminate the Contract or the affected Order for Customer's default.