



BRASS & COPPER PTY. LTD.

A.C.N. 007 294 064 A.B.N. 59 007 294 064

ESTABLISHED 1989

**NON-FERROUS PRODUCTS: ALUMINIUM, BRASS, BRONZE, COPPER
AND NICKEL PRODUCTS**

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CONDITIONS OF SALE

1. Interpretation

In these conditions unless the context or the contrary intention otherwise requires:

- Company - means Brass & Copper Pty. Ltd.
- Goods - means all products distributed and services provided by the company.
- Manufacturer - means the manufacturer or the supplier of goods distributed by the company.

2. Contract

A binding and concluded contract shall come into existence between the company and the party placing an order ("the Purchaser") when the Purchaser places an Order with the Company **AND** the Order is accepted by the Company. The Purchaser and the Company agree that these Conditions Of Sale shall bind the parties in all future transactions and shall only be varied by written terms signed by a authorized representative of the company.

3. Duties and Taxations

The Purchaser shall indemnify the Company in respect of the cost of any sales tax or any other taxes, duty or levy incurred by the company in acquiring any goods ordered by the Purchaser.

4. Price and Payment

- (a) The Company shall submit to the Purchaser an invoice setting out the purchase price for the goods delivered on or after the delivery of the goods to the Purchaser. The Purchase price shall be calculated in accordance with the Company's Price List as at the date of despatch; provide that between the time of order and despatch, amendment to the Price List shall be in accordance with Manufacturers' prices and the Australian Copper Price. The Company reserves the right to amend its Price List from time to time;
- (b) The Purchaser agrees to pay to the Company in full the total purchase price as stated in the Company's invoice within thirty days of the receipt by the Purchaser of the Company invoice. In the event that the Company's invoice is posted by ordinary pre-paid post, the Purchaser shall be deemed to have received the Company's invoice two clear days after the date of posting;
- (c) The Company reserves the right to make part deliveries of any goods ordered by the Purchaser and each part delivery shall entitle the Company to invoice the Purchaser for same whereupon payment shall to made in accordance with Clause 4(b) hereof;
- (d) The Company reserves the right without explanation to place any account C.O.D. and/or to refuse payment by cheque;
- (e) The Purchaser shall pay interest on all outstanding amounts due to the Company at the rate of 2.0% per centum per month (or such lesser rate as the Company may specify) from the due date until payment thereof.

5. Ownership and Continuing Security

- 5.1. Ownership of goods remain with Company
Ownership of, or title in, the goods will not pass to the Purchaser until the Purchaser has paid to the Company the invoiced price for all goods in the Purchaser's possession at time of payment.
- 5.2. Continuing Security
The Purchaser agrees with the Company that it will treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors.
- 5.3. Personal Property Securities Act
 - 5.3.1. Definitions
 - (i) PPSA means the Personal Property Securities Act 2009 (Cth) as amended from time to time;
 - (ii) A term used in this clause 5.3 has the same meaning as in the PPSA.
 - 5.3.2. Consideration
 - (i) In consideration of the Company supplying the goods to the Purchaser, at the request of the Purchaser, the Purchaser, by signing these Conditions of Sale:-
 - (a) grants to the Company, at the Company's discretion, a security interest or purchase money security interest (PMSI) in the goods;

- (b) agrees that any of the goods or proceeds of sale of the goods coming into existence after the date of these Conditions of Sale will come into existence subject to:-
 - (i) the security interest or PMSI granted in these Conditions of Sale; and
 - (ii) the terms of these Conditions of Sale; without the need for any further action or agreement by any party;
 - (c) agrees that the Purchaser has received valuable consideration from the Company and that it is sufficient; and
 - (d) agrees that the security interest or PMSI has attached or will attach to all goods supplied now or in the future to the Purchaser when the Purchaser takes possession of the goods and that the attachment of the security interest or PMSI has not in any way been deferred or postponed from the date of these Conditions of Sale.
- 5.3.3. Purchaser to take all steps
The Company may, by notice to the Purchaser at any time, require the Purchaser to take all steps that the Company considers necessary or desirable to:-
- (i) ensure that these Conditions of Sale or any security interest or PMSI arising under them, are enforceable against the Purchaser or any third party; and
 - (ii) protect, perfect, record, or better secure interest or PMSI arising under them, are enforceable against the Purchaser or any third party.
- 5.3.4. Registration and notices
- (i) The Company reserves the right to register a financing statement in respect of any goods supplied by the Company to the Purchaser under these Conditions of Sale and in respect of which credit has been extended by the Company to the Purchaser.
 - (ii) The Purchaser:-
 - (a) waives the right to receive a copy of any notice, verification statement confirming registration of a financing statement or a financing change statement relating to the security interest or PMSI under these Conditions of Sale, unless the notice statement is required by law and cannot be excluded; and
 - (b) agrees to comply with any notice from the Company under this clause 5.3 at its cost and expense.
 - (iii) The Purchaser agrees:-
 - (a) not to allow any person to register a financing statement over any of the goods supplied by the Company without the prior written consent of the Company; and
 - (b) that it must immediately notify the Company if it becomes aware of any person taking steps to register a financing statement in relation to the goods.
 - (iv) The Purchaser agrees to perfect and maintain any security interest or PMSI that it may have in the goods under the PPSA.
 - (v) The cost and expense of registering a financing statement or a financing change statement is to be paid by the Purchaser and may, where applicable, be debited against the Purchaser's credit account with the Company.
- 5.3.5. No accessions or commingling of goods
The Purchaser must not allow the goods to become accessions or commingled with other goods unless the Company has first perfected any security interest or PMSI that the Company has in relation to the goods.
- 5.3.6. Perfection
If the Company perfects any security interest or PMSI that the Company has in relation to the goods, the Purchaser must not do anything that could materially adversely effect:-
- (i) the Company's business; or
 - (ii) in the opinion of the Company, the Company's security position under these Conditions of Sale.
- 5.3.7. Right of Entry
The Purchaser irrevocably grants to the Company the right to enter on the Purchaser's property or premises, without notice, and without being in any way liable to the Purchaser or to any third party, if the Company has cause to exercise any of the Company's rights under section 110 of the PPSA, and the Purchaser indemnifies the Company from any claims made by any third party as a result of that exercise.
- 5.3.8. Contracting out of enforcement provisions (example only (of contracting out of obligations but not rights) depending on Company's circumstances).
If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of these Conditions of Sale, the Company and the Purchaser agree that each of the provisions of the PPSA which section 115 of the PPSA permits parties to contract out of, other

than sections 117, 118, 134(1) and 135, do not apply to the enforcement of that security interest.

5.3.9. Payments made in respect of the goods

Despite any statement to the contrary by the Purchaser, every payment to the Company in respect of the goods must be taken as a payment:-

- (i) first, of the amounts held by the Purchaser in trust or subject to a security interest, to the extent that the security interest is not a PMSI;
- (ii) secondly, of amounts subject to a security interest, to the extent that it is a PMSI;
- (iii) thirdly, for any goods that the Purchaser has sold but for which it has not received the proceeds; and
- (iv) fourthly, for whatever goods the Purchaser has not sold as the Company elects.

5.3.10. Confidentiality

The Company and the Purchaser may not disclose any information of a kind referred to in section 275(1) that is not in the public domain.

5.3.11. If Purchaser insolvent

If the Purchaser becomes insolvent, without prejudice to any other rights of the Company:-

- (i) the Purchaser's right to sell the goods in the ordinary course of business in accordance with the PPSA and any other rights of the Purchaser in respect of the goods immediately cease; and
- (ii) the Purchaser must immediately return to the Company the goods in which title has not passed as provided for under clause 5.1.

5.4. Payment by Cheque

If the Purchaser makes payment by cheque the Company shall be deemed not to have received payment in full for the goods until the cheque is cleared.

5.5. Loss or Damage after Delivery

If for any reason the goods become lost or damaged after delivery to the Purchaser and prior to payment, the Purchaser agrees that the Purchaser shall indemnify the Company for any expense caused by any such loss or damage.

6. Delivery

- (a) The goods shall be delivered by the Company to the Purchaser within the time or times set out in the Order and to the place specified by the Purchaser in the Order. In the event that the Purchaser does not specify a place for delivery, the place for delivery shall be deemed to be the Purchaser's place of business. Should the Purchaser's wish to change the time and the place of delivery, it must notify the Company in writing of such changes within a reasonable time before the date of delivery;
- (b) The goods shall be delivered by the Company in accordance with the terms hereof and the Company may impose a charge for delivery.

7. Warranty

- (a) The Company warrants that upon payment to it of the total purchase price provided for herein the Purchaser will obtain good title to the goods ordered herein free and clear from all encumbrances:
- (b) Subject to the provisions of the Trade Practices Act 1974 as amended ("the Act") the Company's liability for a breach of a condition or warranty implied by the Act shall be limited to:
 - (i) In the case of goods, any one of the following as determined by the Company:
 - the replacement of goods;
 - the repair of goods;
 - the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - the payment of the cost of having the goods repaired;
 - (ii) In case of services any one of the following as determined by the Company:
 - the supplying of the services again;
 - the payment of the costs of having the services supplied again;
- (c) The Company shall not be liable or deemed to be in default or failure in performance under this Agreement for any interruptions resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, accidents, fires, explosions, earthquakes, floods, strikes, labour disputes, Government actions, shortage of suitable parts, or any similar or dissimilar cause beyond the reasonable control of the Company;
- (d) Except as expressly stated in this Agreement the Company accepts no other responsibility or liability whatsoever including liability for negligence or any liability for consequential loss, howsoever arising. All conditions and warranties contained or implied by any Statute or Rule of Law are hereby expressly excluded and negated provided that nothing in this Agreement shall exclude, restrict or modify any condition, warranty or liability of any statute which may at any time be implied in this Agreement where to do so is illegal or would render any provision of this Agreement void.

8. Suitability for Purpose

- (a) To the full extent permitted by law the Purchaser hereby indemnifies and holds the Company, its servants and agents and each of them harmless against all claims or loss or damage arising directly or indirectly out of the Purchaser's use, possession or ownership of the goods or out of any failure of the said goods to perform a particular result or to comply with a particular specification and without limiting the generality hereof should the Purchaser have either expressly or by implication made known to the Company or to the person by whom any antecedent negotiations were conducted any particular purpose for which the goods are being acquired, the Purchaser acknowledges that it has not relief on nor would it have been reasonable for it to be held to have relied on the skill or judgement of the Company when deciding whether the said goods were reasonably fit for that purpose.
- (b) Except as provided in Clause 7 hereof no return of goods would be accepted.

9. Legislative Complaint

No warranty is given or responsibility accepted by the Company to ensure that the goods ordered comply with marketing and/or labelling and/or packaging of goods. Compliance with the requirements of such legislation shall be the sole responsibility of the Purchaser.

10. Default

- (a) If the Purchaser defaults in payment of any amount due to the Company, the Purchaser hereby irrevocably gives the Company licence, in addition to and without limitation of any other right it may have, without notice to enter on any premises where any of the goods are kept and repossess same and thereafter to deal with the goods as its own property.
The Purchaser acknowledges that to the maximum extent possible by law it shall do all things that may be reasonably requested by the Company including the obtaining of permission of any person or Company to enter upon the premises where any of the goods may be located in order to give effect to this covenant.
- (b) The Purchaser will indemnify the Company against loss or outgoing suffered as a result of any breach or non-compliance by the Purchaser of any of these conditions of sale.

11. Law

This Agreement shall be construed to accord to the laws of the State of Victoria and the parties hereto submit to the jurisdiction of the Courts of that State.

12. Storage

The Company advises that, whilst aluminium, brass and copper products will not rust, moisture trapped between articles when stored can lead to staining. This is not detrimental to the life of the article but stains are not easily removed.

AGREEMENT UNDER THE PRIVACY ACT

Definitions:

The "Company" Shall mean Brass & Copper. Pty. Ltd.

The "Purchaser" shall mean the entity applying for credit and/or the purchase of goods on credit.

The Purchaser and signatory agree that the Company may:

- (a) Give a credit reporting agency the following personal information.
 - (i) Identify particulars (as permitted by the Privacy Commissioners determination issued under Section 18E(3));
 - (ii) The fact that the Purchaser has applied for credit and the amount;
 - (iii) The fact that the Company is a current credit provider to the Purchaser;
 - (iv) Payments which become overdue more than forty-five days, and for which collection action has commenced;
 - (v) Advice that payments are no longer overdue;
 - (vi) Cheques drawn by the purchaser which have been dishonored more than once;
 - (vii) In specified circumstances, that, in the opinion of the Company, the Purchaser has committed a serious credit infringement;
 - (viii) The credit provided to the Purchaser by the Company has been paid or otherwise discharged.
- (b) Receive a consumer credit report from a Credit Reporting Agency and use the report for the purpose of:
 - (i) Assessing an application made by the Purchaser for commercial credit;
 - (ii) The collection of payments that are overdue in respect of commercial credit provided to the Purchaser by the Company.
- (c) Give to or receive from another credit provide (Including a Bank) a report about the Purchaser's consumer credit worthiness, credit standing, credit history or credit capacity for any of the following purposes;
 - (i) To assess an application by the Purchaser for credit;
 - (ii) To notify other credit provides of a default by the Purchaser;
 - (iii) To exchange information, with other credit providers, of the status of credit with the Company where the Purchaser is in default with other credit providers;
 - (iv) To assess the Purchaser's credit worthiness.

Where goods are supplied to the Purchaser on credit, the Purchaser irrevocably authorizes the Company, its Employee's and agents, to make such inquiries as it deems necessary to investigate the credit worthiness of the Purchaser from