



**HOWMET FASTENING SYSTEMS
MELBOURNE OPERATIONS
TERMS AND CONDITIONS OF SALE
(Revised April 2020)**

1. GENERAL

- 1.1 This document constitutes the terms of each agreement for the sale of Goods by the Seller to the Buyer.
- 1.2 These terms prevail over any inconsistent terms in any document of the Buyer or in any other document between the Seller and the Buyer.
- 1.3 If the Buyer exercises any of its rights or performs any of its obligations under this document, including placing a Purchase Order, accepting delivery of the Goods or making any payment under this document, the Buyer is taken to have accepted the terms of this document.
- 1.4 The Seller has the discretion to accept or reject any Purchase Order made by the Buyer for the purchase of Goods.
- 1.5 On the Seller's acceptance of the Buyer's Purchase Order for the purchase of Goods, an agreement for the sale of the Goods by the Seller to the Buyer arises in relation to those Goods.

2. SELLER'S QUOTATIONS

- 2.1 A quotation is not an offer by the Seller. The Seller may withdraw or alter it without notice.
- 2.2 Unless the Seller withdraws it, a quotation is valid for the period stated in it, or if no period is stated, for 30 days after the date of the quotation.

3. PURCHASE ORDER

- 3.1 Any Purchase Order must include details in relation to the identity of the Buyer, the identity and quantity of Goods being purchased, the destination for delivery of the Goods and any other material information concerning the Buyer's order.
- 3.2 Purchase Orders for Goods are subject to minimum order quantities, which are determined by the Seller from time to time.

4. CANCELLATION OR CHANGES TO PURCHASE ORDER

- 4.1 The Buyer may not cancel or terminate a Purchase Order without the prior written consent of the Seller.
- 4.2 If the Seller consents to such cancellation or termination under clause 4.1, the Seller may request the Buyer to pay a charge arising from such cancellation or termination that is reasonably determined by the Seller.
- 4.3 The Buyer may not request any changes to an accepted Purchase Order without the prior written consent of the Seller. The Buyer acknowledges and agrees that the Seller is entitled to make a price adjustment and/or delivery adjustment in respect of such requested changes, as reasonably determined by the Seller.
- 4.4 The Seller may cancel any accepted Purchase Order in whole or in part by notice to the Buyer and resell the Goods if:
 - (a) the Buyer fails to comply with any of its obligations under this document; or
 - (b) an Insolvency Event occurs in respect of the Buyer.
- 4.5 Upon cancellation under clause 4.4, the Buyer must indemnify the Seller from and against any costs and expenses incurred by the

Seller prior to cancellation and must pay any reasonable cancellation charges determined by the Seller.

- 4.6 The Buyer has no claim against the Seller for any loss, damage, cost or expense arising from cancellation under clause 4.4.

5. DELIVERY

- 5.1 Any delivery or shipping time the Seller gives the Buyer is only an estimate. The Seller is entitled to manufacture and deliver the Goods at any time prior to the estimated delivery or shipping time.
- 5.2 The Seller will use commercially reasonable efforts to complete the relevant Purchase Order in accordance with the estimated delivery or shipping time. However even if the Seller delivers the Goods late, the Buyer must still accept and pay for the Goods. The Seller is not liable to the Buyer for any loss or damage arising from any delays.
- 5.3 The Seller may deliver the Goods in instalments. Each instalment must be treated as a sale under a separate agreement. If the Seller fails to deliver any instalment, the Buyer must still accept and pay for the remaining instalments. If the Buyer fails to pay for any instalment, the Seller may treat the default as a breach of contract relating to each other instalment.

- 5.4 Unless otherwise agreed in writing, all Goods are sold Ex-Works Seller's plant (Incoterms 2010).

- 5.5 Delivery of the Goods is taken to occur when the Seller notifies the Buyer that the goods are ready for collection by Buyer's nominated carrier at the Seller's plant.

6. QUANTITY AND QUALITY

- 6.1 For any Goods that are fastener products, if quantities shown on the packaging are based on weight counts, the Seller will use commercially reasonable efforts to ensure that its weight counts are accurate. If the quantity of fasteners, as determined by actual weight:

- (a) is within 5% of the quantity shown on the packaging, the Buyer is deemed to have received the quantity shown on the packaging and must pay for such amount; or
- (b) is less than the weight specified on the packaging but no less than 90% of the quantity specified in the Purchase Order, the Seller is deemed to have fully discharged its obligations under this document. In such an event, the Buyer will only be entitled to the actual quantity provided by the Seller and be required to pay only for the amount actually delivered by the Seller.

- 6.2 The Buyer must inspect the Goods promptly after their receipt and must, within 30 days of delivery of the Goods, notify the Seller in writing of any shortfall, non-conformity or defect in the Goods. To the extent permitted by law, any failure to do so will constitute acceptance of the Goods by the Buyer and the Buyer will be barred from making any claim against the Seller in respect of such Goods.

- 6.3 The Buyer must keep lot traceability records for the Goods to ensure that lots manufactured by the Seller can be traced through the Buyer's manufacturing and/or sales processes.

7. SAMPLES, GOODS FOR DEVELOPMENT OR TESTING

7.1 If the Goods supplied by the Seller to the Buyer are to be used as samples, or for development or testing purposes, the Buyer acknowledges that, to the extent permitted by law, the Seller makes no warranty or representation whatsoever regarding such Goods.

7.2 The Buyer must indemnify the Seller from and against any claim, loss or damage arising out of or in connection with the Buyer's purchase or use of such sample, development or testing Goods.

8. EQUIPMENT AND TOOLING

8.1 Any equipment, including jigs, dies and other non-recurring tooling (**Tooling**) which the Seller constructs or acquires for use exclusively in the production of Goods remain the property of the Seller. If the Buyer pays for or otherwise reimburses the Seller for the Tooling, then the Seller will use such Tooling solely for the production of the Goods for the Buyer, unless the Buyer gives written consent permitting the Seller to use the Tooling for a third party.

8.2 If the Buyer does not place any orders with the Seller for Goods to be produced using the Tooling for three consecutive years, then the Seller may give a written notice to the Buyer notifying of its intention to dispose of such Tooling. If the Buyer fails to place a Purchase Order in response to the notice within 30 days of notice being sent by the Seller, the Seller may dispose of such Tooling without any liability to the Buyer.

8.3 Any equipment or materials owned or provided by the Buyer will be carefully handled and stored by the Seller while in the Seller's possession. If the Buyer fails to place a Purchase Order to be made with such equipment or materials for three consecutive years, then the Seller may give a written notice to the Buyer notifying of its intention to dispose of such equipment or materials. If the Buyer fails to reply or collect the equipment or materials within 30 days of notice being sent by the Seller, the Seller may dispose of the equipment or materials without any liability to the Buyer.

9. PRICES AND GST

9.1 Unless otherwise stated, the Price is in Australian dollars and exclusive of GST.

9.2 If GST is or will be payable on a supply made under or in connection with this document, to the extent that the consideration otherwise provided for that supply under this document is not stated to include an amount in respect of GST on the supply:

- (a) the consideration otherwise provided for that supply under this document is increased by the amount of that GST; and
- (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within seven days of receiving a written demand from the supplier.

9.3 The Buyer must bear the costs of delivery or transportation of Goods from the Seller's plant.

10. PAYMENT

10.1 The Buyer must pay for the Goods pursuant to the prices and charges as shown on the Seller's invoice provided by the Seller to the Buyer, subject to any applicable agreement between the

parties, including any economic price adjustment clauses or other material re-pricing or surcharges.

10.2 Unless otherwise agreed in writing, the Buyer must pay for the Goods within 30 days after the end of the month in which the Goods are supplied.

10.3 The Buyer is not entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller.

10.4 If the Seller considers in its absolute discretion that the Buyer's creditworthiness has or is likely to become unsatisfactory, the Seller may:

- (a) demand different payment terms, including but not limited to immediate payment; or
- (b) demand any form of assurance or security for payment it sees fit,

and stop work on all of the Buyer's orders and hold all of the Buyer's orders.

10.5 If the Buyer fails to agree to different payment terms or to provide the assurance or security sought under clause 10.4, the Seller may treat such failure as a repudiation of the portion of the Purchase Order that has not been fully performed.

10.6 The Seller reserves the right to require the Buyer to pay interest on any overdue amounts.

10.7 The Buyer must indemnify the Seller from and against any costs or expenses incurred by the Seller in connection with the collection of any unpaid moneys due to the Seller by the Buyer, including but not limited to reasonable solicitors' fees.

11. ANTI-BRIBERY AND CORRUPTION AND LEGAL COMPLIANCE

11.1 The Buyer acknowledges that it has read the 'Howmet Aerospace Inc. Anti-Corruption Policy' which is available at <http://www.howmet.com/global/en/investors/anti-corruption-policy.asp> and agrees to perform its obligations under the agreement in accordance with the principles set out in that policy.

11.2 The Buyer must comply at all times with all applicable laws and regulations, including but not limited to anti-corruption laws and import and export laws of Australia and any other country in which the Buyer conducts business with the Seller. The Buyer must notify the Seller as soon as practicable if it is or is likely to be in breach of any applicable laws or regulations.

12. WARRANTY CLAIM

12.1 The Seller has made the following express warranties against defects in the Goods supplied by the Seller to the Buyer (each a **Warranty**):

- (a) that the Goods will meet the Seller's specifications; and
- (b) that the Goods will be free from defects in material and workmanship,
for a period of 12 months from the date of supply of the Goods to the Buyer.

12.2 In relation to any Warranty claim, the Buyer must make a claim for breach of warranty prior to the expiration of the one-year warranty period.

12.3 The Warranties only apply to Goods which are properly installed, maintained and/or operated under normal conditions and the Seller will not be liable for any loss or damage suffered or incurred by the Buyer in respect of any defect arising from:

- (a) any Goods produced according to the Buyer's specifications;

- (b) ordinary wear and tear;
- (c) wilful damage by the Buyer or its customers;
- (d) negligence on the part of the Buyer or its customers;
- (e) abnormal working conditions at the Buyer's or any of its customer's facilities;
- (f) the Buyer's or any of its customer's failure to follow the Seller's instructions (whether oral or in writing); or
- (g) the Buyer's or any of its customer's misuse or alteration or repair of Goods without the Seller's prior written approval.

12.4 In relation to each of the Warranties:

- (a) the Warranty is given by Howmet Fastening Systems Australia Pty Ltd.; 1508 Centre Rd, Clayton Vic 3168; +61 3 8545 3333; hfsmel.sales@howmet.com;
- (b) a claim under the Warranty may be made only in relation to a defect in the Goods which appears within 12 months of the date of supply to the Buyer of the Goods;
- (c) where there is a breach of the Warranty, the Seller must repair or replace the goods supplied to the Buyer with goods which do not have a defect or repay the amount paid by the Buyer for the goods;
- (d) to claim under the Warranty, the Buyer must notify Seller at the address stated in 12.4(a) above. Non-conforming Goods must be returned to Seller, which may be returned at Seller's cost only after inspection by Seller (which may be by Buyer returning a sample to Seller at Seller's request) and Buyer's receipt from Seller of definite shipping instructions and an RMA number.
- (e) the Buyer must bear the expense of claiming under the Warranty;
- (f) any goods to which the Warranty applies also come with guarantees that cannot be excluded under the Australian Consumer Law and the Buyer is entitled to:
 - (i) a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage; and
 - (ii) have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

13. **CONSUMER GUARANTEES**

The ACL requires that certain guarantees must be given by the Seller to the Buyer in relation to the supply by the Seller of goods or services to the Buyer (**Consumer Guarantees**). To the extent that the Consumer Guarantees apply to the Seller's supply of Goods to the Buyer, nothing in this document is intended to exclude, modify or limit the Buyer's rights in respect of the Consumer Guarantees.

14. **LIMITATION OF LIABILITY**

14.1 The Seller's liability to the Buyer is limited in the following ways:

- (a) Except as required of the Seller under the Consumer Guarantees and except as set out in clause 12 above, the Seller provides no warranty, guarantee or assurance, express or implied, to the Buyer in relation to the Goods supplied to the Buyer, and the Buyer agrees and acknowledges that it is fair and reasonable, in all the circumstances, for the Seller to do so.

(b) If the Goods supplied by the Seller to the Buyer are not of a kind ordinarily acquired for personal, domestic or household use or consumption, except in the case of a failure by the Seller to comply with a Consumer Guarantee under any of sections 51, 52 or 53 of the ACL, the Seller's liability for failure to comply with a Consumer Guarantee to the Buyer is limited to:

- (i) in the case of goods supplied to the Buyer, the replacement of the goods or the supply of equivalent goods (or the payment of the cost to the Buyer of the replacement or supply), or the repair of the goods (or the payment of the cost to the Buyer of the repair); and
- (ii) in the case of services supplied to the Buyer, the supply of the services again or the payment of the cost to the Buyer of having the services supplied again.

(c) To the full extent permitted by law, the Seller has and is under no liability (whether in negligence or otherwise) to the Buyer for:

- (i) a breach of any condition, warranty, term of this document that is not a breach of a Warranty or a Consumer Guarantee or for any loss or claim in connection with or relating to any such breach; or
- (ii) any other loss or damage (including any consequential or indirect loss, loss of profit, loss of revenue or loss of opportunity) suffered or incurred by the Buyer arising out of or in connection with the Goods or this document.

15. **RISK AND TITLE**

15.1 Risk in the Goods passes to the Buyer when delivery is taken to occur in accordance with clause 5.5.

15.2 The Seller is not liable for any loss or damage of the Goods after dispatch from the Seller's plant even if transport is arranged by the Seller.

15.3 Title to the Goods shall pass from the Seller to the Buyer when delivery is taken in accordance with clause 5.5.

16. **INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

16.1 The Buyer warrants that any specification, design or instruction given to the Seller will not infringe any third party rights. The Buyer warrants that by completing any order for the Goods in accordance with any specification, design or instruction given or implicitly required by the Buyer, the Seller will not infringe any intellectual property of a third party (such as a patent, registered design, trademark or copyright or confidentiality rights). The Buyer indemnifies the Seller from and against any infringement or alleged infringement or unauthorised use of intellectual property (such as a patent, trademark, registered design or copyright or confidential information) from the manufacture or use of such Goods.

16.2 Notwithstanding clause 14, the Seller indemnifies the Buyer from and against any court-assessed loss or damages (excluding any consequential or indirect loss, loss of profit, loss of revenue or loss of opportunity) resulting from any infringement by the Goods of any intellectual property right of any third party. The amount of such indemnity is capped at the purchase price of the Goods.

- 16.3 Neither party will be entitled to the indemnification rights in clauses 16.1 or 16.2 unless, where one party alleges that the other party has infringed any intellectual property right in respect of the Goods, the first party notifies the second party as soon as practicable in writing, so as to give the second party the full opportunity to defend and dispose of the claim at the expense of the indemnifying party.
- 16.4 Copies of documents such as drawings, plans and specifications the Seller submits to the Buyer and any other data customarily provided to the Buyer for quality control purposes remain the property of the Seller. The Buyer must treat the information contained in those documents as strictly confidential. The Buyer must use the information only to install or operate the Goods. The Buyer must not use the information in any other way to the advantage of the Buyer or the detriment of the Seller.
- 16.5 In purchasing the Goods, the Buyer does not gain any licence or right under any of the Seller's intellectual property such as a patent, registered design, trademark or copyright or confidential information. The Seller is not obliged to disclose the methods or techniques used in production or provide any data concerning its manufacturing processes.
- 16.6 Unless otherwise agreed to in writing by the Seller, the Seller is not obliged to keep any information of the Buyer confidential.
17. **FORCE MAJEURE**
- 17.1 The Seller is not liable for any delays in fulfilling its obligations under the Purchase Order or failure to comply with this document if the delay or failure (directly or indirectly) arises out of any circumstances which are not within the Seller's reasonable control (including but not limited to strikes, lock-outs, labour disputes or disruptions, accidents, acts of terrorism or war, fire, flood, drought, explosion, shortage of power, labour or fuel, breakdown of plant or machinery, shortage of raw materials from normal source of supply, acts or omission of the Buyer, delays in transportation or lack of transportation facilities, act of God or any order or direction of any local, State or Federal Government, Government authority or instrumentality). If such circumstances occur, the Seller may delay or cancel delivery of the Goods or reduce the quantity to be delivered.
- 17.2 The Seller is not obliged to remedy such circumstances.
18. **THE VIENNA CONVENTION**
- The United Nations Convention on Contracts for the International Sale of Goods 1980 does not apply to the agreement between the parties.
19. **NOTICES**
- 19.1 A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, email or fax. If it is sent by mail, it is taken to have been received three working days after it is posted. If it is sent in electronic form (such as email), it is taken to have been received when the sender receives a valid, digitally signed acknowledgement of receipt from the addressee. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.
- 19.2 A person's address, email and fax number are those set out in the quotation. The Seller may send a notice to the Buyer's last known address.
20. **GOVERNING LAW AND JURISDICTION**
- 20.1 This document and any dispute arising out of this document is governed by the laws of the State of Victoria within the Commonwealth of Australia.
- 20.2 Each party submits to the non-exclusive jurisdiction of the courts of that State, and courts of appeal from them, in respect of any proceedings arising out of this document.
21. **VARIATION OF RIGHTS**
- 21.1 A right of the Seller may only be waived in writing, signed by the Seller.
- 21.2 The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this document. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this document.
22. **GST ON CLAIMS**
- 22.1 If a payment to satisfy a claim or a right to claim under or in connection with this document (for example, for misleading or deceptive conduct or for misrepresentation or for a breach of any warranty or for indemnity or for reimbursement of any expense) gives rise to a liability to pay GST, the payer must pay, and indemnify the payee on demand against the amount of that GST.
- 22.2 If a party has a claim under or in connection with this document for a cost on which that party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).
- 22.3 If a party has a claim under or in connection with this document whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).
23. **THE SELLER'S RIGHTS**
- Any right that the Seller may have under this document is in addition to, and does not replace or limit, any other right that the Seller may have.
24. **OTHER**
- 24.1 The Seller may license or subcontract all or any part of its rights and obligations without the Buyer's consent.
- 24.2 The Buyer must not assign this document or its rights under this document or any Purchase Order to any party without the Seller's prior written consent.
- 24.3 A party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party.
- 24.4 This document may be performed and all rights may be enforced against the Buyer by the Seller or any subsidiary, parent or affiliate of the Seller.
25. **SEVERABILITY**
- Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.
26. **INTERPRETATION**
- 26.1 In this document:

ACL means the Australian Consumer Law set out in Schedule 2 of the *Australian Competition and Consumer Act 2010* (Cth).

Buyer means the person or corporation acquiring the Goods from the Seller upon the terms and conditions as set out in this document.

Controller has the same meaning as in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Goods means the fastener products or any other product which is sold or to be sold by the Seller to the Buyer.

Insolvency Event means, in respect of a person:

- (a) an administrator being appointed to the person;
- (b)
 - (i) a Controller or analogous person being appointed to the person or any of the person's property;
 - (ii) an application being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property; or
 - (iii) an appointment of the kind referred to in subparagraph (ii) being made (whether or not following a resolution or application);
- (c) the holder of a Security Interest or any agent on its behalf, appointing a Controller or taking possession of any of the person's property (including seizing the person's property within the meaning of section 123 of the PPSA) or otherwise enforcing or exercising any rights under the Security Interest or Chapter 4 of the PPSA;
- (d) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (e) an application being made to a court for an order for its winding up;
- (f) an order being made, or the person passing a resolution, for its winding up;
- (g) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (h) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (i) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (j) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the Seller.

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

Price means the price payable for the Goods as specified in writing by the Seller to the Buyer from time to time.

Purchase Order means the document submitted by the Buyer to the Seller for the purchase of the Goods.

Security Interest means:

- (a) a security interest that is subject to the PPSA;
- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Seller means Howmet Fastening Systems Australia Pty Ltd. ACN 073 750 428