

**1 APPLICABILITY OF THESE TERMS AND CONDITIONS AND INTERPRETATION**

These Terms and Conditions ("Terms & Conditions") shall apply generally to the supply of all Goods sold and Services provided by GSF to its Customers. The terms of any other written agreements between GSF and its Customers that are still in force will take precedence over these Terms and Conditions to the extent of any inconsistency. For the avoidance of any doubt, the supply of Goods and Services by GSF to its Credit Customers are governed by the terms and conditions of supply on credit that are agreed between GSF and Credit Customers set out in GSF's written credit application documentation.

In these Terms & Conditions:

**"Credit Customer"** means a Customer that has an account with GSF for the supply of Goods and Services by GSF on credit terms

**"Customer"** means any purchaser of any Goods and/or Services from GSF.

**"Delivery Date"** means, in relation to any Goods or Services, the date agreed between GSF and the Customer by which the Goods are to be delivered and/or the Services are to be provided.

**"GSF"** means Greg Sewell Forgings Pty Ltd ACN 006 143 111.

**"Goods"** means goods supplied or to be supplied by GSF to the Customer including goods manufactured or modified by GSF at the Customer's request.

**"Proprietary Information"** means any and all information relating to Goods and/or the installation or operation of Goods (including all intellectual property therein) supplied by GSF to the Customer.

**"Services"** means services supplied or to be supplied by GSF to the Customer including but not limited to manufacturing and supply of products from metal and associated products.

**"Moneys"** means all moneys now or in the future actually or contingently owing by the Customer to GSF on any Account and includes any part of those moneys and includes all interest accruals and costs, expenses, and disbursements.

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

If the Customer is comprised of more than one person then "Customer" means those persons collectively and each of them individually and the obligations and liabilities on the part of the Customer in these Terms & Conditions binds all of them jointly and each of them severally.

A reference to the singular includes the plural and vice versa;

A reference to one gender denotes the relevant gender;

A person denotes an individual or corporation or other legal entity as applicable.

**2 QUOTATIONS**

If GSF has provided any quotation specifically for Goods and Services ("Quotation"):

- (a) these Terms & Conditions shall apply to the Quotation;
- (b) the price in the Quotation shall be GSF's current price as at the date of the Quotation and the price actually payable for the Goods and Services shall be GSF's current price as at the date of the Customer's acceptance of the Quotation;
- (c) the Quotation will detail any charges for delivery of the Goods and Services;
- (d) subject to clause 2(b), the Quotation shall remain valid for acceptance by the Customer for thirty (30) days after the date of the Quotation;
- (e) if a deposit for Goods and Services is required details will appear in the Quotation.

**3 ORDERS**

If the Customer has made an order for Goods and Services without there being a Quotation provided by GSF ("Order"):

- (a) the Order is subject to acceptance in writing by GSF; and
- (b) the price actually payable for the Goods and Services is GSF's current price as at the date of GSF's acceptance of the Order; and
- (c) for some Goods and Services GSF requires a deposit to be paid by the Customer at the time of making an Order. The details of the deposit will be provided by GSF to the Customer in writing.

**4 VARIATION OR CANCELLATION**

After the Customer's acceptance of a Quotation or GSF's acceptance of an Order:

- (a) no change in the specification of Goods and Services shall bind GSF,

unless GSF expressly agrees to the change in writing; and

- (b) if the Customer cancels the Order or Quotation after acceptance, the Customer will reimburse GSF for any loss, damage or expenses incurred by GSF in relation to the supply or proposed supply of the Goods and Services.

**5 CHARGES AND TAXES**

- (a) Unless otherwise expressly stated, the price of Goods and Services excludes all freight, transportation, shipping, insurance, packing, crating or casing, storage, handling, demurrage, delivery, export and similar charges, and all sales, GST, excise or other taxes, and the Customer shall pay and indemnify GSF for those charges or taxes. If GSF expressly agrees in writing that the price includes any of such charges or taxes, the price is subject to adjustment for increases in any of those charges or taxes after the date of the Quotation or acceptance of the Order.
- (b) The Customer shall pay all taxes, levies, duties and assessments of every nature due in connection with the Goods and Services supplied and hereby indemnifies and holds harmless GSF from any liability on account of any and all such taxes, levies, duties, assessments and deductions.
- (c) The price for Goods and Services includes import duty. However, GSF reserves the right to charge the Customer if the amount of import duty increases.
- (d) For the avoidance of doubt the price for Goods and Services does not include the cost of any installation, commissioning or training requested by the Customer.

**6 PAYMENT**

- (a) The Customer shall pay for Goods and Services by the time specified by GSF, which may be prior to delivery or collection or provision of the Goods and Services, and which may be specified in an invoice or other documentation issued by GSF to the Customer. Time shall be of the essence in respect of payment for the Goods and Services.
- (b) If a payment is not made by the due date for payment, the Customer shall be liable to pay to GSF interest at the rate of 16% per annum calculated daily until paid. This will not affect any other rights of GSF including, if the Goods and Services have not been delivered, collected or provided, GSF being entitled to withhold the delivery or provision and/or refuse the collection of the Goods and Services until payment is received.
- (c) Whilst any moneys are owed by the Customer to GSF, the Customer is not entitled to set off any amounts owed by GSF or withhold any payments to GSF.
- (d) GSF is entitled to recover from the Customer, in addition to the price, any GST on the supply of the Goods and Services except to the extent that the prices expressly include GST.
- (e) GSF is entitled to recover from the Customer, in addition to the price of Goods and Services, all losses, expenses, disbursements and costs (including legal fees) on a full indemnity basis, consequent upon GSF seeking to execute or enforce a right under these Terms & Conditions, and all such amounts are recoverable from the Customer by GSF as a liquidated debt.

**7 DELIVERY**

- (a) GSF will use all reasonable endeavours to deliver the Goods and Services on or before the Delivery Date, but:
  - (i) the Delivery Date is subject to extension for any delay caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, fire or any cause beyond the reasonable control of GSF; and
  - (ii) GSF will not be liable for any loss, damage or other liability whether in contract, tort, negligence or otherwise and whether directly or indirectly arising from the Goods and Services not being delivered by the Delivery Date for any reason.
- (b) The Customer will be charged for all costs related to delivery and such costs will be detailed on a tax invoice provided to the Customer.
- (c) GSF may, with the agreement of the Customer, deliver Goods and Services to the Customer in instalments and in respect of which GSF may separately invoice the Customer for payment for each delivery instalment (each of which shall be taken to be the subject of a separate and distinct contract between the parties).
- (d) Any Goods and Services sought to be returned (other than under clause 10) will only be accepted with the prior written approval of GSF and may be subject to a 15% handling/restocking fee.
- (e) "Freight collect" charges for returned Goods will be deducted from any credit note issued to the Customer unless GSF has agreed in writing in advance to accept the Freight collect charges.

- (f) Subject to clause 7 (d), Goods will only be accepted for return if they are undamaged and in their original packaging and condition.
- (g) The Customer agrees to provide, at the Customer's expense (if requested by GSF) assistance in unloading heavy Goods during delivery.
- (h) The Customer will be responsible for the offloading of Goods and the Customer indemnifies GSF against all claims whatsoever arising from the unloading of Goods.
- (i) Goods which have been specifically manufactured by GSF for the Customer or altered by the Customer cannot be returned simply because the Customer has changed its mind in respect of those Goods.

#### 8 RISK AND PROPERTY IN GOODS

- (a) For the purposes of the PPSA (as amended from time to time) "Goods" in this clause means any and all present and after acquired goods supplied by GSF to the Customer;
- (b) The Goods shall be entirely at the risk (including loss, damage or deterioration) of the Customer from the time of delivery of the Goods (the carrier of the Goods shall be taken to be the agent of the Customer even if engaged or paid by GSF).
- (c) GSF retains full title to the Goods until GSF receives payment in full for the Goods and all other amounts owed by the Customer to GSF.
- (d) Until all Monies have been paid:
  - (i) GSF has the right to call for or recover possession of the Goods (for which purpose GSF's employees or agents may enter onto the Customer's premises) and the Customer must deliver up the Goods if so directed by GSF;
  - (ii) the Customer:
    - (A) agrees that the relationship between the Customer and GSF shall be fiduciary and the Customer shall keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to GSF;
    - (B) has the right to resell the Goods in the ordinary course of the Customer's business as GSF's fiduciary agent but must not otherwise dispose of or encumber the Goods;
    - (C) shall not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to GSF in their original state;
    - (D) agrees that if the Goods are incorporated with goods of the Customer, the resultant product shall become and be deemed to be the sole property of GSF. If the Goods are incorporated in any way with the property of a party other than the Customer, the resultant product shall become and be deemed to be owned in common by GSF with that other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Customer of the incorporated materials; and
    - (E) will hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Customer) in trust for GSF and shall pay the proceeds into a separate fiduciary account to be held in trust for GSF until accounted for to GSF at the demand of GSF.
- (e) To avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this clause 8 that there is created for the benefit of GSF a Purchase Money Security Interest in the Goods;
- (f) The Customer agrees that GSF may register any personal property security interest created by these Terms & Conditions on the Personal Property Securities Register and the Customer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by GSF in respect of any personal property of the Customer. The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Customer or place an obligation on GSF, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that GSF otherwise agrees in writing.

#### 9 LIABILITY

The Customer agrees that (subject to clause 11):

- (a) the Customer must satisfy itself as to the truth and accuracy of and may not rely for any purpose upon, any technical or other advice or information provided by or on behalf of GSF in connection with Goods and Services or these Terms & Conditions;
- (b) All specifications, drawings, performance figures and particulars of weights and dimensions are estimates only and are subject to change. Any deviation from an estimate provided by GSF does not give grounds for claim.
- (c) except to the extent prohibited by law (and subject to clause 11 herein), the only remedy of the Customer against GSF for any loss, damage or liability whether in contract, tort, negligence or otherwise in connection

with these Terms & Conditions and/or Goods and Services, GSF's supply of the Goods and Services, or GSF's failure to supply the Goods and Services to the Customer, shall be limited to GSF, at its option, replacing or repairing any Goods supplied and/or re-performing the Services; and

(d) GSF shall otherwise have no liability to the Customer whether in contract, tort, negligence or otherwise.

#### 10 DEFECTIVE GOODS & SERVICES

- (a) Within ten (10) days after the delivery of the Goods and Services and the provision of the Services the Customer shall complete any inspection or testing required by it to confirm the Goods and Services comply with these Terms & Conditions or any Order or specifications and notify GSF in writing of the extent to which the Goods and/or Services do not comply with the Terms & Conditions or any Order or specifications.
- (b) The Customer shall not use the Goods and Services (other than to the extent reasonably necessary for inspection and testing) before the Customer completes inspection and testing and satisfies itself that Goods and Services comply with the Terms & Conditions or any Order or specifications, and, if the Customer notifies GSF in writing that the Goods and Services do not comply with the Terms & Conditions or any Order or specifications, until GSF has had a reasonable opportunity to inspect and test the Goods and Services after GSF receives that notice.
- (c) If the Customer does not comply with clause 10(a) or 10(b), the Customer shall be taken to have unconditionally accepted the Goods and Services.

#### 11 CONSUMER WARRANTY

If the Customer is a Consumer ("Consumer" has the meaning defined in Section 3 of the Competition and Consumer Act 2010) the Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods and Services repaired or replaced if the Goods and Services fail to be of acceptable quality and the failure does not amount to a major failure.

#### 12 CUSTOMER SPECIFICATION/SPECIAL ORDERS/INTELLECTUAL PROPERTY

- (a) If any Goods are manufactured by GSF to the design or specification of the Customer, the Customer warrants to GSF that any drawings, plans, specifications and other design information provided to GSF for the manufacture of such Goods are accurate and correct in all respects and do not infringe upon the intellectual property rights of any third party including any copyright, patents, designs or trademarks of the third party;
- (b) Where the design of Goods supplied by GSF to the Customer is provided by the Customer (or its nominee) to GSF, or the design is provided by GSF in accordance with specifications provided by the Customer, the Customer will accept sole responsibility for the design and is responsible for the suitability for the Goods for the purposes for which they were designed and acquired;
- (c) The Customer acknowledges that all Proprietary Information and all right title and interest therein are the sole property of or licensed by GSF and the Customer shall gain no right title or interest in the Proprietary Information whatsoever.
- (d) The Customer specifically acknowledges GSF's exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon which is developed supplied installed or paid for by or on behalf of the Customer;
- (e) The Customer agrees to indemnify GSF in respect of any loss, damage, expense, claim or liability suffered or incurred by GSF as a result of any claim by a third party asserting infringement of any intellectual property rights in relation to such Goods or any breach by the Customer of this clause 12 or any claims against GSF arising out of any matters referred to in this clause 12.

#### 13 NO EXPORT

- (a) Unless otherwise agreed in writing by GSF, any Goods supplied to the Customer are intended for use in Australia only, such that if any such Goods are exported by the Customer, it is the responsibility of the Customer to ensure those Goods comply with the laws of any foreign country to which the Goods are exported.
- (b) The Customer agrees to indemnify GSF in respect of any loss, damage, expense, claim or liability suffered or incurred by GSF as a result of any breach by the Customer of this clause 13 or any claims

against GSF arising out of any matters referred to in this clause 13.

#### **14 DEFAULT, INSOLVENCY AND TERMINATION**

If the Customer:

- (a) commits a substantial breach of the Terms & Conditions including unreasonably refusing to accept any Goods and Services or failing to pay for any Goods and Services, in accordance with the Terms & Conditions; or
- (b) informs any person it is insolvent, commits an act of bankruptcy, has a bankruptcy petition presented against it, becomes bankrupt, becomes subject to or bound by any arrangement, assignment, composition or moratorium of debts with its creditors, official management, receivership, liquidation, voluntary administration, winding up or other external administration,

all monies owing by the Customer to GSF become immediately due and payable and GSF may, without affecting GSF other rights:

- (c) immediately terminate supply of Goods and Services;
- (d) refuse, suspend or withhold supply of any further Goods and Services;
- (e) enter upon (personally or by its employees or agents) any premises in the possession or control of the Customer and use reasonable force for the purposes of retaking possession of any Goods (title to which has not passed to the Customer), in which case the sale of those Goods by GSF to the Customer shall be taken to be terminated and GSF shall have no liability to the Customer whether for trespass, negligence, payment of damages or compensation or otherwise;
- (f) terminate any supply arrangements with the Customer.

#### **15 GOVERNING LAW**

These Terms & Conditions are governed by and construed in accordance with the laws in the state of Victoria. The Customer and GSF submit to the jurisdiction of the courts operating in Melbourne or in any other Australian location that GSF may reasonably elect to commence a proceeding.

#### **16 NON-WAIVER**

GSF's failure to exercise any right under the Terms & Conditions or to insist on strict performance of any part of the Terms & Conditions does not operate as a waiver and a partial exercise of a right does not preclude any further or fuller exercise of that right.

#### **17 SEVERANCE**

If any part of these Terms & Conditions or any related document is or becomes void or unenforceable that part is severed so that all parts which are not void or unenforceable remain in full force and effect and are unaffected by the severance.

#### **18 NOTICES**

- (a) Notices required to be given by the Customer to GSF pursuant to these Terms & Conditions may be delivered to GSF:
  - (i) personally to GSF at GSF's Head Office 63 Glenbarry Road, Campbellfield VIC 3061; or
  - (ii) sent by post to GSF's postal address at GSF's Head Office 63 Glenbarry Road, Campbellfield VIC 3061; or
  - (iii) sent by email at [areceivable@gsforgings.com](mailto:areceivable@gsforgings.com)
- (b) Notices will be taken as delivered when received by GSF.
- (c) Notices required to be given by GSF to the Customer pursuant to these Terms & Conditions may be delivered:
  - (i) by post to the Customer's last known address (and shall be taken as delivered on the second business day following posting); or
  - (ii) by facsimile to the Customer's last known facsimile number (and will be taken to be received when a successful facsimile transmission is notified GSF's fax machine); or
  - (iii) by email to the last notified email address of the Customer (which will be taken to be received within 24 hours of GSF sending the email to the correct email address).