

Conditions of Sale Effective November 2024

1. QUOTATIONS, ORDERS AND CONTRACT

- 1.1 A written quotation issued by ARC to the Customer is an invitation to the Customer to offer to purchase and overrides ARC's prevailing price list. A written quotation expires on the date specified as an expiry date. If no expiry date is specified, the written quotation expires 15 days after the date of the written quotation.
- 1.2 ARC may withdraw, revoke or vary a written quotation at any time prior to the Customer submitting and ARC accepting an offer (which may be by way of an order) in response to the invitation to purchase comprised by ARC's written quotation.
- 1.3 A contract for the supply of Goods is made when ARC communicates (by writing or conduct) its acceptance of the Customer's offer.
- 1.4 An order from the Customer on terms which are inconsistent with the terms of a written quotation is an offer by the Customer to buy Goods from ARC. In those circumstances, a contract for the supply of Goods is made if:

- (a) ARC communicates that it is prepared to supply the ordered Goods on the terms agreed by the parties, which will include these Conditions; and
- (b) the Customer accepts delivery of the ordered Goods,

in which case the contract is deemed to have been made as at the date of the Customer's order.

- 1.5 A contract made pursuant to clauses 1.3 or 1.4 is wholly documented by any specific terms agreed by ARC and the Customer in writing including, without limitation, in a quotation and these Conditions.
- 1.6 To the extent that any inconsistency arises between the terms of a quotation and any clause of these Conditions, the terms of the quotation prevail to the extent of the inconsistency.
- 1.7 Where in the period between acceptance of a quote and delivery of the relevant Goods, ARC incurs an increase in the cost of producing and/or delivering the Goods, ARC reserves the right to increase the quoted price of these Goods at any time prior to delivery (a "price escalation"), provided that the Customer may, if it does not agree to the price escalation, terminate part or all of the contract within 7 days after receiving notice of such price escalation.
- 1.8 These Conditions of Sale apply to the exclusion of any terms and conditions of trade of the Customer whether or not any inconsistency arises and bind the Customer both personally and as trustee of any trusts of which the Customer is a trustee.

2. SPECIFICATIONS AND WORKING DOCUMENTATION

- 2.1 If the Customer's order refers to a Specification or Working Documentation, then:
- (a) the Customer represents and warrants to ARC that any such Specification or Working Documentation provided to ARC will not breach or infringe upon the rights or property of any third party including, without limitation, patent, design, copyright or other intellectual property rights and the Customer indemnifies ARC and must hold it harmless from and against any loss, damage, liability or cost suffered or incurred by ARC arising out of any actual or alleged breach or infringement of any intellectual property rights in connection with ARC's use or reliance on a Specification or Working Documentation provided by the Customer;
 - (b) the Customer releases ARC from and waives any rights or

causes of action it may at any time have had against ARC but for this release in relation to any fault or defect in any Goods made pursuant to the Customer's Specification or Working Documentation arising, whether directly or indirectly, out of the terms of the Specification or Working Documentation provided by the Customer to ARC; and

- (c) the Customer indemnifies ARC and must hold it harmless from and against any loss, damage, liability or cost suffered or incurred by ARC as a result of or related to any inaccuracy, omission or error in the Working Documents prepared by the Customer or a third party.

- 2.2 Subject to clause 10.1, unless otherwise stated on a quotation, Goods will be supplied by ARC within the tolerances in regard to quantity, weight, dimension and chemical composition as specified in the relevant order or, if not specified, as consistent with usual industry practice. Where the total mass or length of any item supplied includes a fraction of a tonne the Customer must pay for that fraction on a pro rata basis.

- 2.3 Notwithstanding any other provision of these Conditions, it is a term of the contract that ARC has discretion to refuse to supply Goods or Services to the Customer (without liability to the Customer) where:

- (a) Goods or Services are unavailable or insufficient other than due to ARC's substantial fault or negligence;
- (b) the Customer has materially failed to comply with terms on which ARC has agreed to provide credit to the Customer; or
- (c) the Customer or a Related Corporation of it has committed a material breach of a contract with ARC or a Related Corporation of it, including these Conditions.

- 2.4 The Customer agrees that it does not rely on the skill or judgement of ARC in relation to the suitability of any of the Goods for a particular purpose.

3. DELIVERY AND RISK

- 3.1 ARC's delivery obligations are subject always to the Customer providing ARC with:

- (a) a 28 day Delivery Programme, updated weekly; and
- (b) Working Documentation no later than the Lead Times for the corresponding Goods; unless ARC agrees otherwise in writing.

- 3.2 Subject to clause 3.1, ARC will deliver Goods to the Customer as follows:

- (a) ARC reserves the right to arrange transport by any means in its absolute discretion;
- (b) delivery will be made during Working Hours to the location agreed (delivery point) for the purpose of clause 1.5;
- (c) ARC or its transport contractor will deliver the Goods to the delivery point (Drop Spot) unless, in the opinion of ARC or its transport contractor, it is not safe or prudent to do so, in which case delivery will occur as close to the Drop Spot as reasonably practicable. Delivery occurs and risk in the Goods passes to the Customer when ARC's or its transport contractor's delivery vehicle arrives at the Drop Spot;
- (d) the unloading of Goods at a Drop Spot is the Customer's responsibility at its own cost and risk but ARC or its transport contractor may, without liability to the Customer, unload

the Goods at the Drop Spot if the Customer requests ARC to do so or is absent from the Drop Spot at the time ARC or its transport contractor wishes to unload and the Customer releases and forever discharges ARC and its transport contractor from and against any claim, cause of action or liability arising out of the unloading of Goods at the Drop Spot;

- (e) where the Customer attends ARC's premises to acquire Goods, ARC may:
- (i) deliver the Goods into or onto the Customer's vehicle if requested by the Customer in which case risk in the Goods passes to the Customer and delivery is effected when the Goods are set down in or on the Customer's vehicle; or
 - (ii) in all other cases, deliver the Goods by setting them down alongside the Customer's vehicle in which case risk in the Goods passes to the Customer and delivery is effected when the Goods are set down alongside the Customer's vehicle notwithstanding that ARC's staff may, on request, assist the Customer to load the Goods into or onto the Customer's vehicle.

3.3 Where ARC or its transport contractor enters the Customer's premises or the premises of a third party nominated by the Customer as a delivery point, the Customer releases ARC from any claim the Customer may at any time have had against ARC but for this release in respect of damage occasioned to the Customer's premises or injury to persons arising out of the delivery by ARC or its transport contractor of Goods to such premises to the extent such damage is not due to ARC or its transport contractor's substantial fault or negligence.

3.4 A statement on an invoice or delivery docket given to the Customer by ARC as to the quantity, description, date and place of delivery of Goods will be a conclusive statement and bind the Customer for all purposes (except in the case of a manifest error due to ARC's substantial fault or negligence).

3.5 If the Customer does not advise ARC in writing of any fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract made pursuant to these Conditions within 96 hours of delivery:

- (a) the Customer is deemed to have accepted the Goods and is deemed to agree that the Goods are not faulty, damaged or defective and comply with a contract made pursuant to the terms of these Conditions; and
- (b) to the maximum extent permitted by law, the Customer releases and discharges ARC from and against any claims, actions, loss or liability relating to any fault, damage or defect in the Goods or any failure of the Goods to comply with a contract made pursuant to these Conditions.

3.6 If the Customer advises ARC in writing of a fault, damage or defect in Goods or a failure of Goods to comply with the terms of a contract made pursuant to these Conditions within 96 hours of delivery then ARC will, if in its reasonable opinion the Customer's advice is reasonable and the Customer has not used the Goods, replace the Goods that appear to be faulty, damaged or defective or not in compliance with the terms of a contract made pursuant to these Conditions and ARC will have no additional liability to the Customer in respect of the fault, damage, defect or non-compliance.

3.7 Goods are not damaged or defective by reason only of the presence of rust, millscale or rolling seams except as provided for in AS3600.

3.8 Unless otherwise agreed by ARC and the Customer in writing, ARC will bundle or package Goods the subject of an order in its discretion and the Customer releases and forever discharges ARC from any liability or claim arising out of such bundling or packaging by ARC (except where such claim arises as a result of ARC's substantial fault or negligence).

3.9 ARC will not be liable for any loss incurred as a result of delay or failure to make any supply of Goods or Services or to observe any of these Conditions, without substantial fault or negligence by ARC, due directly or indirectly to an event of force majeure, being any cause or circumstance beyond ARC's reasonable control, including but not limited to, any lack of production capacity or raw materials, strikes,

lockouts, labour disputes, fires, floods, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-government authorities or embargoes, provided that ARC gives notice to the Customer of the delay and uses reasonable efforts to mitigate the impact of the delay. During the continuance of an event of force majeure the parties' obligations (other than those relating to payment) under these Conditions will be suspended. In these circumstances, neither party has any liability whatsoever to the other (other than in relation to payment) and if the force majeure event continues for 28 days or longer, either party may terminate the contract for convenience.

4. RETENTION OF TITLE

4.1 The Customer agrees that legal and equitable title to the Goods is retained by ARC until the Amount Payable has been paid in full by the Customer for the Goods, the Services and all other goods and services supplied to the Customer at any time. Prior to title in the Goods passing to the Customer, the Customer:

- (a) holds the Goods and any Processed Goods as bailee and fiduciary agent of ARC;
- (b) must store the Goods and such part of the Processed Goods separate from its own goods and those of any other third party in such a way as to clearly indicate at all times that the Goods and such part of the Processed Goods are owned by ARC; and
- (c) must ensure that, at all times, the Goods and such part of the processed goods are properly stored, protected, readily identifiable and insured.

4.2 The Customer hereby agrees to accept this appointment as bailee and fiduciary agent of ARC.

4.3 The Customer may only install or affix the Goods to other goods (so that they become an Accession to those other goods) or use or permit the Goods to be manufactured, processed, assembled, commingled or otherwise dealt with (so that they become Processed Goods) in the ordinary course of the Customer's normal business.

4.4 The Customer may sell or deal in the ordinary course of business with the Goods, and such part of the Processed Goods or any Accession provided that

- (a) not used; and
- (b) the Customer holds the proceeds of any sale of or dealing in the Goods and such part of the proceeds of any sale of or dealing in the Processed Goods on trust for ARC in a separate identifiable account as the beneficial property of ARC and the Customer must pay such amount to ARC on demand.

4.5 For purpose of this clause 4, "such part" means an amount equal in dollar terms to the amount owing by the Customer to ARC at the time the Goods are used in the manufacture of, or incorporated into, the Processed Goods or Accession.

4.6 Notwithstanding any other provision to the contrary, ARC reserves the following rights in relation to the Goods until the Amount Payable has been paid in full by the Customer in respect of the Goods and all other goods and services supplied to the Customer at any time:

- (a) legal and equitable ownership of the Goods;
- (b) to retake possession of the Goods; and
- (c) to keep or resell any of the Goods repossessed.

4.7 In the event of a breach of this contract by the Customer including, without limitation, failure by the Customer to pay any Amount Payable by the required date which has not been remedied within 14 days of a notice from ARC to do so, the Customer must return the Goods to ARC immediately on demand. If the Customer does not return the Goods to ARC on demand, ARC is entitled (without further notice) to:

- (a) enter upon the Customer's premises at any time to do all things necessary to recover the Goods or any Processed Goods;
- (b) take possession of the Goods or any Processed Goods wherever located;

- (c) take possession of any Goods which have become an Accession, wherever located; and/ or
 - (d) appoint a person to be a receiver of all or any of the Goods, Accessions, Processed Goods or other property the subject of the security interests created by the contract.
- 4.8 The Customer hereby grants full leave and irrevocable licence to ARC and any person authorised by ARC to enter upon any premises where the Goods, Processed Goods or Accessions may for the time being be placed or stored for the purpose of retaking possession of those Goods, Processed Goods or Accessions.
- 4.9 Despite clause 4.6(c), the Customer may sell the Goods or any Accession to a third party in the normal course of the Customer's business provided that the Customer holds the proceeds of sale on trust for ARC to the extent of the Amount Payable. The Customer must keep those proceeds separate on trust for ARC and not mix those proceeds with any other monies.
- 4.10 The Customer:
- (a) must pay ARC all costs and expenses incurred or payable by ARC for registering, maintaining or releasing any security interest, charge or caveat in connection with the contract, or recovery of the Amount Payable or in otherwise enforcing ARC's rights against the Customer;
 - (b) must pay the costs of registering any PPSA financing statement and such costs may be invoiced or debited against the Customer's credit account; and
 - (c) not used.
- 4.11 The Customer acknowledges and agrees that the contract between the parties comprises a security agreement and that ARC is entitled to register a financing statement in respect of the security interests given under that contract.
- 5. PRICE AND GST**
- 5.1 The price of Goods or Services or both will be ARC prevailing price at the time of delivery and does not include GST unless expressly stated to the contrary.
- 5.2 Where a party to these Conditions (Supply Maker) makes a Taxable Supply (within the meaning of the GST Act) under or in connection with these Conditions to another party to these Conditions (Recipient) and the consideration otherwise payable for the Taxable Supply is not specifically stated to include GST, the Supply Maker will be entitled to recover from the Recipient as an additional amount the amount of any GST payable on the Taxable Supply, and the Recipient must pay such GST at the same time that the consideration for the Taxable Supply is payable.
- 5.3 The amount of any cost recovery or compensation for costs under or in connection with these Conditions shall be reduced by the amount of any Input Tax Credits (within the meaning of the GST Act) available in respect of those costs.
- 5.4 A party to these Conditions will not be obliged to pay any amount in respect of GST to the other party unless and until a Tax Invoice (within the meaning of the GST Act) has been issued in respect of that GST.
- 5.5 In addition to payment of the price for Goods, the Customer is responsible for and ARC may recover from the Customer:
- (a) taxes (other than income tax), stamp duty or other statutory charges or levies whether State or Federal payable in relation to the supply of Goods;
 - (b) the cost of delivery of Goods including, without limitation, costs relating to long loads, wide loads, escorted loads, drop trailers, crane trucks (including associated personnel), particular dunnage requirements, palletising or crating of materials, early deliveries (at or around 7:00 am), delivery loads of less than 10 tonnes, delivery to non-metropolitan sites;
 - (c) the cost of providing materials necessary to manufacture Goods in accordance with a Specification or Working Documentation when such materials are not indicated on the Specification or Working Documentation including, without limitation, hurdles, chairs, laps and bracing;
 - (d) costs incurred by ARC arising out of the Customer notifying ARC

- of a change to an agreed delivery schedule within 10 Business Days of the time for delivery, with such costs to include, without limitation, costs of double handling, storage of material, trailer hire and scheduling of production and delivery;
- (e) storage charges where Goods are not collected immediately upon being made available for collection at ARC's premises;
- (f) demurrage costs or charges incurred by ARC for attendance at a delivery point after the expiration of the first three quarters of an hour such charges to be calculated at master carrier rates;
- (g) legal and collection costs and disbursements on an indemnity basis incurred by ARC in relation to a breach of these Conditions by the Customer;
- (h) all costs, charges, expenses or any other outgoings incurred by ARC with respect to any Variation by the Customer;
- (i) all costs or charges incurred by ARC with respect to the recovery or return of Goods from the Customer (including re-stocking charges) which are not due to any breach of these Conditions by ARC; and
- (j) the cost of any testing or inspection of Goods, or testing or inspection of products or materials required by the Customer to be used in relation to the manufacture of Goods where the test or inspection does not reveal that the Goods are non-compliant with these Conditions, in each case (except with respect to amounts described in clause 5.5(a)) to the extent reasonably incurred by ARC.

6. PAYMENT AND CREDIT TERMS

- 6.1 Unless ARC has agreed to extend credit to the Customer, payment for Goods must be made by the Customer in immediately available funds on or immediately prior to delivery of the Goods.
- 6.2 Unless otherwise agreed by the Customer and ARC, ARC will be entitled to deliver the Goods in one or more instalments. Where delivery of the Goods is effected by way of part delivery, ARC will be entitled to invoice the Customer for pro-rata progress payments in respect of Goods delivered.
- 6.3 Where ARC has agreed to extend credit to the Customer, ARC will submit an invoice to the Customer for Goods or Services or both supplied to the Customer (including, without limitation, Goods delivered in part fulfilment of an order) and the full amount of the invoice (but if the order is partially fulfilled, for the full amount of the part fulfilled by ARC) together with any additional charges (if any) notified in the invoice must be paid by the Customer to ARC by no later than the date which is 30 days from end of month of the date of ARC's invoice or such other date for payment as ARC may agree in writing. All payments are claimed under the Building & Construction Industry Security of Payment Act 1999 (NSW) or equivalent security of payment legislation in the jurisdiction in clause 11.
- 6.4 ARC is entitled to allocate and apply amounts received from the Customer to any part of the Amount Payable or any other amounts due to ARC in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any Goods, and despite any instruction, request or direction from the Customer as to how payments should be applied.
- 6.5 The Customer must pay ARC on demand the default interest at the time of the breach at the rate prescribed from time to time in New South Wales on all overdue amounts owed by the Customer to ARC which interest will be calculated daily and will be payable together with the overdue amount. All payments made by the Customer will be first applied to the accrued interest.
- 6.6 The Customer must not retain or withhold any undisputed amount owing to ARC in accordance with the terms of these Conditions. ARC expressly disclaims any right of the Customer to set off amounts due or alleged to be due from ARC to the Customer against amounts due or alleged to be due from the Customer to ARC under these Conditions.
- 6.7 ARC may, at any time, without cause, suspend, limit or withdraw any credit granted to the Customer.
- 6.8 If:
- (a) a party breaches a provision of these Conditions (except, in the case of a Customer, to the extent such breach is a failure to pay as described in clause 6.8(e)), and such breach is not

- remedied within 14 days of receiving notice from the other party requiring it to do so (unless such breach arises out of the supply of defective Goods, in which case ARC shall remedy the breach within such time as is reasonable in the circumstances); or
- (b) in the case of the Customer, the Customer, being a natural person, is the subject of any personal insolvency event including, without limitation, arising out of the Customer committing an act of bankruptcy; or
- (c) in the case of the Customer, the Customer, being a company, has a receiver, receiver and manager, official manager, trustee, administrator, other controller (as defined in the Corporations Act 2001 (Cth)) or similar official appointed or steps are taken for such appointment over any of the assets or undertaking of the Customer; or
- (d) without limiting clauses 6.8(b) and 6.8(c), in the case of the Customer, if the Customer suspends payment of its debts generally or is or becomes unable to pay its debts when they are due or is presumed to be insolvent under the Corporations Act 2001 (Cth) or if the Customer ceases or threatens to cease to carry on business; or
- (e) in the case of the Customer, payment for the Goods has not been received by ARC by the due date for payment, (a **"Defaulting Party"**), then:
- (f) where the Customer is the Defaulting Party, ARC may, without limiting any other rights it may have, do any or all of the following things:
- (i) withdraw any credit facilities which may have been extended to the Customer and require immediate payment of all moneys owed to ARC by the Customer; and/or
- (ii) suspend performance under the contract without ARC incurring liability to the Customer; and/or
- (iii) terminate, without ARC incurring liability to the Customer any contract in force between ARC and the Customer for the sale or supply of Goods or Services or both and, without limitation, withhold any deliveries of Goods or performance of Services pursuant to any purchase order accepted by ARC; and
- (g) where ARC is the Defaulting Party, the Customer may, without limiting any other rights it may have, terminate these Conditions, but without prejudice to ARC's entitlement under these Conditions to payment for Goods or Services supplied in accordance with these Conditions.
- 6.9** The Customer as beneficial owner charges in favour of ARC all of the Customer's interest and rights in all of the present and future real property of the Customer as security for the due and punctual payment of all debts and monetary liabilities owed by the Customer to ARC pursuant to a contract on or including the terms of these Conditions, including the Amount Payable. The Customer acknowledges that ARC has a caveatable interest in any real property owned by the Customer and consents to ARC lodging a caveat to note its interest.
- 6.10** The Customer grants a security interest in the Goods to ARC to secure payment of the Amount Payable. The security interest:
- (a) extends to and continues in all proceeds, Accessions and Processed Goods; and
- (b) is a purchase money security interest to the extent to which it secures payment of that part of the Amount Payable which comprises the aggregate unpaid purchase price of Goods.
- 6.11** The Customer must not do or permit anything to be done that may result in the purchase money security interest granted to ARC ranking in priority behind any other security interest.
- 7. PPSA**
- 7.1** The Customer:
- (a) waives its right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement relating to a security interest created under the contract; and
- (b) contracts out of its rights to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in clause 7.2).
- 7.2** To the fullest extent permitted by the PPSA, the parties agree to contract out of the following provisions of the PPSA: sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 142 and 143, which sections (or parts of sections) do not apply to the contracts between the Customer and ARC.
- 8. LIMITATION OF LIABILITY**
- 8.1** Without affecting any liability ARC may have under clause 9 and otherwise except to the extent that the law prohibits such a limitation, ARC's liability to the Customer and any party claiming through the Customer against ARC for any claim for loss or damages (including legal expenses) made in connection with a contract (including the supply of Goods described in a contract) whether in contract, under any warranty or indemnity, in tort (including negligence), under statute, in equity or otherwise shall be strictly limited as follows:
- (a) for any liability arising from Goods not meeting the specification under the contract or which are said to be otherwise defective or deficient, ARC's liability is limited to the cost of replacement of those Goods as soon as reasonably practicable, or the repair of those Goods or the repayment (or allowance) of the invoice price of those Goods (at the option of ARC, acting reasonably, or otherwise as agreed);
- (b) for any liability arising from the Services not meeting the scope or which are said to be otherwise defective or deficient, ARC's liability is limited to the provision of the Services again or payment of the cost of having the relevant Services provided (at the option of ARC, acting reasonably, or otherwise as agreed); and
- (c) for any liability that does not fall within the scope of clauses 8.1(a) or 8.1(b), ARC's liability for any loss or damage arising from or caused in any way by ARC, the Goods it supplies or the contract is excluded (to the maximum extent permitted by law).
- 8.2** These Conditions set out the entire agreement between the parties in relation to their subject matter. The terms of the United Nations Convention on Contracts for the International Sale of Goods, 1980 (the Vienna Convention) and all other terms or conditions in relation to the subject matter of these Conditions, whether implied by use, statute or otherwise, are expressly excluded.
- 8.3** Notwithstanding any other provision of these Conditions, ARC is not liable, to the maximum extent permitted by law, for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Goods it supplies or the Services it performs. The phrase "indirect, special or consequential loss or damage" includes:
- (a) any loss of income, profit, production, contract, customers, business opportunity or business;
- (b) any loss of goodwill or reputation;
- (c) any loss of value of intellectual property; and
- (d) any loss or damage resulting from the loss or damage to goods other than the Goods.
- 8.4** Not used.
- 8.5** Subject to clause 9 but otherwise despite any other provision of the contract, ARC is not liable, to the maximum extent permitted by law, for:
- (a) the cost of removal of Goods not meeting the specification under the contract or which are said to be otherwise defective or deficient, whether installed or otherwise;
- (b) the cost of installation of replacements for Goods not meeting the specification under the contract or which are said to be

- otherwise defective or deficient; or
- (c) defects or deficiencies in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.

9. CONSUMERS

Where and only to the extent that the supply of Goods is to a “consumer” (as that term is defined by the ACL) then, in respect of that supply:

- 9.1 the Special Conditions at www.arcreeo.com.au/trading-terms are incorporated into and form part of these Conditions, and apply as part of the contract between the Customer and ARC; and
- 9.2 clause 8 does not apply and, except as stated otherwise in the Special Conditions, nothing in these Conditions excludes, restricts or modifies any Consumer Guarantee applying under the ACL.

10. MISCELLANEOUS

- 10.1 Nothing in these Conditions is intended to exclude, restrict or modify rights which the Customer may have under the CCA or any other legislation which may not be excluded, restricted or modified by agreement.
- 10.2 For the purpose of these Conditions and any transaction effected pursuant to these Conditions, mass of steel reinforcing bars will be calculated on the basis of mass per metre as defined in AS4671-2001 plus an allowance for rolling margin as defined in AS1100 part 501 of up to 4.5%, including other costs as determined by ARC from time to time.
- 10.3 A party waives a right under these Conditions only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of a term of these Conditions does not operate as a waiver of another breach of the same term or any other term.
- 10.4 If a provision in these Conditions is wholly or partly invalid or unenforceable in the jurisdiction in clause 11, that provision or the part of it that is invalid or unenforceable must, to that extent, and in that jurisdiction, be treated as deleted from these Conditions. This does not affect the validity or enforceability of the remaining provisions in the jurisdiction in clause 11.
- 10.5 ARC may assign or otherwise deal with the benefit of any contract made pursuant to these Conditions without the consent of the Customer. In the event of a novation, the Customer may, if it has reasonable grounds to believe that the novatee will not comply with these Conditions, by written notice given within 30 days of receiving notice of the novation, terminate any contract which has not been completed and which was concluded prior to the novation. The Customer may not assign its rights under a contract or lease, licence or loan the Goods to any third party or grant a security interest in the Goods without prior notice to and written consent from ARC (which consent will not be unreasonably withheld).
- 10.6 A party (“Receiving Party”) must not disclose the Confidential Information of the other party (“Disclosing Party”) unless the Receiving Party receives the prior written consent of the Disclosing Party, such information enters the public domain (other than as a result of a breach by the Receiving Party) or its use or disclosure is required by law. The Customer may not use any trade mark or other intellectual property of ARC, unless it receives the prior written consent of ARC (which consent may be given, withheld or withdrawn, or given subject to conditions, at ARC’s discretion).

11. JURISDICTION

The law of the state or territory of New South Wales is the proper law of these Conditions. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales.

12. PRIVACY

- (a) Where the Customer provides ARC with personal information (as defined in the Privacy Act 1988) about any individual (including the Customer where applicable), the Customer must have that individual’s consent to provide that information to ARC having regard to and for the purposes set out in this clause 12 and in ARC’s Privacy Policy. This policy is available

on request or via <https://www.arcreeo.com.au/privacy>, and contains more information about ARC’s handling of personal information, types of information collected, types of service providers used, countries to which personal information is likely to be disclosed, accessing and correcting personal information, privacy complaints, the credit reporting bodies used, information shared with those bodies and individuals’ rights in relation to their information held by those bodies.

- (b) ARC may collect, use and disclose that personal information for purposes relating to any contract with the Customer and to the Customer’s credit application and account. This includes assessing the Customer’s application, monitoring the value of and enforcing the security interests created by a contract, reviewing credit arrangements on a periodic basis or in connection with changes (e.g. credit limit) as though assessing a new application, order fulfilment and delivery, market research, planning, business development, debt collection and customer relationship management. ARC may also conduct lawful and relevant credit and reference checks (including consumer credit checks on the Customer where the Customer is an individual), and deal with personal information in connection with any acquisition or potential acquisition of any part of ARC’s business. Without the personal information sought, ARC may not be able to do these things, including fulfil orders and process credit applications.
- (c) ARC may provide marketing communications to the Customer by email and other means on an ongoing basis, unless the Customer opts out by contacting ARC or legal restrictions apply.
- (d) ARC may exchange personal information with ARC’s Related Corporations, the Customer guarantors and prospective guarantors (e.g. for the purpose of them deciding whether to act as guarantor), the Customer’s representatives and ARC’s service providers. ARC may also exchange that information with other credit providers for purposes including to: assess a credit or guarantor application; determine credit/default status; and assess or comment on credit worthiness. Some of these third parties may be located in other countries. While these parties outside Australia will often be subject to privacy and confidentiality obligations, Customer acknowledges and agrees for itself and as agent for each of its officers, employees, agents, contractors, guarantors and representatives that: (a) privacy obligations overseas may not always apply or may differ from Australian privacy laws; (b) ARC may not be accountable for the third party under the Privacy Act or for the overseas recipient’s storage, use or disclosure of the information; (c) individuals may not be able to seek redress under the Privacy Act for that disclosure or for the acts or omissions of the overseas recipient of the information; and (d) the third party may be subject to foreign laws which might compel further disclosures of personal information (e.g. to government authorities).

13. INTERPRETATION

In these Conditions:

Accession means any Goods which are installed in or affixed to other goods;

ACL means the Australian Consumer Law in Schedule 2 of the CAA;

ARC means The Australian Steel Company (Operations) Pty Ltd ABN 89 069 426 955;

Amount Payable means all amounts payable by the Customer at any time to ARC and/or ARC’s Related Corporations (whether or not those amounts have become due for payment under these Conditions) in relation to the Goods or the contract between the Customer and ARC (including, but not limited to, any invoiced amount, interest, fees, costs or expenses);

Business Day means a day that is not a Saturday, Sunday or public holiday in the jurisdiction set out in clause 11;

CCA means the Competition and Consumer Act 2010 (Cth);

Conditions means these terms and conditions;

Confidential Information means all information (in any form, whether written, electronic or otherwise) including any proprietary information, data, trade secrets, ideas and know-how (including systems, processes, techniques and algorithms), throughout the world in or relating to the Goods or the Services;

Customer means a person who makes a contract with ARC on the terms of these Conditions;

Delivery Programme means the Customer's proposed delivery dates for the Goods;

Goods means any goods supplied by ARC which are the subject of an order, or part of those Goods where the context allows;

GST means the tax payable on Taxable Supplies within the meaning of the GST Act; GST Act means the A New Tax System (Goods and Services Tax) Act 1999 and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;

Lead Time means the minimum period before the proposed delivery date by which the Customer must provide Working Documentation which period shall be notified by ARC.

Processed Goods means Goods which, after delivery, become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with so that their identity is lost in the product or mass;

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

Related Corporation has the meaning given to the term "related body corporate" in section 50 of the Corporations Act 2001;

Services means services supplied by ARC to the Customer in relation to Goods the subject of an order which has been accepted by ARC;

Specification includes metallurgical properties, chemical formulae, ingredients, architectural drawings, engineering drawings or other plans and accompanying schedules as varied or amended from time to time;

Variation means any modification, amendment or change to the terms of an order submitted by the Customer (whether or not such order has been accepted by ARC) including, without limitation, in relation to scheduling and re-scheduling, loading requirements, delivery times or delivery sites;

Working Documentation means architectural drawings, site drawings, structural drawings, construction drawings and reinforcement schedules or any other document or operational information provided by or on behalf of the Customer to ARC for the purpose of the transactions contemplated by these Conditions; and

Working Hours means between 7.00am and 5.00pm, Monday to Friday (inclusive) excluding public holidays.

In addition the following terms have the same meanings given to them in the PPSA:

- (a) financing statement
- (b) proceeds;
- (c) purchase money security interest;
- (d) security agreement;
- (e) security interest; and
- (f) verification statement.