



# COLUMBUS STAINLESS

— [Pty] Ltd —

## STANDARD CONDITIONS OF SALE - Local (hereinafter referred to as The Conditions)

The Conditions shall apply to all Contracts of Sale concluded between Columbus and its local sales customer.

### 1. DEFINITIONS

For the purposes of this document, the words and phrases set out below shall have the particular meanings detailed below:

<b>The Customer</b>	means the customer who is designated as such on the Columbus Order Acceptance.
<b>Material</b>	means the items of stainless steel detailed on the Columbus Order Acceptance.
<b>Columbus</b>	means Columbus Stainless (Pty) Ltd or its assigns or successors in title.
<b>Order Acceptance</b>	means the document entitled "Order Acceptance" which forms part of the Contract of sale between the Customer and Columbus and which confirms the acceptance of every order and which details, inter alia, material ordered by the Customer and accepted by Columbus, the price per ton, any special instructions that may be applicable and the delivery date.
<b>Delivery Date</b>	means the period during which Columbus undertakes to deliver the material to the Customer.
<b>Settlement Discount</b>	means the discount to which the Customer shall be entitled for early settlement of accounts as set out in Columbus' price list as amended from time to time.
<b>Test Certificate</b>	means the Certificate provided by Columbus certifying that material has been produced in accordance with the specification(s) set out in the Order Acceptance.

### 2. PURCHASE AND SALE

- 2.1 Columbus hereby sells and the Customer hereby purchases material, subject to the Conditions, which Columbus may amend from time to time.
- 2.2 The terms of the Contract of Sale between Columbus and the Customer appear in the Order Acceptance, Commercial Invoice and the Conditions. If material is sold by Columbus to the Customer in terms of a separate written agreement, the Conditions shall apply to that agreement. If there is a conflict between the Conditions and that agreement, the provisions of the Conditions shall prevail.
- 2.3 If there is any conflict between the terms contained in the Order Acceptance or Commercial Invoice and the Conditions, the terms contained in the Conditions shall prevail.

- 2.4 The Conditions shall prevail over any conditions of purchase of the Customer, unless the General Manager : Commercial at Columbus has agreed, in writing, to accept the Customer's conditions of purchase, in which event the Conditions will apply to the extent that they do not conflict with the Customer's conditions of purchase.

### 3. ORDER ENTRY PROCEDURE

- 3.1 Columbus shall indicate prices, volume availability and delivery dates to the Customer either by fax or e-mail. The Customer shall place his orders similarly by fax or e-mail.
- 3.2 If an order is received after the close of order entry, or at a time when the mill has already been fully loaded, then the delivery date relating to that order may either be postponed to the next available production month, or rejected entirely, at the discretion of Columbus.
- 3.3 Columbus may provisionally confirm the receipt of all new orders, by fax or e-mail, whilst the order is being processed but the final acceptance thereof will only occur once Columbus has issued an Order Acceptance and will always be subject to the Conditions.
- 3.4.1 The customer is required to sign and return a copy of the Order Acceptance to Columbus. The signatory hereby warrants that he is authorised to act on behalf of the Customer, that he has read the Conditions and that, on behalf of the Customer, he accepts that the Conditions will apply to the Contract of Sale between the Customer and Columbus.
- 3.4.2 In the event that the Customer does not sign and return a copy of the Order Acceptance to Columbus within 15 (fifteen) working days from the date of sending thereof by Columbus, the Customer shall be deemed to have accepted the Order Acceptance and the conditions, which conditions shall apply to the contract of sale between the Customer and Columbus.
- 3.5 Once the Order Acceptance has been signed by the Customer, or once 15 (fifteen) working days referred to in clause 3.4.2 above have passed, the order is confirmed and it may not thereafter be cancelled by the Customer, in whole or in part, nor may it be varied in any manner whatsoever, unless such cancellation or variation is agreed, in writing, by the parties.
- 3.6 Orders accepted by Columbus are subject to a delivery tolerance of plus or minus 10% of the mass ordered. The Customer is liable to pay for the mass that is actually received, provided that it is within this delivery tolerance.
- 3.7 The Customer must report any errors that may appear on the Order Acceptance in writing within 15 (fifteen) working days from the date of receipt thereof, failing which he shall be deemed to have accepted the Order Acceptance as being correct. Thereafter, the Order Acceptance shall constitute irrefutable proof of the details of the order to which it relates. It is therefore essential that the Order Acceptance document should be carefully checked.

### 4. DELIVERY

- 4.1 Columbus shall at its option deliver material to the Customer's premises or to the railway siding nearest thereto. ("Delivery")
- 4.2 Receipt by the Customer of material shall be deemed to be unqualified acceptance thereof and the Customer shall not be entitled to make any claim in respect of any loss, shortage or damage unless he has endorsed the delivery note and given notice to Columbus in writing within 7 (seven) days of Delivery

4.3 The Customer shall not be entitled to refuse Delivery or return material without Columbus' prior written consent should the material be delivered on the Delivery Date or anytime thereafter.

4.4 The Customer may with Columbus' consent, request delivery to a nominee, in which event delivery to that nominee shall constitute delivery to the Customer.

## 5. PRICES AND PAYMENT

5.1 The prices quoted to the Customer and set out in the Order Acceptance are in accordance with Columbus' published price list in force from time to time. Columbus reserves the right to modify such prices by giving 24 (twenty-four) hours notice in writing and the modified prices shall apply to material ordered thereafter.

5.2 In addition to the prices set out in the Order Acceptance the Customer shall also be liable for any taxes or other charges or levies (other than income tax) which Columbus may be required to pay or collect in terms of any existing or future government. Provincial or municipal laws in respect of the sale, delivery, storage, processing, use, consumption or transportation of material sold to the Customer.

5.3 The Customer shall make payment of the full amount due to Columbus in accordance with the payment terms set out in the Commercial Invoice and on the due date that is specified therein.

5.4 The Customer is only entitled to the Settlement Discount if the payment to which it refers is received at Columbus' office and banked by Columbus within the period qualifying for the Settlement Discount. The onus shall be on the Customer to provide proof of date of receipt of payment in the event of dispute. Should the date of receipt of payment to qualify for Settlement Discount fall over a weekend or on a public holiday, the Customer shall only qualify for the Settlement Discount if payment is made into Columbus' bank account on the last working day preceding the weekend or public holiday. It shall be deemed that any payment received by Columbus, shall only be banked on the following business day.

5.5 Should the Customer accept delivery of the material prior to the Delivery Date then the Customer shall make payment to Columbus in terms of Clause 5.4 and shall be entitled to the Settlement Discount if the payment to which it refers is received at Columbus' office within the period qualifying for the Settlement Discount, calculated from the date of the early delivery. The onus of proving the date of receipt of payment shall be on the Customer as in Clause 5.4 above.

5.6 On invoicing, the actual mass shall apply to coil, sheet and plate.

5.7 The Customer shall take the risk with regard to any payment that may be made by post, or any other manner, other than personal delivery.

## 6. RISK AND OWNERSHIP

Risk in and to the material shall pass to the Customer upon Delivery but ownership shall pass only upon payment in full of the purchase price and the other charges described in Clause 5.2.

## 7. WARRANTY

7.1 Columbus Stainless warrants that the material will conform to the specifications detailed in the Test Certificate.

7.1.1 In the event that any claim is made by the Customer that the material is defective in terms of this warranty, Columbus shall entirely without prejudice to any other rights it may have, replace the material or such portion thereof as may have been affected, or refund the purchase price or such portion thereof as is applicable to the defective material, against the return of the affected material or its scrap value.

7.1.2 If the material is defective but none-the-less usable in a less demanding application, the Customer and Columbus may agree upon an acceptable discount rather than replacing or scrapping the material. Such a discount will be negotiated in good faith between the parties having regard to prevailing market circumstances.

7.2 Columbus shall not under any circumstances whatsoever or howsoever arising, be liable for any direct or consequential loss or damage. This warranty contains the entire basis for liability on the part of Columbus in respect of the condition of the material. Save for this warranty, Columbus makes no other warranties, express or implied, by operation of law or otherwise. In particular, but without limiting the generality thereof, Columbus makes no warranty that the material is fit for any particular purpose of the Customer.

## 8. FORCE MAJEURE

8.1 Except for the obligation to pay the full purchase price in respect of any material that may already have been shipped and invoiced or delivered, neither party shall be liable to the other for any failure to perform any of its obligations, in whole or in part, in the event of, and to the extent that such failure is caused by, force majeure.

8.2 Force majeure shall, without in any way restricting its ordinary meaning, include Act of God, war, civil commotion, strikes, lockouts, revolutions, fires, explosions, floods, political disturbances, acts of any Government or local authority, breakdowns of plant equipment, shortages of raw materials, storms or any matters that are beyond control of either or both of the parties.

8.3 During the currency of a force majeure the respective parties' obligations may be suspended as soon as the party who is unable to perform his obligations as a result thereof, has given the other party notice, in writing, informing him of the nature and the expected duration of the force majeure.

8.4 In the event that a force majeure lasts for a period of more than 30 days, the parties may agree, or one or other of them may elect to cancel the outstanding obligations, upon written notice.

## 9. SUSPENSION AND CANCELLATION

9.1 If any sums are due, owing and payable by the Customer to Columbus, in accordance with the payment terms reflected on the respective Invoice, Columbus shall be entitled, but not obliged, to suspend the delivery of any other material that has been ordered by the Customer, and accepted by Columbus, without Columbus incurring any liability to the Customer for damages or losses of any kind whatsoever.

9.2 Interest shall accrue on outstanding amounts at a rate of 2% per annum above the ruling prime bank overdraft rate from the due date for payment to the actual date of payment.

9.3 If the Customer fails to make payment of any sums due, owing and payable on due date, and further fails to rectify such default within 7 (seven) days of date of default, or if any execution is levied upon the property or assets of the Customer, or if the Customer passes a resolution for its winding

up (otherwise than solely for the purpose of amalgamation or reconstruction), or if any provisional or final order of liquidation or for judicial management is granted against it, then and in any such case Columbus may by written notice to the Customer:

- 9.3.1 cancel the Contract of Sale with the Customer and claim the material back, or damages; and
- 9.3.2 cancel any other orders by the customer which may already have been accepted by Columbus.

In such an event, the Customer agrees and binds itself to forthwith return, at its expense and risk, any material which has been delivered by Columbus and for which payment has not been made.

## **10. DOMICILIUM**

The parties choose their respective addresses on the Commercial Invoice as their respective domicilia citandi et executandi for the purposes of any notice in terms of the Conditions.

## **11. WAIVER**

Any indulgence which may be granted by Columbus to the Customer, in respect of any of the Customer's obligations, shall not be deemed to be a waiver or a novation of any such obligations and shall not prejudice the right of Columbus. Any waiver, change, amendment or discharge of a term contained in the conditions, or of any order that has been accepted by Columbus, shall not bind either party unless it has been made in writing and signed by an authorised representative of each party.

## **12. CESSION OF RIGHTS**

The Customer shall not cede, assign, or sub-contract any of its obligations in terms of these Conditions to any other party without the prior written consent of Columbus.

## **13. JURISDICTION**

- 13.1 The Contract of Sale between the Customer and Columbus, including the Conditions, shall be governed by the laws of the Republic of South Africa and any dispute arising out of or concerning any order or Contract of Sale shall be resolved in accordance with the laws of the Republic of South Africa, in a South African Court having jurisdiction.
- 13.2 Columbus may at its option proceed in any relevant Magistrates Court and the Customer hereby consents and submits to the jurisdiction of such court having jurisdiction over Columbus in respect of proceedings connected with this agreement, notwithstanding that the amount claimed or the value of the matter in dispute exceeds such jurisdiction.