

**BAHRU STAINLESS SDN BHD**  
**(Company No.811430-H)**

**STANDARD TERMS AND CONDITIONS OF SALE OF GOODS**

**1 Definitions**

In these Terms the following expressions shall have the following meaning:  
**"the Company"** means Bahru Stainless Sdn Bhd (Company No.811430-H).  
**"the Customer"** means the person, firm or corporation with whom the Company contracts for the sale of the Goods.  
**"the Goods"** means the goods to be sold by the Company and purchased by the Customer pursuant to the Contract.  
**"the Contract"** means this contract for the sale of the Goods by the Company to the Customer incorporating the Terms.  
**"working day"** means any day of the week except a day which is a Saturday, Sunday or public holiday in Johor Bahru, Johor, Malaysia.  
**"the Terms"** means the terms and conditions in this Contract, governing the sales of the Goods by Bahru Stainless Sdn Bhd. The Terms shall not be applicable to those contracts which main purpose is a service to be rendered by Bahru Stainless Sdn Bhd.

**2 General**

Any quotation or estimate given by the Company, shall be deemed and treated as an invitation to the Customer to place an order and thereby make an offer to acceptance by the Company. An order or confirmation placed in response to, or any other acceptance of the Company's quotation or estimate shall give rise to a contract binding between the Company and the Customer.

A binding contract between the parties herein, shall come into effect upon the occurrence of any of the following event, whichever is the earliest:-

- acceptance by the Company (an order confirmation); or
- any commencement of manufacturing of the Goods by the Company, where Goods are manufactured specially in response to Customer's order; or
- the dispatch of the Goods.

The Terms are the only terms upon which the Company sells the Goods to the Customer, and shall be incorporated in the Contract to the exclusion of all other terms and conditions including any terms or conditions specified or referred to in any purchase order, form or order placed by the Customer. Any reference in any document forming part of or evidencing the Contract (including any order, design, drawing specification or other similar document) or any terms or conditions of purchase or business of the Customer shall not be incorporated into the Contract.

No variation of the Terms shall be valid, unless it is agreed and signed by the Company's authorized personnel in a document and issued to the Customer.

In addition to the Terms herein, the Company may from time to time specify and incorporate technical specifications and terms of trading including but not limited to, terms of carriage, minimum order sizes or packaging into the Contract. The details of such specifications and terms of trading are available upon request by the Customer.

**3 Prices of Goods**

Unless otherwise agreed in the Contract, all prices are exclusive of any GST, VAT, expense, import duty, tax, custom, excise and any other duty, tax imposed by any competent authority upon the sale and/or delivery of the Goods. Any such GST, VAT, expense, import duty, tax, custom, excise and any other tax or duty shall be added to the price and to be paid by the Customer.

Prices stated in quotations, estimates, or other documents issued by the Company prior to Customer's order confirmation are not binding upon the Company. The price of the Goods charged shall be the price valid and effective at the date of Customer's order confirmation. The price shall be valid for the Contract as a whole in the agreed terms and conditions.

Notwithstanding **clause 3.2** above, the Company shall have the right to increase the price of the Goods between the period of Customer's order confirmation and payment, if the following event occurs:

- the alloy extra and variation in the international prices of the constituent elements of the Goods or their supply terms; or
- there being any applicable incidental expenses arising in relation to the Goods or their delivery, whereby, the Customer shall accept the price increase and pay the same to the Company.

**4 Payment and Securities**

The Customer shall pay for the Goods in full, within the time period and in the manner as specified in the Contract. Partial payments are not allowed. Payment shall not be deemed effected until the Company's account has been fully and irrevocably credited. The Customer shall bear all the expenses, interest, bank charges arising out of the payment system agreed. If a documentary credit is issued, it shall be governed by the ICC Uniform Customs and Practice for Documentary Credits in effect and the Documentary Credits requires prior acceptance by the Company.

**4.2 If the Customer:**

- fails to comply with its payment obligation or other obligations under the Contract or any other contract(s) entered into with the Company or Acerinox Group of companies; or
- breach or threaten to breach any terms in this Contract;
- is under liquidation or any kind of insolvency or bankruptcy or entered into any debt or credit arrangement with its creditors; or
- fails to pay its creditors, or suffer any forms of court seizure or sale, or
- its assets or property is seized or placed under receivership or judicial management, the Company is hereby entitled to either compel Customer's performance of the Contract or to terminate the Contract.

If the Company has reasonable grounds to believe that the Customer will not be able to perform its payment obligation or other obligations under the Contract or any other contract(s) with the Company or Acerinox Group of companies, the Company may at any time suspend the performance of its obligations under the Contract or refuse delivery of the Goods, unless:

- the Customer immediately pays the Company, the full purchase price under the Contract and all other outstanding payments under any other contract(s) with the Company or the Acerinox Group of companies; or
- the Customer delivers to the Company, a bank guarantee or other security for the same amount acceptable by the Company.

The Company shall immediately notify the Customer of any such suspension and state a reasonable final time period for the Customer to make full payment/ furnish security for the Goods. If the Customer fails to make any such arrangements within the final time stipulated, the Company shall have the same rights as **clause 4.2** above.

If under **clause 4.2** or **4.3** above, the Company has already dispatched or delivered the Goods, it may refuse or stop the handing over or delivery of the Goods to the Customer or the consignee, even though the Customer or consignee holds a document which entitles them to the Goods.

If the Company terminates the Contract under **clause 4.2** or **4.3** above, the Customer's right's or authority to sell the Goods, shall immediately ceased. The Company shall prohibit the sale, delivery or process of the Goods and request the Customer to immediately return the Goods or forward the Goods to any other destination. Notwithstanding the Company's rights of suspension or termination, the Customer's obligation to pay the Goods remains and the Customer shall pay the Company in accordance with the Contract for all the Goods dispatched by the Company.

All amounts due by the Customer in payment for the Goods which are not paid on or before their due date shall bear annual interest both before and after judgment until actual payment to the Company at EURIBOR +3%. In addition thereon, the Customer shall also fully indemnify the Company for any loss, liability or expense or costs arising out of the Customer's breach of Contract or failure to pay.

The Customer shall not be entitled to set off against any sums due to the Company under the Contract any amount claimed by the Customer from the Company, whether under the Contract or other contract(s) or on any other account(s), save and except that the Customer shall be entitled to set off against sums due to the Company, from valid credit notes issued by the Company to the Customer.

All deliveries and despatch of the Goods shall be subjected to the Company's commercial risks policies.

**5 Formal Acceptance and Delivery**

The delivery of the Goods shall be made at the place(s) specified in the Contract or as subsequently agreed in writing according to **clause 2.3** above. If no place for delivery is specified or agreed by the Customer, the delivery of the Goods shall be deemed delivered to the Customer, at the place where the Goods are immediately prior to loading for delivery to the Customer (EX WORKS, INCOTERMS 2010). Any agreed trade term shall be construed in accordance with the edition of INCOTERMS stated in the Contract.

Unless otherwise stated, the Goods which are stated to be available "ex stock" (or an equivalent term) are subject to availability.

The Company shall be entitled to make delivery of the Goods by instalments or parts and to invoice the Customer for each instalment or parts dispatched.

The dates or periods for dispatch or delivery of the Goods stated in the Contract are only estimates/approximate and shall not be binding. Given the complexity of the production process of the Goods, if the Company having used its reasonable endeavors to comply with any date(s) specified in each contract for the dispatch or delivery of the Goods to the Customer and the Company is unable to do so, such failure shall not constitute a breach of Contract by the Company which entitles the Customer to cancel the Contract and/or to claim any damages, costs or whatsoever against the Company AND the Company shall be entitled to a reasonable extension of time in which to effect dispatch or delivery of the Goods.

If the delivery of Goods cannot take place at the agreed delivery time due to circumstances attributable to the Customer, the Customer agrees to make payments to the Company as if delivery had actually taken place. In addition to any other rights under the Contract, the Company may at the Customer's risk and expense, arrange for storage of the Goods and at the request of the Customer also arrange for the insurance of the Goods, subject always to the Customer makes an advance payment to the Company covering the reasonable costs for storage and insurance.

**6 Passing of Risk**

The passing of Risk in the Goods, shall take place in accordance with the INCOTERM specified in the Contract. If there is no provision in such respect, parties hereby agreed that it shall be construed in accordance with the INCOTERM EX WORKS (INCOTERMS 2010).

**7 Title to the Goods**

Notwithstanding the delivery of the Goods and the passing of the risk therein to the Customer, title to and property in the Goods shall remain vested in the Company until:

- the price of the Goods; and
- all other money due for payment by the Customer to the Company on any other account(s) or pursuant to any other contract (s), have been paid, discharged or satisfied in full.

Until such time, the title and property in the Goods pass to the Customer, the following provisions shall apply:

- the Company may at any time without prior notice to the Customer, require the Customer to deliver up to the Company the Goods and may repossess and resell the Goods if any of the events specified in **clause 4.2** or **4.3** occurs. If the Company chooses to exercise its right to repossess the Goods, the Customer will give the Company full and uninterrupted access to the Company's premises, or any other premises where the Goods are stored, without any liability for trespass or any resulting damage or cost, in order to possess the Goods. And the Company may, in its absolute discretion, keep or dispose of any Goods the Company repossesses;
- the Customer shall hold all unpaid Goods as fiduciary agent and bailee for the Company, and shall store the unpaid Goods separate from other goods in a proper manner and in conditions which adequately protect and preserve the Goods, and take out insurance covering its storage of the Goods, without any charge or cost to the Company. The Customer shall not tamper with any of the Company's identification or marks on the Goods or their packaging. The Customer shall further ensure that the Goods are clearly identified as belonging to the Company. If the Goods are processed in any way combined and/or mixed with other products then the Company will have a security interest in the final product(s) for an amount equivalent to the value of the Goods;
- the Customer shall at the request of the Company, assist the Company in taking all measures necessary to protect the Company's title to the Goods, including but not limited to the measures as described in **clause 8**.

The rights and remedies conferred upon the Company by the Terms are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of the Company under the Contract.

The Customer is authorized to sell the Goods only in the ordinary course of its business and as expressly authorized in the Contract, and to pass good title in the Goods to its customers if they are purchasers in good faith. If the Customer sells any Goods in accordance with this **clause 7.4**, the Customer shall hold the proceeds resulting from such sales on trust for the Company to the extent of sums due from the Customer to the Company in respect of the Goods, separate from all other monetary amounts received. If so required by the Company, the Customer will place the said money in a bank account nominated by the Company.

The right to sell the Goods granted in **clause 7.4** shall automatically ceased upon occurrence of any event specified in this **clause 7** and/or **clause 4.2** or **4.3**. If, in the event of a default described in this **clause 7.5**, the Goods have already been delivered by the Customer to a third party purchaser in good faith, then the Company shall have the option of claiming the amount owing from the Customer or to be subrogated to the rights of the Customer in respect of the proceeds of sale of the Goods.

**8 Quantity and Quality Warranty.**

The Company shall deliver the Goods which are of the quantity, quality and description required by the Contract, which are packaged in the manner required by the Contract or in the absence of such requirement, in the manner normally done by the Company. Notwithstanding the foregoing, the Goods shall be subject to the Company's standard manufacturing variation, tolerances and classifications.

Valid weights are those indicated by the Company, provided that the Company has used a weighing-machine officially certified under the appropriate rules of the country where the Goods are produced or shipped. At the Customer's written request, the Company shall provide the Customer with a receipt of weight. Unless otherwise specifically agreed in the Contract, the tolerances in quantity for each size and total quantity shall be +/- 10% of the total quantity ordered.

**8.3 The Company warrants that the Goods are:**

- Of merchantable quality; and
- Free from any right or claim from a third party.

Subject to **clause 9.1**, the Company makes no other warranties which exceed or differ from the warranties herein expressed. All other warranties are disclaimed by the Company and excluded from the Contract to the extent permitted by law. Particularly, to the extent permitted by law, the Company does not warrant that the Goods:

- are suitable for any declared or undeclared specific purpose of the Customer;
- are in conformity with samples of the Goods presented by the Company, which are to be regarded as type samples only;
- are free from defects where such defects result from materials, specifications or information provided by the Customer or any of its appointed representatives;
- are suitable if they are not adequately handled or stored; or if they are misused, abused or operated on mechanical equipment improperly designed or maintained; or
- are suitable if they are used, supplied for use or made available for use in any nuclear application.

The Customer shall inspect the Goods immediately upon their arrival at the destination to which the Goods are dispatched pursuant to the Contract for the purpose of ascertaining:

- whether the Goods have been damaged in transit; and
- that the Goods are in the quality, quantity and weight as specified in the Company's order confirmation and the Company's delivery note.

Any damage to the Goods in transit must be stated by the Customer in the receipt to the carrier and transmitted to the Company within 48 hours.

If a defect is found, the Goods shall not be processed and the Customer shall mitigate and store the Goods until it is ready examination by the Company. Otherwise the Customer will, to the extent permitted by law, lose its right to claim the defect in the Goods.

Notices of defects in the Goods, shall be made in writing to the Company immediately after the Customer discovered or should have discovered the defect(s) and in any event within two (2) weeks following delivery, except to the extent that a longer period is required by law. The notice shall contain a statement of the grounds for the claim and a description of the defect. In any event the Company's liability for defects is, to the extent permitted by law, limited to two (2) weeks from delivery. If the Customer fails to notify the Company within said time limit, its claim shall to the extent permitted by law, be barred. Notices of defects do not give the Customer rights to suspend or delay the fulfillment of its duties under the Contract or refuse, delay payment of the Goods to the Company.

Upon the Company's receipt of the notice under **clause 8.8** and if the Company accepts the claim, it shall at its absolute option:

- Repair or make good such defect; or
- In relation to such defective Goods, to re-supply goods which are in all respects in accordance with the Contract; or
- Agree with the Customer that the Customer will retain the Goods in the conditions in its current condition, in consideration of a reduction in price to compensate the Customer for the defect in the Goods; or
- Cancel the sale, subject to the remaining provisions of the Terms herein. The Company shall thereby defray the necessary cost of transportation of the Goods or substitute goods, but not, to the extent permitted by law, any expenditure incurred for dismantling, installation, processing and other similar measures.

Notwithstanding the above, the Company is entitled to use reasonable time to investigate the claim(s) and to request from the Customer the evidence which it considers necessary. If the Customer has given notice of a defect but no defect is found for which the Company is liable, the Company shall be entitled to compensation for the cost it has incurred as a result of the notice.

Subject to **clause 9.1**, the Customer is not entitled to any other remedies, other than those specified above in this **clause 8**.

**9 Limitation of Liability**

The Company shall not be liable to the Customer for any direct loss or damage in excess of the value of the defective Goods (excluding taxes, customs duties, insurance premiums and other charges beside the Goods themselves) which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in relation to the Goods and/or the performance of the Contract by the Company its employees or agents.

The Company shall not be liable to the Customer for any indirect or consequential loss (including economic loss and production halt) of any kind whatsoever, which the Customer or any other third party may suffer by reason of any act, omission, neglect or default (including negligence) in relation to the Goods and/or the performance of the Contract by the Company its employees or agents.

Any technical advice given by the Company, its employees or agents in connection with the Goods is provided in good faith but no representation, condition or warranty, express or implied, is given by the Company as to the accuracy or completeness of such technical advice. Such Technical advice does not release the Customer from testing the Goods in order to determine their suitability for its intended use.

**10 Force Majeure**

If the Company is directly or indirectly delayed or hindered in or prevented from performing the Contract or any part thereof by circumstances beyond its control, then the Company may suspend further performance of the Contract for so long as it is so delayed or prevented or hindered and such suspension shall not constitute a breach of the Contract on the part of the Company.

Said circumstances may result from (including but not limited to) the following events:

- war, whether declared or not, civil war, riots and revolutions, acts of piracy, acts of sabotage;
- natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;
- explosions, fires, destruction of machines, of factories, and of any kind of installations;
- boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises, and work stoppages;
- acts of authority, whether lawful or unlawful, apart from acts for which the Company has assumed the risk by virtue of other provisions of the Contract;
- shortage of labour, energy or raw materials;
- restrictions on communications; or
- defects or delays in deliveries by sub-contractors.

If performance of the Contract is suspended under this **clause 10**, the Company shall notify the Customer in writing of any such suspension of performance of the Contract and if such suspension continues for more than five (5) consecutive weeks either the Company or the Customer may by notice in writing to the other terminate the Contract but without prejudice to the Company's right to be paid in accordance with the Contract for any part of the Goods which may have been dispatched to the Customer prior to the suspension of performance by the Company and to be reimbursed of all other costs, charges and expenses incurred by the Company pursuant to the Contract up to the date of such notice of termination.

**11 Assignment**

The Customer shall not cede, assign, charge, sub-let or otherwise transfer the Contract or any part of it without the prior written approval of the Company.

**12 Waiver**

The rights and remedies of the Company in respect of the Contract or in respect of any failure by the Customer to observe or comply with the terms thereof shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of the time by the Company nor by any failure of or delay by the Company in asserting or exercising any such rights or remedies.

**13 Severance**

If at any time any one or more of the Terms (or any paragraph, sub-paragraph or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted herefrom and the validity and/or enforceability of the remaining provisions of the Terms shall not in any way be affected or impaired thereby.

**14 Notices**

Any notice authorized or required to be given pursuant to the Terms shall be given in written form and sent by any means leaving trace of its date, content and receipt by the addressee to the persons and places indicated in the Contract. All notices shall be given in English language.

**15 Amendments**

No variation or amendments of the Terms shall be valid and effective unless it is agreed in writing and signed by the Company's Commercial Director or Chief Executive Officer.

**16 Law and Jurisdiction**

The Contract shall be governed by and construed in all respects in accordance with Malaysian Law. The Customer submits to the exclusive jurisdiction of the Courts of Johor Bahru, Johor, Malaysia. The United Nations Convention on Contracts for the International Sale of Goods shall not apply in the Contract.

Notwithstanding the foregoing the Company reserves the right to proceed in the Courts of the Customer's country in order to demand any outstanding amount.

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