

TERMS AND CONDITIONS OF SALE

The following Terms and Conditions of Sale (**Terms**) are applicable to the provision of all goods and/or services supplied by Ferro Corporation (Aust.) Pty Ltd ACN 000 033 189 (**Ferro**), to any purchaser, or in the case of sample products or material, recipient thereof (**Buyer**).

1. **GENERALLY** - Ferro's offer for sale of goods and/or services and Buyer's acceptance of any such offer is governed exclusively by these Terms unless otherwise agreed in writing signed by Ferro. If an order is deemed to be an offer by Buyer, Ferro's acceptance of such offer is expressly conditioned on Buyer's assent to these Terms. Any additional, different, or conflicting terms proposed by Buyer in any offer, acceptance, confirmation (including any Buyer purchase order or specifications) or otherwise, are rejected by Ferro, and will not be binding in any way on Ferro. Buyer agrees and acknowledges that it (a) has read and understood these Terms, (b) is bound by these legally binding Terms, (c) has the requisite power and authority to enter into these Terms and to carry out the obligations contemplated by these Terms and (d) is solvent and duly incorporated in accordance with the laws of the place of its incorporation and is validly existing under those laws. The Buyer is deemed to have accepted these Terms if and when Ferro accepts an offer under these Terms or Ferro issues an invoice, order confirmation or acknowledgement to Buyer. To the extent that there is any inconsistency or conflict between the terms and conditions set out in a Ferro order confirmation and these Terms, the terms and conditions in the Ferro order confirmation will prevail.

2. **BUYER'S CREDIT** - For the purpose of assessing the credit worthiness of the Buyer from time to time and the collection of payments, the Buyer hereby irrevocably authorises Ferro and its employees and agents to make such inquiries as they deem necessary (and as permitted by law) including, but not limited to, making inquiries with and obtaining reports from persons nominated by the Buyer as trade referees, the Buyer's creditors, bankers and financiers, credit providers, mortgagee or mortgagees and trade insurers and credit reporting agencies (**Information Sources**) for commercial credit purposes only and the Buyer agrees and consents to the Information Sources providing to Ferro such information as is required by Ferro and permitted to be given by law for the purposes outlined in this condition. The Buyer also consents to Ferro disclosing, for commercial credit purposes only, the contents of any credit report or personal information to a credit reporting agency for the purpose of that credit reporting agency creating, altering or adding to any credit information file in relation to the Buyer. Notwithstanding any information that Ferro receives, Ferro is not obliged to provide any credit to the Buyer. The Ferro Credit Policy is incorporated into and forms part of these terms and conditions. Please read the Ferro Credit Policy, which contains further information about how Ferro manages the credit-related personal information it holds about you, including how to request access to and seek correction of this information, how you can make a complaint, and how Ferro will deal with such a complaint.

3. **PRICE AND PAYMENT** - The goods and/or services provided under these Terms are offered for sale at prices to be established and approved by Ferro. Unless otherwise specified on Ferro's invoice, order confirmation, acknowledgment or otherwise agreed to by the parties in writing, Buyer will pay for all goods and/or services on a net thirty (30) day basis. Ferro reserves the right to charge reasonable interest on any overdue amounts. All orders are subject to credit approval by Ferro. Ferro reserves the right to withhold shipment or to require other adequate assurances of performance of Buyer's payment obligations as Ferro may reasonably require, notwithstanding any order confirmation issued by Ferro.

4. **TAXES (other than GST)** - Ferro's price for goods and/or services is exclusive of any Commonwealth, State, or Territory sales, use, or excise taxes levied upon, or measured by, the sale, the sales price, or use of goods and/or services required in the performance of any order. Ferro will list separately on its invoice any such taxes applicable to any such goods and/or services or transaction, and payable by Buyer, with respect to which Buyer does not furnish to Ferro evidence of exemption.

5. **GST** - (a) Words or expressions used in this Clause 5 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* have the same meaning in this Clause 5. (b) If a party (**Supplier**) makes a taxable supply under or in connection with the Terms (for consideration that is not expressly GST inclusive), the consideration payable or to be provided for that supply is increased by, and (subject to Clause 5(e)) the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable on the supply (**GST Amount**), provided the Supplier gives the Recipient a tax invoice for the supply. (c) The GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided. (d) If a payment under these Terms is a reimbursement or indemnification for a loss, cost or expense, the amount will be reduced by any input tax credits that the other party or the representative member of a GST group of which that party is a member (as the case may be) is entitled to in respect of that loss, cost or expense. (e) If an adjustment event arises in respect of a supply made under or in connection with the Terms then: (i) if the Supplier's corrected GST amount is less than the previously attributed GST amount, the Supplier will refund the difference to the Recipient or (ii) if the Supplier's corrected GST amount is greater than the previously attributed GST Amount, the Recipient will pay the difference to the Supplier, and (iii) the Supplier must issue an adjustment note to the Recipient within 7 days of the adjustment event occurring or otherwise as soon as it becomes aware of the adjustment event; and (iv) any payment under Clause 5(e)(i) or (ii) must be paid to the Supplier or Recipient (as the case may be) within 15 days of the adjustment note being issued to the Supplier. (f) If the goods sold are to be exported from Australia, the parties agree that: (i) they will use all commercially reasonable efforts to satisfy the GST-free export provisions in section 38-185 of the GST Act; (ii) they will notify each other if section 38-185 of the GST Act will not be satisfied; and (iii) if section 38-185 of the GST Act is not satisfied, and the

supply of those goods is taxable, the consideration will be increased in accordance with Clause 5(b).

6. **DELIVERIES** - Ferro will use commercially reasonable efforts to meet the delivery dates, specifications, and quantities as set forth in Buyer's purchase order. Except for liability referred to in clauses 11(a) and 11(c) (**ACL Liability**), Buyer acknowledges that Ferro is not responsible for or otherwise liable for any delay in, or failure of, performance of any of Ferro's obligations under these Terms to the extent that any delay or failure is due to circumstances beyond Ferro's reasonable control including, without limitation, strikes, lockouts and other industrial disputes, breakdown of systems or network access, flood, fire, explosion or accident. Title to and risk in the goods, shall pass to Buyer immediately on delivery of the goods by Ferro. Unless otherwise specified in Ferro's invoice, order confirmation or other written notification from Ferro to the Buyer, delivery shall occur when the goods are delivered by Ferro to the Buyer's premises as specified in Ferro's invoice, order, confirmation or acknowledgment.

7. **PRODUCT WARRANTIES** - Ferro warrants to Buyer that at the time of delivery Ferro will have good title to all goods supplied to Buyer and the right to convey title to such goods to Buyer free and clear of all encumbrances. Ferro further warrants to Buyer that all such goods will conform to the written specifications provided by Ferro and will be free from defects in material and workmanship. Ferro further warrants that any services it provides hereunder will be performed with reasonable care and skill. The warranties stated in this Clause 7 are the only representations and warranties Ferro has given Buyer in connection with the provision of goods and/or services to Buyer. Except as set forth in these Terms and except for any consumer guarantees that may apply under the Australian Consumer Law, Ferro makes no and expressly disclaims any other representation or warranty, either express or implied, concerning the goods and/or services.

8. **NON-CONFORMING GOODS** - Upon Buyer's receipt of shipment, Buyer shall immediately inspect the goods. Unless Buyer provides Ferro with written notice of any claim for shortage, defect or nonconformity in the goods within ten (10) days after receipt of shipment, such goods shall be deemed finally inspected, checked and accepted by Buyer and Buyer's failure to provide such notice shall be deemed to constitute a waiver of any such claim unless the claim is made under the Australian Consumer Law.

9. **TRADE COMPLIANCE**

(a) **EXPORT CONTROL REGULATIONS** - The goods that are the subject of these Terms and related technology are subject to export and re-export restrictions under U.S. and other countries' export control regulations, including without limitation the U.S. Export Administration Regulations, regulations of the U.S. Office of Foreign Asset Control and comparable laws and regulations of other countries, which may require U.S. or other government approval for any re-export or retransfer (**Export Control Regulations**). Buyer warrants that it (i) will adhere to and comply with (x) all applicable Export Control Regulations and (y) any applicable terms, conditions, procedures and documentation requirements made known to Buyer by Ferro from time-to-time to comply with the Export Control Regulations; (ii) will not, directly or indirectly through a third party, ship Ferro goods to the Crimea region of Ukraine, Cuba, Iran, North Korea, Syria, Sudan or any other country subject to trade embargoes in violation of Export Control Laws. Buyer acknowledges that Ferro will not proceed with a shipment when Ferro knows that the Ferro goods in that shipment are destined for a sanctioned country. Buyer represents that neither Buyer nor any of its principals, officers, or directors, or any person or entity known to Buyer to be directly involved in this transaction as freight forwarder, customer, end-user, consultant, agent or otherwise is designated on any of the U.S. government restricted parties lists, including without limitation the U.S. Commerce Department Bureau of Industry and Security Denied Persons List, Entity List or Unverified List, the U.S. Treasury Department Office of Foreign Asset Controls Specially Designated National and Blocked Persons List or the U.S. State Department Directorate of Defense Trade Controls Debarred Parties List or restricted parties lists of any country having jurisdiction over Buyer or the transaction involving the goods that are the subject of this document or related technology.

(b) **ANTIBOYCOTT PROVISIONS** - Buyer will not request Ferro information or documentation where the purpose of such request is to support, give effect to or comply with a boycott of any country in contravention of the laws or policies of the United States, including but not limited to the Arab League boycott of Israel. Ferro hereby rejects any such request by Buyer and will report receipt of any such request to the relevant U.S. government office, as required by law.

(c) **ANTICORRUPTION AND ANTIBRIBERY** - In relation to any transaction involving the goods and/or services that are the subject of these Terms or related technology, Buyer shall not seek to obtain or retain business or gain any other advantage by making or offering to make any payment of money or by providing or offering to provide anything of value, directly or indirectly, to: (i) any government official; or (ii) any non-governmental person, in either case with the intent that such official or person will perform their responsibilities improperly. Buyer warrants that it will comply with the anticorruption laws and anti-bribery laws of any country having jurisdiction over Buyer or the transaction involving the goods and/or services that are the subject of this document or related technology, and will in all cases comply with the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.

(d) **NONCOMPLIANCE** - In the event that Ferro reasonably believes that any provision of this Clause 9 has or may have been breached, Buyer shall cooperate fully with Ferro's investigation to clear the matter and Ferro shall not be obligated to sell or provide goods and/or services or technology or take any other act in furtherance of any

transaction or agreement while such investigation is pending and such suspension or forbearance by Ferro shall not constitute breach of any obligation in respect of the transaction to which these Terms apply or otherwise.

10. **DISCLAIMER - EXCEPT FOR ACL LIABILITY, FERRO SHALL HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE INCLUDING ANY LOSS OF OPPORTUNITY, LOSS OF REVENUE, LOSS OF PROFITS OR LOSS OF DATA, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE GOODS AND/OR SERVICES PROVIDED BY FERRO OF ANY NATURE HOWSOEVER CAUSED (WHETHER BASED ON NEGLIGENCE OR OTHER TORT OR CONTRACT OR OTHERWISE) INCLUDING WITHOUT LIMITATION BREACH OF ANY OBLIGATION IMPOSED ON FERRO HEREUNDER OR IN CONNECTION HEREWITH.**

11. **APPLICATION OF AUSTRALIAN CONSUMER LAW**

(a) If a supply under these Terms is a supply of goods or services by Ferro to Buyer on the basis that Buyer is a consumer within the meaning of the Australian Consumer Law (set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth)), the Australian Consumer Law may impose liability on Ferro and/or grant rights to Buyer, that cannot be excluded, restricted or modified.

(b) Nothing contained in these Terms excludes, restricts or modifies the imposition of liability or exercise of rights referred to in clause 11(a).

(c) If Ferro is liable to Buyer under the Australian Consumer Law in relation to goods and/or services provided to Buyer under these Terms that are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Ferro limits this liability to:

(i) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and

(ii) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired, unless the Buyer has express rights to a more favourable remedy under these Terms in which case, this clause does not apply.

12. **INDEMNITY** - Buyer shall indemnify, defend and hold Ferro and any related body corporate (as defined in section 50 of the *Corporations Act 2001* (Cth)) and any of their respective directors, officers, employees, representatives, agents, successors and assigns harmless from and against any and all fines, penalties, suits, actions, claims, liabilities, judgments, losses, damages, costs and expenses (including solicitors' fees) resulting or arising from (a) Buyer's negligence or willful misconduct, (b) Buyer's use, sale, handling, storage, or disposal of the goods and/or services or any product or waste derived therefrom, (c) Buyer's discharge or release of the goods and/or services or any product or waste derived therefrom into water, onto land or into the air, (d) Buyer's exposing any person (including Buyer's employees) to the goods and/or services or any product or waste derived therefrom, including failure to warn of such exposure, or (e) the transportation of the goods to Buyer after tender of the goods by Ferro to the carrier at Ferro's shipping point. The foregoing shall apply, without limitation, to injury to person (including death) or damage or harm to property or the environment. This indemnity shall not apply to ACL Liability or any fine, penalty, suit, action, claim, liability, judgment, cost or expense caused solely by Ferro's negligence or willful misconduct, but shall apply where there is concurrent negligence or willful misconduct on the part of Ferro and Buyer in proportion to Buyer's negligence or willful misconduct.

13. **FORCE MAJEURE** - Except for the payment of monies owed and ACL Liability, neither party will have any liability for any breach or failure to perform that is the result of an event, condition or circumstance beyond that parties' reasonable control, including, without limitation, acts of God, war, insurrection, or terrorism, fire, inclement weather, strikes, boycotts, or other similar circumstances. If a party becomes aware of any such event, condition or circumstance, then such party will promptly advise the other party and both parties will cooperate to ameliorate the circumstance or condition as quickly as possible.

14. **TERMINATION** - If (a) any payment is outstanding for more than 7 days after the due date, (b) Buyer commits a material breach of any of these Terms, or (c) an Insolvency Event occurs in respect of Buyer, Ferro may terminate any invoice, order confirmation, acknowledgment or other document agreed to between Ferro and Buyer by notice in writing to Buyer without prejudice to any other rights or remedies available to Ferro at law, in equity or by statute. Ferro may demand and Buyer shall pay for all outstanding amounts, owed by Buyer to Ferro. Buyer agrees to pay all Ferro's costs and

expenses including, but not limited to, reasonable legal costs and costs for the collection and/or the repossession of goods incurred by Ferro in exercising any of its rights or remedies whether available at law, in equity or by statute. If, prior to delivery of the goods to Buyer, (a) Ferro commits a material breach of any of these Terms, or (b) an Insolvency Event occurs in respect of Ferro, Buyer may terminate any invoice, order confirmation, acknowledgment or other document agreed to between Ferro and Buyer by notice in writing to Ferro without prejudice to any other rights or remedies available to Buyer at law, in equity or by statute. Buyer is entitled to a refund of any amounts paid minus any costs incurred by Ferro up to the date of termination. For the purposes of this Clause 14, an Insolvency Event shall mean in respect of Buyer, any event (other than for the purpose of solvent reconstruction or amalgamation) where (a) a receiver, receiver and manager, liquidator, provisional liquidator, trustee, administrator, controller, inspector appointed under any companies or securities legislation, or another similar official, is appointed in respect of Buyer or any of its property, or any security is enforced over a substantial part of its assets or steps taken to do so, (b) Buyer ceases to carry on all or substantially all of its business, is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, that party's creditors or threatens to do so, or stops payments to its creditors generally, (c) Buyer, becomes, or is deemed to be insolvent or bankrupt, (d) a distress, attachment or other execution is levied or enforced on or commenced against any substantial part of its assets and is not stayed within 14 days, (e) if a registered corporation under the *Corporations Act 2001* (Cth), steps taken under sections 601AA, 601AB or 601AC of the *Corporations Act 2001* (Cth) to cancel its registration, (f) anything having a similar effect to any of the events specified above happens under the law of any jurisdiction.

15. **CONFIDENTIAL INFORMATION** - These Terms and any information, drawings, specifications or data of Ferro (including in relation to the goods), constitutes confidential information and Buyer must keep the information confidential, and not disclose the confidential information to any person without the prior written consent of Ferro (except to the extent required by law or to advisers or financiers and their advisers).

16. **GOVERNING LAW** - These Terms shall be governed, interpreted and construed by and in accordance with the laws of Victoria and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria.

17. **COMPLIANCE WITH LAWS** - Buyer shall comply with all applicable laws including Commonwealth, State, Territory and local government legislation including regulations, bylaws, orders, awards and proclamations regarding the export, import, sale, distribution, marketing, and service of the goods and/or services and related technology, including without limitation, tax and foreign exchange legislation or regulations and the obligations under Clause 9.

18. **COMPLETE AGREEMENT** - These Terms contain the complete and final agreement between Buyer and Ferro and supersedes all other and further agreements, representations, warranties, covenants, promises, and other contractual obligations between the parties in respect of the subject hereof unless otherwise agreed to in writing signed by Ferro and Buyer. These Terms may be amended, modified or waived only by a written agreement signed by Ferro and Buyer. Emails of Buyer shall not be deemed a means of modifying or amending these Terms, unless expressly agreed by Ferro in writing.

19. **SEVERANCE** - If any provision of these Terms is found to be invalid or unenforceable, then that provision will be read down or severed and that invalidity or unenforceability does not affect the validity or enforceability of the other terms and conditions of these Terms.

20. **SURVIVAL OF INDEMNITIES** - Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of these Terms.

21. **NO RELATIONSHIP** - No party to this document has the power to obligate or bind any other party. Nothing in this document will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties.

22. **BENEFIT OF THESE TERMS** - Buyer agrees that Ferro enters into these Terms on its own behalf and also as agent and trustee for each related body corporate (as defined in section 50 of the *Corporations Act 2001* (Cth)) of Ferro and each related body corporate of Ferro, may enforce these Terms as if it were a signatory of these Terms.