

FIELDEN METALWORKS LTD - TERMS OF TRADE

1. INTERPRETATION

Fielden Metalworks Ltd its successors or assigns is herein described as the "Seller".

The person, company or other entity with which the Seller enters into a contract for the sale and purchase of Goods is herein described as the "Customer".

The goods supplied or to be supplied by the Seller to the Customer are herein described as the "Goods".

Any contract between the Seller and the Customer for the sale and purchase of Goods is herein described as a "Contract".

2. ACCEPTANCE OF TERMS AND CONDITIONS

Any of the following actions by the Customer are deemed to be acceptance of the Terms and Conditions contained herein:

- (a) Application for a debtors account to be opened with the Seller; or
- (b) Acceptance of any tender provided by the Seller; or
- (c) Order from the Customer for the supply of any Goods by the Seller; or
- (d) Acceptance of delivery from the Seller,

And such terms and conditions shall constitute the only terms and conditions to be contained in any Contract, and these Terms and Conditions shall override and negate the Customer's terms and conditions of purchase or contract.

Where there is a conflict between: (a) the Seller's confirmation of order and these Terms and Conditions, the confirmation of order shall prevail; and (b) a purchase order and these Terms and Conditions, these Terms and Conditions shall prevail; and (c) a quote and a purchase order, the quote shall prevail.

None of the Seller's agents or representatives are authorised to make any representations, statements, warranties or conditions not expressly set out herein, and the Seller is in no way bound by such statements unless such statement is given in writing by the Seller, in which case such statement shall only apply to the particular transaction, dealing or matter.

The Seller reserves the right to unilaterally amend or replace these Terms and Conditions from time to time by notice in writing to the Customer.

3. WAIVER AND FORBEARANCE

No delay or forbearance by the Seller shall be construed to be a waiver of the Seller's rights under any Contract unless such waiver is given expressly in writing by the Seller.

4. PRICE

The Seller reserves the right to alter its prices without notice even after acceptance of the Customer's order where such alteration arises from circumstances beyond the Seller's control.

When a price increase is necessary the Seller will endeavour to fulfil Customer's orders received prior to the effective date of the price increase at prices applying on the date the order was received. Notwithstanding this the Seller reserves the right to decline to supply any Customer's order received and outstanding at the time a price increase becomes effective.

Goods and Services Tax shall be paid by the Customer in addition to quoted prices.

5. FREIGHT

Unless agreed otherwise in writing, the carriage of Goods within New Zealand will be arranged by the Seller and paid by the Customer on invoice from the Seller in addition to quoted prices.

The Seller shall have the right to select the means of transportation and carrier.

If a Customer requests a means of transport or carrier other than that selected by the Seller, all costs incurred shall also be paid by the Customer. Should goods agreed as Customer, or Customer's carrier failed to uplift within three (3) working days of notification by the Seller that such goods are ready for collection, the Seller shall be entitled to send the goods to the Customer at the Customer's expense. The Seller reserves the right to deliver the Goods by instalments suitable to it at its discretion.

Off-loading shall be the responsibility and at the cost of the Customer.

If the Customer fails or refuses or indicates to the Seller that it will fail or refuse to take or accept delivery, then the Goods shall be deemed to have been delivered when the Seller was willing to deliver them, and the Customer will meet any costs incurred if Goods have been turned away and returned. Should the Seller fail to deliver or make defective delivery of one or more instalments this shall not entitle the Customer to cancel any Contract.

6. PAYMENT

Where no other terms of payment have been advised in writing by the Seller, payment without deduction or set-off is due on or before the 20th of the month following the month in which the Goods were despatched from the Seller's premises.

Overdue accounts shall incur interest charged at 2% per month calculated on a daily basis until the price and interest have been paid in full.

The Seller shall not be bound to perform or comply with any further obligation to the Customer should any amount owing by the Customer be overdue.

The Customer will, in addition to paying interest as set out above, pay and reimburse the Seller for all costs and expenses (including without limitation lawyer's costs on a solicitor to client basis) which the Seller may incur as a result of the Customer's failure to pay all monies due and payable under any Contract.

7. RETURN OF GOODS

Goods may only be returned to the Seller with the prior agreement of the Seller and on the following terms and conditions:

- (a) The Customer is to pay the cost of returning the Goods (including without limitation transportation and packing); and
- (b) The Goods are to be returned within 30 days of the date of despatch to the Customer; and
- (c) The Customer is to enclose documents with the Goods identifying the Customer, the quantity and description of the Goods and the Seller's invoice or packing slip number and date of that document; and
- (d) The Seller will not accept the return of any Goods where the Goods have been used or modified; and
- (e) The Seller will not accept the return of any Goods that are incorrectly packed or carried.
- (f) A fee will be applicable for covering incurred restocking/administration costs.

8. QUOTATION AND TENDERS

Quotations are subject to change by the Seller without notice to the Customer in all respects, including price, delivery date, terms, quantities or specifications.

Tenders are open for acceptance for 30 days from the date of written tender after which they will lapse. The Seller may withdraw any tender at any time prior to acceptance.

Acceptance of tenders must be in writing and accompanied by sufficient information to enable the order to be proceeded with.

9. OVERAGE:

Unless otherwise agreed, the Seller has the right to deliver and charge for an over or under supply not to exceed 5% of the quantity of the Goods ordered.

10. CHANGE & CANCELLATION OF ORDERS

The Customer may not change or cancel any order except with the prior written agreement of the Seller and provided that the Customer indemnifies the Seller against any loss or harm it suffers, including without limitation the cost to the Seller of the work and materials expended as at the date the Seller agrees to the change or cancellation.

11. RISK

Notwithstanding any delay in the passing of title under these Terms and Conditions, the Customer bears the risk of any loss, damage to, or deterioration of the Goods due to any cause whatsoever from the time the Seller gives possession of the Goods to a carrier or, if the Seller delivers the Goods in its own vehicles, from the time of the arrival of the vehicle at the place of delivery.

All materials supplied by or on the account of the Customer to the Seller are received by the Seller at the Customer's risk and responsibility, and the Seller shall not be liable for any loss, damage or injury of any kind whatsoever due to any cause whatsoever (including without limitation the negligence of the Seller) suffered by the Customer in any way related to any materials supplied by the Customer to the Seller, or purchased on the Customer's account for supply to the Seller, to be incorporated in, or otherwise used in the manufacturing of, the Goods.

12. OWNERSHIP

Notwithstanding any provision of these Terms and Conditions, property in and the right to possession of Goods shall remain vested in the Seller until such time as the Seller has been paid all monies due to it by the Customer. Pending payment, the Customer will hold the Goods properly stored and secured on consignment from the Seller as bailee and as the Seller's fiduciary agent. The Seller may retake possession of the Goods from any premises where they are situated at any time until the Seller has been paid in full. Pending payment property in the proceeds of any sale of the Goods or in any product into which the Goods are incorporated or intermingled by or on behalf of the Customer in any manufacturing or assembly process shall be and remain in the Seller. Notwithstanding that title in the Goods is retained by the Seller, the Customer is hereby authorised to sell the Goods in the ordinary course of business, such authority being revocable on notice by the Seller at any time at the Seller's discretion, and shall be deemed automatically revoked if the Customer enters into any arrangement with its creditors, resolves to liquidate, or a liquidator, voluntary administrator or receiver is appointed.

13. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

Expressions in this clause have the meaning prescribed to them in the PPSA.

As security for payment of the price of the Goods and payment of any other amount owed by the Customer to the Seller from time to time and as security for the performance by the Customer of the obligations set out in these Terms and Conditions the Customer grants the Seller a Security Interest in the Goods. The Seller reserves the right to register a Financing Statement in the Personal Property Securities Register to perfect its Security Interest in the Goods.

All costs of registering a Financing Statement or a Financing Change Statement may, at the Seller's discretion, be debited against the Customer's account with the Seller.

On request by the Seller the Customer will sign any documents and provide any information to enable the Seller to perfect its Security Interest in the Goods.

The Customer will not allow any other person to register a Financing Statement over the Goods without the prior written consent of the Seller.

The Customer waives its right to receive a copy of the Verification Statement, and all other rights it would otherwise have under the PPSA to receive any documents, make any objections or take any action of any kind whatsoever, to the greatest extent allowed by law.

14. CONFIDENTIALITY

Where either party acquires any information regarding the current or future business interests, methodology or affairs of the other party, including without limitation the existence of any Contract or trading relationship between the Seller and the Customer ("Confidential Information"):

(a) The party will only be permitted to use the Confidential Information to the extent necessary to enable it to perform its obligations under any Contract; and

(b) The party will not disclose the Confidential Information to any third party without the prior written consent of the other party unless required by law to do so.

Each party will ensure that its directors, employees, agents and contractors also comply with the obligations under this clause.

The provisions of this clause continue to bind each party notwithstanding the expiry or termination of any Contract or that it may have ceased to be a party to any Contract.

15. INTELLECTUAL AND INDUSTRIAL PROPERTY

Any dies, tools, programs, computer models, working drawings or other equipment or information produced or purchased by the Seller in order to produce the Goods shall at all times remain the property of the Seller, and any amount paid by the Customer in relation to them shall be deemed to be a fee in respect of their development and use.

Unless otherwise specifically agreed with the Customer, the Seller may use or dispose of this equipment as they see fit without accounting to the Customer. The Customer warrants that the carrying out by the Seller of any Contract does not infringe the intellectual or industrial property rights of any other person and the Customer will indemnify the Seller in respect of any claim arising thereunder including the Seller's costs arising therefrom.

The Customer shall maintain in good condition at its cost any dies, tools and other items supplied by it for the process of manufacture and the Seller shall not be liable for any loss or damage (wear and tear or otherwise) occurring thereto.

16. WARRANTY AND LIABILITY

Except as required by the Consumer Guarantees Act, the Seller warrants only that the Goods supplied hereunder shall conform to the description or specifications stated on the face of the relative price list and/or quotation, and/or packing slip, and/or invoice.

The above warranty shall not apply to any Goods or parts thereof that are not manufactured by the Seller, and no warranties of any kind whatsoever are given by the Seller in respect of such Goods or parts thereof.

Refund or replacement under the above warranty is conditional on the Customer giving the Seller notice within thirty (30) days from the date of invoice that the said Goods are otherwise than as warranted. Failure by the Customer to give said notice within the thirty (30) day period shall constitute a waiver by Customer of all claims hereunder with respect to the said Goods. If requested by the Seller, the Customer shall promptly return to the Seller's supplying plant all unconsumed Goods alleged by the Customer to be otherwise than as warranted and the Seller will pay freight thereon.

The above warranty is replaced all other written or unwritten, expressed or implied representations, warranties or conditions and the Seller hereby expressly disclaims and excludes any and all expressed or implied representations warranties and conditions as to fitness for any particular purpose and merchantability, all Goods being supplied to the customer "as is".

Notwithstanding anything in any Contract, the liability of the Seller, whether in contract, tort or otherwise, in respect of all claims for loss, damage or injury arising from breach of any of the Seller's obligations arising under or in connection with any Contract or otherwise shall not in aggregate exceed the price for the Goods concerned, and may at the Seller's discretion be satisfied and discharged by the replacement of the Goods.

17. INDEMNITY

The Customer hereby indemnifies the Seller for any loss, costs, damages, expenses and injury to property or persons (including but not limited to legal expenses, loss of profits, business or other direct, indirect, special, consequential or incidental damages) ("the Losses") resulting from, arising out of or in connection with the Goods supplied by the Seller under any Contract.

For the avoidance of doubt, the Customer shall be liable for any costs and expenses incurred on the Customer's behalf in relation to the Goods.

18. USE

The Customer declares itself familiar with the nature and use of the Goods and acknowledges that the determination of the suitability or fitness of the Goods for the use or purpose contemplated by the Customer or Customer's customers for the Goods is the sole responsibility of the Customer or Customer's customers whichever the case may be.

Notwithstanding that the Seller may furnish such technical assistance and information as it has available with respect to the Goods sold hereunder and their use, the Customer assumes sole responsibility for all consequences of reliance thereon.

The furnishing of such technical assistance and information shall be governed by the provisions of clauses 15 to 17 above and for the avoidance of doubt no claim or action may be founded on any act or omission of the Seller in furnishing such assistance and information, the accuracy of which the Customer will confirm independently.

19. SPECIFICATIONS

Subject to the provisions of clauses 15 to this clause 19 the Goods will comply with the written descriptions stated on the face of the Seller's price list, quotation, packing slip or invoice.

Any specifications produced or provided by the Seller in order to produce the Goods shall be deemed to be accepted by the Customer, and shall prevail over any prior specifications provided by the Customer to the Seller. Dimensions and other descriptions of Goods contained or referred to in any Contract or in any publications maintained or issued by the Seller are estimates only, and unless otherwise expressly agreed in writing, it is not a condition of any Contract that the Goods will correspond precisely with such dimensions and descriptions. Customary tolerances, or in the absence of customary tolerances, reasonable tolerances shall be allowed. Without limiting this clause 19, where a colour is specified, a reasonable tolerance of shadings (whether lighter, darker or variations in hue) shall be allowed.

20. DELIVERY AND FORCE MAJEURE

Delivery is offered subject to the following conditions: (a) The availability of transport; and

(b) The availability of raw materials, manufacturing aids, and plant capacity; and

(c) Any cause or event beyond the control of the Seller.

Without limiting this clause 20, the Seller is not to be under any liability whatever in respect of any failure to deliver or delay in delivery due to any cause of whatever nature not within the control of the Seller, including without limitation any act, omission, default or request by or on behalf of the Customer.

Notwithstanding that the Seller will use reasonable endeavours to ensure that Goods are delivered by their delivery date, no penalty will be imposed on the Seller nor will a reduction in the price be available on the grounds of failure to meet a delivery date.

The Seller shall not be liable in any way whatsoever for any act, omission, or failure to fulfil its obligations under any Contract if such act, omission or failure arises from any cause or event beyond its control, and the commencement or continuation of such a cause or event shall not entitle the Customer to cancel any Contract.

21. TERMINATION

If the Customer defaults in the due payment of any monies payable to the Seller, whether under any Contract or otherwise, or if the Customer is otherwise in default in the performance of its obligations under the Contract or any other contract between the Seller and the Customer or if the Seller deems the credit of the Customer to be unsatisfactory, the Seller, without prejudice to any other right it may have, may suspend or terminate any Contract, and payment for all monies payable by the Customer shall immediately become due and payable.

The expiry or termination of any Contract is without prejudice to the rights and obligations of the parties accrued up to and including the date of expiry or termination.

22. DISPUTES

The parties will meet and discuss in good faith any disputes between them arising out of any Contract. If discussions between the parties fail to resolve the dispute the parties will endeavour to resolve the dispute by the use of mediation, without prejudice to any other rights held, prior to legal proceedings being commenced. Nothing in this clause 22 shall preclude a party from taking immediate steps to seek equitable relief before a New Zealand Court.

23. NO PARTNERSHIP/AGENCY

Nothing contained in any Contract is deemed to constitute the parties' partners nor, except as otherwise expressly provided in these Terms and Conditions constitute any party the agent or representative of another party. No party has authority to act or to assume any obligation or liability on behalf of any other party except as expressly provided in these Terms and Conditions.

24. APPLICABLE LAW AND JURISDICTION

All Contracts shall be governed by and construed in accordance with the laws of New Zealand and the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand Courts.

