

1. Definitions

- 1.1 “Manufacturer” means Sheet Metal Solution Limited, its successors and assigns or any person acting on behalf of and with the authority of Sheet Metal Solution Limited.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by the Manufacturer to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between the Manufacturer and the Client in accordance with clause 4 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the Manufacturer’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Manufacturer.

3. Change in Control

- 3.1 The Client shall give the Manufacturer not less than fourteen (14) days prior written notice of any proposed change of Ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Manufacturer as a result of the Client’s failure to comply with this clause.

4. Price and Payment

- 4.1 At the Manufacturer’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Manufacturer to the Client; or
 - (b) the Manufacturer’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Manufacturer reserves the right to change the Price if a variation to the Manufacturer’s quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable, inaccurate measurements provided by the Client or as a result of increases to the Manufacturer in the cost of materials and labour) will be charged for on the basis of the Manufacturer’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At the Manufacturer’s sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Manufacturer, which may be:
 - (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with the Manufacturer’s payment schedule;
 - (c) for certain approved Client’s, due twenty (20) days following the end of the month in which a statement is posted to the Client’s address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Manufacturer.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card or by any other method as agreed to between the Client and the Manufacturer.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Manufacturer an amount equal to any GST the Manufacturer must pay for any supply by the Manufacturer under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods

- 5.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
 - (a) the Client or the Client’s nominated carrier takes possession of the Goods at the Manufacturer’s address; or
 - (b) the Manufacturer (or the Manufacturer’s nominated carrier) delivers the Goods to the Client’s nominated address even if the Client is not present at the address.
- 5.2 At the Manufacturer’s sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Manufacturer shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 The Manufacturer may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by the Manufacturer to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Manufacturer will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

6. Risk

- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

Sheet Metal Solution Limited – Terms & Conditions of Trade

- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to Ownership passing to the Client, the Manufacturer is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Manufacturer is sufficient evidence of the Manufacturer's rights to receive the insurance proceeds without the need for any person dealing with the Manufacturer to make further enquiries.
- 6.3 Where the Client is to supply the Manufacturer with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. The Manufacturer shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.

7. Access

- 7.1 The Client shall ensure that the Manufacturer has clear and free access to the work site at all times to enable them to undertake the works. The Manufacturer shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Manufacturer.

8. Title

- 8.1 The Manufacturer and the Client agree that Ownership of the Goods shall not pass until:
- (a) the Client has paid the Manufacturer all amounts owing to the Manufacturer; and
 - (b) the Client has met all of its other obligations to the Manufacturer.
- 8.2 Receipt by the Manufacturer of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.3 It is further agreed that:
- (a) until Ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to the Manufacturer on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Manufacturer and must pay to the Manufacturer the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Manufacturer and must pay or deliver the proceeds to the Manufacturer on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Manufacturer and must sell, dispose of or return the resulting product to the Manufacturer as it so directs.
 - (e) the Client irrevocably authorises the Manufacturer to enter any premises where the Manufacturer believes the Goods are kept and recover possession of the Goods.
 - (f) the Manufacturer may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Manufacturer.
 - (h) the Manufacturer may commence proceedings to recover the Price of the Goods sold notwithstanding that Ownership of the Goods has not passed to the Client.

9. Personal Property Securities Act 1999 ("PPSA")

- 9.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods previously supplied by the Manufacturer to the Client (if any) and all Goods that will be supplied in the future by the Manufacturer to the Client.
- 9.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Manufacturer may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Manufacturer for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Manufacturer; and
 - (d) immediately advise the Manufacturer of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.3 The Manufacturer and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by the Manufacturer, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Client shall unconditionally ratify any actions taken by the Manufacturer under clauses 9.1 to 9.5.

10. Security and Charge

- 10.1 In consideration of the Manufacturer agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies the Manufacturer from and against all the Manufacturer's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Manufacturer's rights under this clause.

Sheet Metal Solution Limited – Terms & Conditions of Trade

- 10.3 The Client irrevocably appoints the Manufacturer and each director of the Manufacturer as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.
- 11. Defects**
- 11.1 The Client shall inspect the Goods on delivery or upon installation and notify the Manufacturer within seven (7) days of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Manufacturer an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Manufacturer has agreed in writing that the Client is entitled to reject, the Manufacturer's liability is limited to either (at the Manufacturer's discretion) replacing the Goods or repairing the Goods.
- 12. Returns**
- 12.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 11.1; and
 - (b) the Manufacturer has agreed in writing to accept the return of the Goods; and
 - (c) the Manufacturer will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 12.2 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
- 13. Consumer Guarantees Act 1993**
- 13.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Manufacturer to the Client.
- 14. Default and Consequences of Default**
- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Manufacturer's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes the Manufacturer any money the Client shall indemnify the Manufacturer from and against all costs and disbursements incurred by the Manufacturer in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Manufacturer's collection agency costs, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies the Manufacturer may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Manufacturer may suspend or terminate the supply of Goods to the Client. The Manufacturer will not be liable to the Client for any loss or damage the Client suffers because the Manufacturer has exercised its rights under this clause.
- 14.4 Without prejudice to the Manufacturer's other remedies at law the Manufacturer shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Manufacturer shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Manufacturer becomes overdue, or in the Manufacturer's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 15. Cancellation**
- 15.1 The Manufacturer may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Manufacturer shall repay to the Client any money paid by the Client for the Goods. The Manufacturer shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Manufacturer as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 16. Privacy Act 1993**
- 16.1 The Client authorises the Manufacturer or the Manufacturer's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by the Manufacturer from the Client directly or obtained by the Manufacturer from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 16.2 Where the Client is an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 1993.

16.3 The Client shall have the right to request the Manufacturer for a copy of the information about the Client retained by the Manufacturer and the right to request the Manufacturer to correct any incorrect information about the Client held by the Manufacturer.

17. Unpaid Seller's Rights

17.1 Where the Client has left any item with the Manufacturer for repair, modification, exchange or for the Manufacturer to perform any other service in relation to the item and the Manufacturer has not received or been tendered the whole of any moneys owing to it by the Client, the Manufacturer shall have, until all moneys owing to the Manufacturer are paid:

- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

17.2 The lien of the Manufacturer shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Manufacturer having been obtained against the Client.

18. Construction Contract Act 2002

18.1 The Client hereby expressly acknowledges that:

- (a) the Manufacturer has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Manufacturer by a particular date; and
 - (iv) the Manufacturer has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.

(b) if the Manufacturer suspends work, it:

- (i) is not in breach of contract; and
- (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
- (iii) is entitled to an extension of time to complete the contract; and
- (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.

(c) if the Manufacturer exercises the right to suspend work, the exercise of that right does not:

- (i) affect any rights that would otherwise have been available to the Manufacturer under the Contractual Remedies Act 1979; or
- (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Manufacturer suspending work under this provision.

19. General

19.1 The failure by the Manufacturer to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Manufacturer's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland court of New Zealand.

19.3 The Manufacturer shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Manufacturer of these terms and conditions (alternatively the Manufacturer's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

19.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Manufacturer nor to withhold payment of any invoice because part of that invoice is in dispute.

19.5 The Manufacturer may license or sub-contract all or any part of its rights and obligations without the Client's consent.

19.6 The Client agrees that the Manufacturer may amend these terms and conditions at any time. If the Manufacturer makes a change to these terms and conditions, then that change will take effect from the date on which the Manufacturer notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Manufacturer to provide Goods to the Client.

19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

19.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.