

1. Definitions

- 1.1 "Seller" means Superior Stainless Ltd, its successors and assigns or any person acting on behalf of and with the authority of Superior Stainless Ltd.
- 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 Seller 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 Seller 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 Goods, or accepts Delivery.
- 2.2 These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.
- 2.3 Dimensions and specifications contained or referred to in any agreement or in any publications maintained or issued by the Seller are estimates only. Unless otherwise expressly agreed in writing by the Seller, it is not a condition of any agreement that the Goods will correspond precisely with such dimensions and specifications, and customary or reasonable tolerances will be allowed.
- 2.4 Neither the Seller, nor any of its employees or agents, warrant or guarantee the accuracy or completeness of any information provided to the Client. The Client undertakes that all matters relevant to the supply of the Goods hereunder are to the Client's satisfaction, and in doing so, the Client acknowledges that in deciding to purchase the Goods hereunder that:
 - (a) they have relied on their own skill, inspection and judgement;
 - (b) they have not relied on any statement made by the Seller or its employees or agents;
 - (c) they assume the risk of mistake in relation to the information provided.

3. Change in Control

- 3.1 The Client shall give the Seller 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 Seller as a result of the Client's failure to comply with this clause.

4. Price and Payment

- 4.1 At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by the Seller to the Client; or
 - (b) the Price as at the date of Delivery according to the Seller's current price list; or
 - (c) the Seller's quoted price (subject to clause 4.2) which is based upon rates and costs at the date of the quotation, and will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Seller reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied (including any applicable plans or specifications) is requested; or
 - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed, inaccurate structural measurements provided by the Client, change of design, iron reinforcing rods in concrete, or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Services; or
 - (c) in the event of increases to the Seller in the costs of supply and/or production of the Goods (including fluctuations in currency exchange rates), and/or Delivery, due to circumstances beyond the reasonable control of the Seller.
- 4.3 At the Seller's sole discretion, a 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 Seller, which may be:
 - (a) on Delivery;
 - (b) by way of instalments/progress payments in accordance with the Seller's payment schedule;
 - (c) for certain approved Clients, 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 Seller.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Seller.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller 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.
- 4.7 Receipt by the Seller 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, and until then the Seller's rights and ownership in respect of the Goods, and this agreement, shall continue.

5. Delivery

- 5.1 Delivery of the Goods ("Delivery") is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes possession of the Goods at the Seller's premises; or
 - (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Client's nominated site, even if the Client is not present thereat.
- 5.2 At the Seller's sole discretion, the cost of Delivery is included in 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, fails or refuses (or makes any indication of their intention to fail or refuse) to take or accept Delivery as arranged, then the Goods shall be deemed to have been delivered when the Seller was willing to deliver them, and the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 The Seller 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 Seller to the Client is an estimate only. The Client must still accept Delivery even if late and the Seller 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, or deterioration of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6.3 If the Client requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 6.4 The Client acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish. The Seller will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 6.5 The Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Seller shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 6.6 The Seller shall not be liable for any defect or damage resulting from incorrect or faulty installation.
- 6.7 The Client acknowledges that the Seller is only responsible for parts that are replaced/supplied by the Seller and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Client agrees to indemnify the Seller against any loss or damage to the Goods, or caused thereby, or any part thereof howsoever arising.
- 6.8 Where the Client has supplied materials for the Seller to complete the Goods, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials. The Seller shall not be responsible for any defects in the Goods, any loss or damage howsoever arising from the use of materials supplied by the Client.
- 6.9 Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods provided is given in good faith, is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods.

7. Accuracy of Client's Plans and Measurements

- 7.1 In the event the Client gives information relating to the Goods (including plans, specifications, measurements, quantities and other information provided by the Client):
- (a) it is the Client's responsibility to verify the accuracy of the information before the Client or the Seller places an order based on the information. The Seller accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause;
 - (b) the Seller shall be entitled to rely on the accuracy of such information. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting therefrom.

8. Title

- 8.1 The Seller and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Seller all amounts owing to the Seller; and
 - (b) the Client has met all of its other obligations to the Seller.
- 8.2 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 8.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Seller on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller 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 Seller and must pay or deliver the proceeds to the Seller 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 Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.
 - (e) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.
 - (f) the Seller 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 Seller.
 - (h) the Seller may commence proceedings to recover the Price 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 Seller to the Client (if any) and all Goods that will be supplied in the future by the Seller 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 Seller 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 Seller 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 Seller; and
 - (d) immediately advise the Seller 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 Seller 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 Seller, 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 Seller under clauses 9.1 to 9.5.

10. Security and Charge

- 10.1 In consideration of the Seller agreeing to supply 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 Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 10.3 The Client irrevocably appoints the Seller and each director of the Seller 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. Client's Disclaimer

- 11.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Seller and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

12. Defects

- 12.1 The Client shall inspect the Goods on Delivery and shall within forty-eight (48) hours of such time (being of the essence) notify the Seller of any alleged defect, error or omission, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following such notification 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 Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is (subject to clause 12.2) limited to either (at the Seller's discretion) replacing or repairing the Goods.
- 12.2 Notwithstanding clause 12.1, the Seller shall not be liable for any defect or damage which:
- (a) may be caused or partly caused by or arise as a result of:
 - (i) the Client failing to properly maintain or store the Goods;
 - (ii) the Client using the Goods for any purpose other than that for which they were designed;
 - (iii) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (iv) the Client failing to follow any instructions or guidelines provided by the Seller;
 - (v) any modification of the Goods without the Seller's consent
 - (vi) fair wear and tear, any accident, or act of God.
 - (b) has been attempted to be repaired by any person not authorised by the Seller.
- 12.3 Goods will not be accepted for return other than in accordance this clause 12.

13. Warranty

- 13.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 13.2 To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

14. Consumer Guarantees Act 1993

- 14.1 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 Seller to the Client.

15. Intellectual Property

- 15.1 Where the Seller has designed, drawn or developed Goods for the Client, then the copyright in any designs, specifications, drawings, other technical information and documents shall remain the property of the Seller.
- 15.2 The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 15.3 The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Client.

16. Default and Consequences of Default

- 16.1 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 Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 16.3 Without prejudice to any other remedies the Seller 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 Seller may suspend or terminate the supply of Goods to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 16.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller'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.

17. Cancellation

- 17.1 The Seller may cancel any contract to which these terms and conditions apply or cancel Delivery at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Client cancels Delivery the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.3 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.

18. Privacy Act 1993

- 18.1 The Client authorises the Seller or the Seller'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 Seller from the Client directly or obtained by the Seller 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.
- 18.2 Where the Client is an individual the authorities under clause 18.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Client shall have the right to request the Seller for a copy of the information about the Client retained by the Seller and the right to request the Seller to correct any incorrect information about the Client held by the Seller.

19. Unpaid Seller's Rights

- 19.1 Where the Client has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of any moneys owing to it by the Client, the Seller shall have, until all moneys owing to the Seller 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.
- 19.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Seller having been obtained against the Client.

20. General

- 20.1 Any dispute or difference arising as to the interpretation of these terms and conditions, or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 20.2 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller'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.
- 20.3 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 New Plymouth Court of New Zealand.

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- 20.4 The Seller shall be under no liability whatsoever to the Client for any incidental, indirect, special and/or consequential loss, damage and/or expense (including loss of profit and any claims, demands or actions against the Client by any third party) suffered by the Client arising out of a breach by the Seller of these terms and conditions, even if the Seller should have known the possibility of such damages arising out of, or in relation to its performance or non-performance of this agreement. Alternatively, the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 20.5 The Client shall not, without the prior written consent of the Seller, be entitled to set off against, or deduct from the Price (by way or counterclaim or other legal or equitable claim), any sums owed or claimed to be owed to the Client by the Seller, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.7 The Client agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller 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 Seller to provide Goods to the Client.
- 20.8 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.
- 20.9 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.

