

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "INDUSTRIAL SHEETMETALS", "we", "us" or "our" shall mean INDUSTRIAL SHEETMETALS, or any agents or employees thereof.
- 1.2 "Customer", "You" or "Your" shall mean the purchaser, any person action on behalf of and with the authority of them Customer, or any person purchasing/renting goods from INDUSTRIAL SHEETMETALS.
- 1.3 "Goods" shall mean all goods, chattels, or services provided by INDUSTRIAL SHEETMETALS to the Applicant, and shall include without limitation the supply and manufacture of sheetmetal, ducting, all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of goods by INDUSTRIAL SHEETMETALS to the Applicant.
- 1.4 "Price" shall mean the cost of the goods as agreed between INDUSTRIAL SHEETMETALS and the Customer subject to clause 4 of this contract.
- 1.5 "Default" includes you or any Guarantor:-
- (a) Being unable to pay your debts as they fall due; or
 - (b) failing to comply with these Terms or any other agreement with INDUSTRIAL SHEETMETALS; or
 - (c) having an application made (or resolution passed) for a receiver, liquidators, administrator or other statutory manager to be appointed; or
 - (d) being convicted of a criminal offence; or
 - (e) Doing any act that in INDUSTRIAL SHEETMETALS's opinion causes or threatens the risk, safety, condition or safekeeping of any Goods we supply to you;
 - (f) ceasing to carry on business or suffering a material adverse change which in INDUSTRIAL SHEETMETALS's opinion changes your financial position or creditworthiness;
 - (g) Indicating by notice or conduct that you no longer intend to comply with your obligations under any agreement with INDUSTRIAL SHEETMETALS.
- 1.6 "Guarantors" shall mean all signatories who have signed INDUSTRIAL SHEETMETALS's credit account application form.
- 1.7 "PPSR" shall mean the Personal Property Securities Act 1999.
- 1.8 "Quote" or "Quotation" shall include any offer or tender and any drawings or specifications listed therein.

2. CUSTOMER'S AUTHORITY

- 2.1 You warrant that:-
- (a) You are either the Customer or the authorised agent of the Customer; or
 - (b) You are authorised to accept and are accepting these terms not only personally but as agent for and on behalf of the Customer.
- 2.2 You shall not assign all or any of your rights or obligations under this contract unless we agree specifically in writing. You shall advise us of any alteration to your entity structure and/or of any revocation of an agent's authority to purchase. Until such written confirmation is received and specifically accepted by us in writing, you shall remain liable for any amount owing and our conduct shall not be deemed acceptance or affirmation of any assignment or revocation.

3. ACCEPTANCE AND GENERAL

- 3.1 All goods are supplied on the basis of these terms and conditions ("terms") and any order received by us from you and/or use of your credit account with us (if any) shall constitute acceptance of these terms.
- 3.2 Unless otherwise expressly agreed in writing by us, these terms:
- (a) may be amended by us from time to time; and
 - (b) in conjunction with our quote express the entire understanding and agreement between you and us.
- 3.3 All the rights and remedies under this agreement shall remain in full force notwithstanding any neglect, forbearance or delay in enforcement by us.
- 3.4 Any notice provided by us to you or any guarantor, including notification of any alterations to these terms, shall be deemed to be delivered and received by you immediately if sent to your last known fax or email address or three days after posting to your last known mailing address.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the goods shall be deemed to be sold at the current amount as such goods are sold by INDUSTRIAL SHEETMETALS at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods that is beyond the control of INDUSTRIAL SHEETMETALS between the date of contract and delivery of the goods.

5. PAYMENT

- 5.1 Payment for goods shall be made in full on or before the 20th day of the month following the date of the invoice, or on receipt of delivery of goods, whichever is the earlier ("the due date").
- 5.2 Payment for goods supplied on a "CASH" basis is to be made before or at the time the goods are uplifted or dispatched.
- 5.3 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.4 Any expenses, disbursements, legal costs or debt collection agency fees incurred by INDUSTRIAL SHEETMETALS in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees.
- 5.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6. QUOTATION

- 6.1 Unless withdrawn in writing our quotation is available for acceptance for 30 days (or any longer period stated in the quote) from the date of quotation, and thereafter is subject to confirmation.
- 6.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.

- 6.3 Where goods are required in addition to the quotation the customer agrees to pay for the additional cost of such goods.

7. DELIVERY AND RISK OF GOODS

- 7.1 The goods remain at INDUSTRIAL SHEETMETALS's risk until the delivery to the Customer, but when title passes to the Customer pursuant to clause 9.1 of this contract the goods are at the Customer's risk whether delivery has been made or not.
- 7.2 Delivery shall be deemed complete when INDUSTRIAL SHEETMETALS gives possession of the goods for delivery to the Customer, or possession of the goods is given to a common carrier, or other bailee for the purposes of transmission to the Customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to INDUSTRIAL SHEETMETALS making time of the essence.
- 7.4 Where INDUSTRIAL SHEETMETALS delivers goods to the Customer by instalments and INDUSTRIAL SHEETMETALS fails to deliver one or more instalments the Customer shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.

8. AGENCY

- 8.1 The Customer authorises INDUSTRIAL SHEETMETALS to contract either as principal or agent for the provision of goods that are the matter of this contract.
- 8.2 Where INDUSTRIAL SHEETMETALS enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

9. RETENTION OF TITLE

- 9.1 If the goods are ascertained and in a deliverable state, title in the goods passes to the Customer when the Customer has made payment for all goods supplied by INDUSTRIAL SHEETMETALS.
- 9.2 Where the Customer has not paid for any goods in its possession property in such goods shall remain with INDUSTRIAL SHEETMETALS and:
- (a) you shall hold the goods as our agent and shall store the goods (or any funds you receive in payment of the goods) in such a way that it is clear that they are our property and so they will not deteriorate;
 - (b) you will immediately notify us of any action which affects our interest in the goods.
 - (c) if the goods are attached, fixed or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the goods shall remain with INDUSTRIAL SHEETMETALS until the Customer has made payment for all goods, and where those goods, title to these new goods shall deemed to be assigned to INDUSTRIAL SHEETMETALS as security for the full satisfaction by the Customer of the full amount owing between INDUSTRIAL SHEETMETALS and the Customer.
- 9.3 You irrevocably give us licence without the necessity of giving any notice to enter all premises at which we on reasonable grounds believe the goods to be stored, to inspect, remove or repossess any goods supplied by us and not paid for by you. We shall not be liable for costs, damages or expenses or any other moneys or losses suffered by you or any third party as a result of this action. You shall indemnify us for any liability we suffer as a result of such actions.
- 9.4 We may bring an action for the Amount Owing on the goods sold despite the fact ownership of the goods may not have passed to you.

10. PERSONAL PROPERTY SECURITIES ACT 1999

- 10.1 Interpretation – all section references in this clause shall mean the relevant clause in the PPSA.
- 10.2 Security: Upon consenting to these terms or by accepting supply from us, you acknowledge and agree that:
- (a) you grant a security interest (by virtue of our retention of title clause) to us in all present goods supplied by us to you (if any) and all after acquired goods supplied by us to you (or for your account).
 - (b) You will not allow any goods to become an accession to any property that is not subject to the security interest granted pursuant to these terms.
 - (c) You will ensure nothing is done or omitted to be done that might adversely affect any security interest in the goods granted in our favour.
- 10.3 Financing Statement: You acknowledge, agree and undertake (as the case may be) to:
- (a) sign any further documents and/or provide any further information (which information you warrant to be complete accurate and up to date in all respects) which we may reasonably require to register a financing statement or financing change statement on the Personal Properties Securities Register.
 - (b) Irrevocably appoint us to be your attorney to do anything which you agree to do under this agreement and anything which the attorney thinks desirable to protect the Company's interest under this agreement and you ratify anything done by the attorney under this clause.
 - (c) not register a change demand without our prior written consent, which may be given or withheld at our absolute discretion.
 - (d) You will, upon demand, meet our costs:
 - (i) in relation to registering a financial statement or financing change statement, or releasing any financing statement on the Personal Property Securities Register;
 - (ii) enforcing our security interest including our legal costs on a solicitor client basis;
 - (e) give us not less than 14 days prior written notice of any proposed change in your name, and/or any other change in your details or otherwise (including but not limited to a change in your place of incorporation, address, location, nature of business, ownership, facsimile or phone number, or business practice).
- 10.4 Waiver and Contract Out: To the extent permitted by law, you and us agree to contract out of:
- (a) Sections 114(1)(a) 133, 134 and 148 of the PPSA; and
 - (b) The Buyer's rights referred to in sections 107(a) to (i) of the PPSA.

11. RECEIPT AND RETURN OF GOODS

11.1 All goods must be carefully checked upon receipt and no claim relating to delivery of goods shall be considered unless made within 48 hours of delivery.

11.2 The Customer shall be deemed to have accepted the goods unless the Customer notifies INDUSTRIAL SHEETMETALS otherwise within 10 days of delivery of the goods to the Customer.

11.3 If the goods are not accepted according to clause 11.2 of this contract the Customer shall pay for the delivery of the returned goods to INDUSTRIAL SHEETMETALS.

12. CREDIT FACILITIES

12.1 We may grant or decline to grant credit to you. We may in our sole discretion, at any time and without reason or notice to you and/or any Guarantor, and without prejudice to any other right it has in law or equity:-

- (a) Increase or decrease the amount of credit supplied to you;
- (b) terminate or suspend any credit arrangement we have with you in which case all monies owing by you to us shall be immediately due; and
- (c) request additional security from you on terms satisfactory to us before proceeding further with any order.

12.2 You acknowledge that neither these terms nor your credit application shall be construed to be a consumer credit contract as defined by Section 11 of the Credit Contracts and Consumer Finance Act 2003.

13. CONSUMER GUARANTEES ACT 1993

13.1 Nothing in these terms of trade excludes, limits, restricts or is intended to derogate from any right or remedy which you may have pursuant to the Consumer Guarantees Act 1993 ("CGA"), if you are a consumer as defined in the CGA who requests the goods and services for personal use. However the guarantees contained in the CGA are expressly excluded where you acquire goods or services from us for the purposes of a business.

13.2 If you on sell the goods to a third party; you agree:

- (a) Where permitted by law, to contract out of the CGA; and
- (b) to neither give or make any assertion or representation in relation to our goods without our prior written approval nor hold yourself out to be our agent;
- (c) to indemnify us for any losses incurred due to third party claims against us as Manufacturer/Importer.

14. LIABILITY

14.1 Except as otherwise provided by statute INDUSTRIAL SHEETMETALS shall not be liable for:-

- (a) Any loss or damage or any kind whatsoever whether suffered or incurred by the Customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by INDUSTRIAL SHEETMETALS to the Customer and without limiting the generality of the foregoing of this clause INDUSTRIAL SHEETMETALS shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and
- (b) Except as provided in this contract INDUSTRIAL SHEETMETALS shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods provided by INDUSTRIAL SHEETMETALS to the Customer; and
- (c) The Customer shall indemnify INDUSTRIAL SHEETMETALS against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of INDUSTRIAL SHEETMETALS or otherwise, brought by any person in connection with any matter, act, omission, or error by INDUSTRIAL SHEETMETALS, its agents or employees in connection with the goods.

15. WARRANTY

15.1 No representation, conditions, warranty or premise expressed or implied by law or otherwise applies to goods except where goods are supplied pursuant to the CGA or except where expressly provided to the Customer at the time of sale HOWEVER no warranty shall exceed that given by the manufacturer.

15.2 INDUSTRIAL SHEETMETALS does not provide any warranty that the goods are fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not.

15.3 Notwithstanding the above INDUSTRIAL SHEETMETALS will provide a 12 month warranty on all goods supplied to the Customer.

16. CANCELLATION

16.1 INDUSTRIAL SHEETMETALS shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in the Insolvency Act 2006.

16.2 Any cancellation or suspension under clause 16.1 of this agreement shall not affect INDUSTRIAL SHEETMETALS's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to INDUSTRIAL SHEETMETALS under this contract.

17. FORCE MAJEURE

17.1 Without limiting any other provisions of these terms, we shall not be liable for any claims resulting from our delay or failure in the performance of any obligation or the exercise of any right as a result of a "Force Majeure" event.

17.2 Force Majeure means any event outside our reasonable control including acts of God, declared or undeclared war, fire, flood, storm, slide, earthquake, hurricanes, cyclones, riot, power failure, industrial action, defaults of manufacturers and supplies, the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay, labour disputes, theft, any criminal act or other similar events beyond our control that may prevent or delay our supply of goods or services to you.

17.3 Nothing in this clause shall excuse payment of any amount owing due or which becomes due under these terms and the occurrence of a force majeure event shall not give you a right to cancel any agreement with us.

18. SECURITY

18.1 You and/or any Guarantor agree that in the event of default we shall have the right to complete and register a mortgage (on the most current Auckland District Law Society all moneys memorandum of mortgage as updated from time to time) over any property owned by you and/or any Guarantor in order to protect our rights and interest under these terms. We shall also have the right at our discretion to place a caveat on any such property for the purpose of this clause.

18.2 You agreed to do all acts required for us to register the security and if you fail to do so within 3 working days of our request, you and/or the Guarantor hereby irrevocably appoints us as your attorney for the purpose of us exercising our rights under this clause.

19. PRIVACY ACT CONSENT & RIGHTS

19.1 Where you are an individual, you understand this information is being collected in accordance with the Privacy Act 1993 and that you have rights of access to and correction of personal information held by us. You agree and authorise us to obtain or divulge any information about you (including adverse information) from or to any third party (including credit reporting and debt collection agencies) in the course of our business activities including credit assessment, debt collection and direct marketing activities.

20. PERSONAL GUARANTEE

20.1 In consideration of us supplying and continuing to supply goods and/or services to the Customer, the Guarantors jointly and severally guarantee and indemnify the due performance and observance of the Customer's obligations contained in this agreement with us including, upon demand, the payment of all amounts owing which is or may become due to us by the Customer.

20.2 The Guarantor/s acknowledge:

- (a) This is a continuing Guarantee; and
- (b) Their obligation to us is as a principal debtor; and
- (c) If there is more than one Guarantor, their liability shall be joint and several; and
- (d) Their liability under the Guarantee shall not be effected or discharged by the granting of time or credit to the Customer, or by the release, abandonment or waiver of any rights against the Customer, or the liquidation or bankruptcy of the Customer; and
- (e) This Guarantee is in addition to and not in substitution of any other guarantee or security or other rights which we may presently have or may subsequently acquire and may be enforced without the necessity of making demand or enforcing any such other guarantees, securities or rights; and
- (f) the Guarantee shall continue in full force until we agree to release them in writing and even if:
 - (i) The Customer's obligations to us has been fully paid, satisfied or performed; or
 - (ii) Our conduct of the day to day operation of the Customer's credit account (including but not limited to termination of supply, granting of credit, extension of further credit, granting of time, waiver, indulgence, neglect to sue or failure to give appropriate notice) implied the Guarantors may be released from this Guarantee; or
 - (iii) We release any other party from partial or total liability.

21. MISCELLANEOUS

21.1 The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of INDUSTRIAL SHEETMETALS.

21.2 Failure by INDUSTRIAL SHEETMETALS to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations INDUSTRIAL SHEETMETALS has under this contract.

21.3 The law of New Zealand shall apply to this contract except to the extent expressly negative or varied by this contract.

21.4 Where the terms of this are at variance with the order or instruction from the Customer, this contract shall prevail.

21.5 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existences, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.