

1. Definitions

- 1.1 "Engineer" shall mean Site Weld NZ Ltd and its successors and assigns.
- 1.2 "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.3 "Guarantor" means that person (or persons), or entity that agrees herein to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall have the same meaning as in section 2 of the Sale of Goods Act 1908 and are goods supplied by the Engineer to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Engineer to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Engineer and the Customer subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Engineer from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Engineer shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Engineer.
- 2.4 None of the Engineer's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Engineer in writing nor is the Engineer bound by any such unauthorised statements.

3. Goods / Services

- 3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Engineer to the Customer.

4. Price and Payment

- 4.1 At the Engineer's sole discretion the Price shall be either;
 - (a) as indicated on invoices provided by the Engineer to the Customer in respect of Goods supplied; or
 - (b) Engineer's quoted Price (subject to clause 4.2) which shall be binding upon the Engineer provided that the Customer shall accept in writing the Engineer's quotation within thirty (30) days.
- 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Engineer'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 Engineer's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
- 4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
- 4.5 At the Engineer's sole discretion, payment for approved Customers shall be made by instalments in accordance with the Engineer's delivery/payment schedule.
- 4.6 At the Engineer's sole discretion, payment for approved Customer's shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and the Engineer.
- 4.8 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Engineer.

5. Delivery Of Goods

- 5.1 Delivery of the Goods shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at the Engineer's address.
- 5.2 Delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of the Engineer for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.
- 5.3 The costs of carriage and any insurance which the Customer reasonably directs the Engineer to incur, shall be reimbursed by the Customer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Customer's agent.
- 5.4 Where there is no agreement that the Engineer shall send the Goods to the Customer, delivery to a carrier at limited carrier's risk at the expense of the Customer is deemed to be delivery to the Customer.
- 5.5 The Engineer may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.6 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.7 The failure of the Engineer to deliver shall not entitle either party to treat this contract as repudiated.
- 5.8 The Engineer shall not be liable for any loss or damage whatever due to failure by the Engineer to deliver the Goods (or any of them) promptly or at all.

6. Risk

- 6.1 If the Engineer retains title to the Goods nonetheless all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to title to them passing to the Customer, the Engineer is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Engineer is sufficient evidence of the Engineer's rights to receive the insurance proceeds without the need for any person dealing with the Engineer to make further enquiries.

7. Defects/Returns

- 7.1 The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery notify the Engineer of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Engineer an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 7.2 For defective Goods, which the Engineer has agreed in writing that the Customer is entitled to reject, the Engineer's liability is limited to either (at the Engineer's discretion) replacing the Goods or repairing the Goods provided that:
 - (a) the Customer has complied with the provisions of clause 7.1;
 - (b) the Goods are returned at the Customer's cost within fourteen (14) days of the delivery date;
 - (c) the Engineer will not be liable for Goods which have not been stored or used in a proper manner;
 - (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.
- 7.3 The Engineer may (in its discretion) accept the Goods for credit but this may incur a handling fee of 15% of the value of the returned Goods plus any freight.

8. Warranty

- 8.1 Subject to the conditions of warranty set out in Clause 8.2 the Engineer warrants that if any defect in any workmanship of the Engineer becomes apparent and is reported to the Engineer within three (3) months of the date of delivery (time being of the essence) then the Engineer will either (at the Engineer's sole discretion) repair the defect or remedy the workmanship.
 - 8.2 The conditions applicable to the warranty given by Clause 8.1 are:
 - (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - i) Failure on the part of the Customer to properly maintain any Goods; or
 - ii) Failure on the part of the Customer to follow any instructions or guidelines provided by the Engineer; or
 - iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
 - iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - v) Fair wear and tear, any accident or act of God.
 - (b) The warranty shall cease and the Engineer shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Engineer's consent.
 - (c) In respect of all claims the Engineer shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim.
 - 8.3 For Goods not manufactured by the Engineer, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Engineer shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.
 - 8.4 In the case of second hand Goods, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Engineer as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Engineer shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 9. Default & Consequences Of Default**
- 9.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
 - 9.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Engineer from and against all of the Engineer's costs and disbursements including on a solicitor and own client basis and in addition all of the Engineer's nominees costs of collection.
 - 9.3 Without prejudice to any other remedies the Engineer may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Engineer may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Engineer will not be liable to the Customer for any loss or damage the Customer suffers because the Engineer exercised its rights under this clause.
 - 9.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services the following shall apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable in addition to the interest payable under clause 9.1 hereof.
 - 9.5 In the event that:
 - (a) any money payable to the Engineer becomes overdue, or in the Engineer's opinion the Customer will be unable to meet its payments as they fall due, or; immediately become due and payable.
 - (b) the Customer 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;

Initials _____

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer, then without prejudice to the Engineer's other remedies at law:

(i) the Engineer shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and

(ii) all amounts owing to the Engineer shall, whether or not due for payment, immediately become due and payable.

10. Title

10.1 It is the intention of the Engineer and agreed by the Customer that property in the Goods shall not pass until:

(a) The Customer has paid all amounts owing for the particular Goods, and

(b) The Customer has met all other obligations due by the Customer to the Engineer in respect of all contracts between the Engineer and the Customer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Engineer shall have received payment and all other obligations of the Customer are met.

10.2 Receipt by the Engineer 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 Engineer's ownership of rights in respect of the Goods shall continue.

10.3 It is further agreed that:

(a) Until such time as ownership of the Goods shall pass from the Engineer to the Customer the Engineer may give notice in writing to the Customer to return the Goods or any of them to the Engineer. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.

(b) If the Customer fails to return the Goods to the Engineer then the Engineer or the Engineer's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.

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

11.1 Upon assenting to these terms and conditions in writing the Customer 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 Engineer to the Customer (if any) and all Goods that will be supplied in the future by the Engineer to the Customer during the continuance of the parties' relationship.

11.2 The Customer 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 Engineer 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 Engineer 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 Engineer;

(d) give the Engineer not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice); and

(e) immediately advise the Engineer 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.

11.3 The Engineer and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.

11.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

11.5 Unless otherwise agreed to in writing by the Engineer, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

11.6 The Customer unconditionally ratifies any actions taken by the Engineer under clauses 11.1 to 11.5. under and by virtue of the power of attorney given by the Customer to the Engineer.

12. Security & Charge

12.1 Despite anything to the contrary contained herein or any other rights which the Engineer may have howsoever:

(a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Engineer or the Engineer's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Engineer (or the Engineer's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(b) Should the Engineer elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Engineer from and against all the Engineer's costs and disbursements including legal costs on a solicitor and own Customer basis.

(c) To give effect to the provisions of clause [11, 12.1(a) to (b)] inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Engineer or the Engineer's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Engineer and/or the Engineer's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interests of the Customer and/or the Guarantor in any land, realty or asset in favour of the Engineer and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Engineer and further to do and perform all necessary and other acts including instituting

any necessary legal proceedings, and further to execute all or any documents in the Engineer's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

13. Intellectual property

13.1 Where the Engineer has designed or drawn Goods for the Customer, then the copyright in those designs and drawings shall remain vested in the Engineer, and shall only be used by the Customer at the Engineer's discretion.

13.2 The Customer warrants that all designs or instructions to the Engineer will not cause the Engineer to infringe any patent, registered design or trademark in the execution of the Customer's order.

14. Cancellation

14.1 The Engineer may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Engineer shall promptly repay to the Customer any sums paid in respect of the Price for those Goods. The Engineer shall not be liable for any loss or damage whatsoever arising from such cancellation.

14.2 At the Engineer's sole discretion the Customer may cancel delivery of Goods and/or Services. In the event that the Customer cancels delivery of Goods and/or Services the Customer shall be liable for any costs incurred by the Engineer up to the time of cancellation.

15. Privacy Act 1993

15.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Engineer to:

(a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services; and

(b) to disclose information about the Customer, whether collected by the Engineer from the Customer directly or obtained by the Engineer 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 Customer.

15.2 Where the Customer is a natural person the authorities under (clause 15.1) are authorities or consents for the purposes of the Privacy Act 1993.

15.3 The Customer shall have the right to request the Engineer for a copy of the information about the Customer retained by the Engineer and the right to request the Engineer to correct any incorrect information about the Customer held by the Engineer.

16. Customer's Disclaimer

16.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Engineer and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgement.

17. Contractual Remedies Act 1979

17.1 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) of the Contractual Remedies Act which states that nothing in the Contractual Remedies Act shall affect the Sale of Goods Act 1908, were omitted from the Contractual Remedies Act 1979.

18. Unpaid Engineer's Rights

18.1 Where the Customer has left any item with Engineer for repair, modification, exchange or for the Engineer to perform any other Service in relation to the item and Engineer has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Engineer shall have:

- (a) a lien on the item;
 - (b) the right to retain the item for the Price while the Engineer is in possession of them;
 - (c) a right of resale,
 - (d) the foregoing right of disposal,
- provided that the lien of the Engineer shall continue despite the commencement of proceedings or judgement for the Price having been obtained.

19. Consumer Guarantees Act 1993

19.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).

20. General

20.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

20.2 All Goods and Services supplied by the Engineer are supplied subject to the laws of New Zealand and the Engineer takes no responsibility for changes in the law that affect the Goods or Services supplied.

20.3 The Engineer shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Engineer of these terms and conditions.

20.4 In the event of any breach of this contract by the Engineer the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Engineer exceed the Price of the Goods.

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

20.6 The Customer shall not set off against the Price amounts due from the Engineer.

20.7 The Engineer may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

20.8 The Engineer reserves the right to review these terms and conditions at

any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Engineer notifies the Customer of such change.

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