

## AGREEMENT FOR TERMS AND CONDITIONS OF SALE

### BETWEEN CAMBRIDGE STEEL FABRICATORS AND ENGINEERS LIMITED (the vendor) and THE PURCHASER

The Vendor supplies all goods which for the purposes of the Personal Property Securities Act (the "PPSA") are described in the attached Schedule (the Goods) to the Purchaser, despite anything that may be stated to the contrary in the Purchaser's enquiries or on the Purchaser's orders, subject to the following conditions:

#### **1. Application**

- 1.1. These terms apply to all offers, quotations and agreements entered into between the Vendor and the Purchaser for the supply of Goods and Services from the date of the Agreement.
- 1.2. The placement of an order shall be deemed to be acceptance of these terms by the Purchaser
- 1.3. In the case of any conflict arising between these terms and any other terms of the Purchaser, these terms shall prevail.

#### **2. Non-Contractual terms**

- 2.1. All performance figures are based on estimates only and the description of the Goods in the contract and in all drawings, specifications, brochures, catalogues and other information supplied is given as an aid to identification or description of Goods or Services and is not a condition that the Goods shall correspond precisely with any such description.

#### **3. Price**

- 3.1. All prices are quoted on prevailing rates. Any increase in costs to the Vendor for Goods whenever and howsoever arising shall be payable by the Purchaser.
- 3.2. Where applicable Goods and Services Tax shall be charged and payable in addition to the quoted price.
- 3.3. Quotations remain open for acceptance for a period for 30 days. Any offer may be indrawn by the Vendor at any time before acceptance.

#### **4. Payment**

- 4.1. Payment of the price and any price increase shall be made in full without deduction as follows:
  - 4.1.1. Within 7 days following invoicing for Goods and Services
  - 4.1.2. On the 20<sup>th</sup> of the month following invoicing for Goods and Services
  - 4.1.3. At the point of sale in respect of all cash sales of Goods and Services
- 4.2. The Vendor may charge interest at the rate of 15% per annum (calculated daily) above the prevailing bank overdraft rate in respect of any overdue account up to and including the date of payment together with all associated costs incurred in recovering payment
- 4.3. The Vendor will apportion payments by the Purchaser to outstanding accounts in such amounts and in such amounts and in such order as the Vendor may determine in its sole discretion.

#### **5. Delivery and Risk**

- 5.1. Delivery shall occur when the Vendor hands possession and control of the Goods to the Purchaser or to a third party for transportation. Thereafter the goods shall be at the sole risk of the Purchaser and all costs of insurance, freight and delivery shall be paid by the Purchaser, provided however that the Vendor shall be under no obligation to arrange any such insurance, freight or delivery on behalf of the Purchaser.

#### **6. Delays and Non-Delivery**

- 6.1. The Vendor shall not be liable for any loss or damage suffered by the Purchaser due to the non-performance, non-delivery or delay in delivery.

#### **7. Property**

- 7.1. Notwithstanding the passing of risk, all of the Goods shall remain in the sole property of the Vendor until the Purchaser has paid for the same in full together with all sums due from the Purchaser to the Vendor. Receipt by the Vendor of any cheque or other bill of exchange or any promissory note shall not be deemed to be payment or conditional payment until the same has been honoured or cleared and until such time shall not prejudice or affect the Vendor's rights, power or remedies against the Purchaser and/or Goods. This claim and these conditions will apply to all after acquired Goods.
- 7.2. Until payment in full has been made for the goods and all other sums due the Vendor, The Purchaser acknowledges and agrees as follows:
  - 7.2.1. The Goods are held by the Purchaser as bailee and may only be resold as the agent for and on behalf of the Vendor.

- 7.2.2. The Purchaser shall store the Goods separately from the Purchaser's own Goods and any other Goods supplied by the Purchaser
- 7.2.3. The Purchaser hereby irrevocably gives the Vendor, its agents and servants leave and licence without the necessity of giving any notice to enter on and into any premises occupied by the Purchaser to search for and remove any of the Goods supplied in which the Vendor has ownership without any way being liable to the Purchaser or any person or company claiming through the Purchaser. If the goods or any of them are wholly or partially attached to other goods, the Vendor may, where practical, disconnect or sever in any way whatsoever as may be necessary to remove the Goods.
- 7.2.4. The Purchaser in reselling the Goods as the Vendor's agent shall not represent to any other person that it is acting for the Vendor and the Vendor will not be bound by any contract with any other person to which the Purchaser is a party. The Purchaser shall pay into a separate account the proceeds from the resale of the Goods and shall pay the full price of the Goods together with all or any outstanding indebtedness to the Vendor from this account.
- 7.2.5. This clause is inserted to protect the Vendor and is intended to enable the Vendor to retake possession of the Goods, and at the Vendors option to resell the Goods which is has resumed possession of, following default of the Purchaser and in the vent of the receivership or insolvency of the Purchaser.
- 7.2.6. If one or more of the provisions of the clause 7 shall be invalid or enforceable, the remaining provisions shall not be affected thereby and shall continue if full force and effect.

#### **8. Personal Properties Securities Act 1999**

- 8.1. The Purchaser grants to the Vendor a security interest in all present and after acquired Goods.
- 8.2. On the request of the Vendor, the Purchaser shall promptly execute any documents and do anything else required by the Vendor to ensure that the security interest created under this Agreement constitutes a first ranking perfected security interest over the Goods. The Purchaser shall also provide the Vendor with any information the Vendor reasonably requires to complete a financing statement.
- 8.3. The Purchaser:
- 8.3.1. Shall immediately notify the vendor in writing of any change in the Purchaser's name; and
- 8.3.2. Shall also provide any information the Vendor reasonably requires to complete a financing statement or financing change statement.
- 8.3.3. Waives any right to receive a copy of a Verification Statement under the PPSA.
- 8.4. The Purchaser will pay to the Vendor all costs, expenses and other charges incurred, expended or payment by the Vendor in relation to the filing of a financing statement or financing charge
- 8.5. The Purchaser agrees that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to this Agreement.
- 8.6. The Purchaser agrees that its rights as debtor in sections 118, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA and shall not apply to this Agreement

#### **9. Claims**

- 9.1. The Vendor warrants all the new equipment manufactured by it against faulty workmanship or materials for 30 days and agrees to replace or repair the same at its cost (excluding travelling costs and expenses), subject to the limitations contained in these terms and conditions.
- 9.2. Proprietary articles supplied as part of the Goods are subject only to the warranty given by the makers of the articles.
- 9.3. The vendor is not responsible for any damage whatsoever caused either to the Goods supplied or as a result of the malfunction of the Goods if:
- 9.3.1. The Goods are fitted by unqualified trades persons or are fitted in an unprofessional manner or
- 9.3.2. The instructions for operating the Goods have not been complied with or the Goods are adapted to a use for which they are not specifically intended or
- 9.3.3. The Goods are added to or repaired using components not recommended or approved by the manufacture or
- 9.3.4. The Goods are improperly stored or transported
- 9.3.5. The damage is the result of fair wear and tear, lack of lubrication, direct, misuse, neglect or accident.
- 9.4. Without restricting the limitations of liability contained elsewhere in these terms and conditions, the Vendor's liability in relation to the supply of the Goods and the Goods themselves is limited to the purchase price of the Goods in respect of which such liability arises.

9.5. The warranties contained in this clause will be effective only where the Purchaser has complied with its payment obligations and to the fullest extent permitted by law; this warranty shall be the Purchaser's sole remedy against the Vendor.

#### **10. General Warranty Exclusions**

10.1. To the fullest extent permitted by law, the Vendor shall not otherwise be liable, whether under statute, regulation, by-law or at common law or otherwise for any damage loss or injury caused by any defect or non-compliance of the Goods of the Vendor. The Vendor shall not be liable for any consequential, indirect or special damage or loss of any kind whatsoever, nor shall the Vendor be liable for any damage or loss caused to the Purchaser's servants, agents, customers or other persons whatsoever.

10.2. Where these terms and conditions would otherwise be subject to the Consumer Guarantees Act 1993, the Vendor agrees that it is acquiring the goods for business purposes and that the Consumer Guarantees Act 1993 does not apply to the supply of goods to the Vendor.

#### **11. Credits**

11.1. Any credit note, discount, rebate or allowances to the Purchaser shall be deemed to be without prejudice and shall not be effective unless all monies owing have been paid and all obligations have been fulfilled by the Purchaser in accordance with these terms. Discounts shall not apply to sales tax, freight or other extras or auxiliaries. Credits for returned parts are at the Vendor's discretion provided the parts:

11.1.1. Are returned within 14 days of receipt

11.1.2. Are returned freight free

11.1.3. Are in good saleable condition in manufacturers/suppliers original containers

11.1.4. Are accompanied by number and date of supplying invoice

11.1.5. Are not a procured item

#### **12. Default**

12.1. The Vendor shall be entitled to cancel all or any part of the contract or contracts with the Purchaser, in addition to the other remedies contained in these terms and conditions, in the following circumstances:

12.1.1. If any amounts payable by the Purchaser are overdue or

12.1.2. If the Purchaser fails to meet any obligation under this or any other contract, or obligation to the Vendor or

12.1.3. If the Purchaser becomes or is likely to become insolvent or

12.1.4. If a Receiver is appointed in respect of the assets of the Purchaser or

12.1.5. If the Purchaser no longer carries on business or threatens to cease carrying on business or

12.1.6. If an arrangement within the Purchaser's creditors is likely to be made.

12.2. If the Purchaser makes default in payment or in taking delivery in time, the Vendor shall be entitled to terminate the contract so far as it is unfulfilled, without prejudice to its right to recover all sums owing to it in respect of deliveries already made. Upon termination of the contract, the Vendor shall be entitled to dispose of the balance of the Goods contracted for and the Purchaser shall indemnify the Vendor for any loss in price incurred by its realisation against the price against which such Goods were contracted to be bought by the Purchaser.

12.3. Despite S109 of the PPSA and in addition to the rights contained in that section, the Vendor may recover and/or resell any of the Goods and enter any premises where the Vendor believes the Goods are stored at any time without notice. If the Goods or any of them are wholly or partially attached to the other Goods. The Vendor may recover and resell for its own account sufficient Goods to satisfy all unpaid liabilities and the costs of resale. If the Vendor recovers any excess, the Vendor will not be liable in damages to the Purchaser by must account to the Purchaser to the excess.

12.4. The Vendor may appoint a Receiver in respect of the Goods (including the proceeds of the same) supplied to the Purchaser, under this Agreement. Any Receiver so appointed may take possession of the Goods and resell them and otherwise exercise all rights and powers conferred to a Receiver by law.

12.5. The Purchaser will pay all costs and expenses (including costs of a solicitor / client basis and debt collector's costs) the Vendor incurs in enforcing or attempting to enforce the Vendor's rights under this clause. The Vendor may deduct any costs and expenses incurred from the proceeds of sale of any Goods recovered from the Purchaser.

#### **13. Changes in Design**

13.1. The Vendor reserves the right at any time to change the design construction on materials of the Goods but shall not be required to incorporate such changes if the Goods have already been delivered.

#### **14. Waiver**

14.1. All the original rights, powers, exemptions and remedies of the Vendor shall remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. The Vendor shall not be deemed to have waived any

conditions unless such waiver is in writing from the vendor and any such waiver shall apply to and operate only in the particular transaction dealing or matter.

**15. Interpretation**

15.1. These terms shall be given a fair, large and liberal interpretation to the fullest extent permitted by law and shall not be construed against the Vendor.

**16. Proper Law**

16.1. All contracts shall be governed by the law of New Zealand and the Purchaser hereby submits to the exclusive jurisdiction of the New Zealand Courts.

**17. Acknowledgement**

17.1. The Purchaser acknowledges that it has received a copy of this agreement and in particular that the terms contained herein constitute a "security agreement" for the purposes of the Personal Properties Securities Act 1999.

**Schedule**

All materials handling, construction and specialised equipment and parts as described on Cambridge Steel Fabricators and Engineers Limited quote, order form or invoice.

Signature\_\_\_\_\_