

**1. Definitions**

- 1.1 “Supplier” means Ullrich Aluminium Co Limited, its successors and assigns or any person acting on behalf of and with the authority of Ullrich Aluminium Co 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 Supplier 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 Supplier and the Client in accordance with clause 5 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 Supplier’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.
- 2.3 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Supplier’s website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.4 None of the Supplier’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Supplier in writing nor is the Supplier bound by any such unauthorised statements.

**3. Change in Control**

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

**4. Export Contracts**

- 4.1 In the event that the Goods are exported, delivery of the Goods may be subject to either FOB Contract or CIF Contract.
- 4.2 In the event of a FOB Contract the following shall apply
  - (a) the Goods shall be delivered to the Client by delivery on board the agreed upon mode of transport on the delivery date. The Supplier shall promptly notify the Client that the Goods have been delivered aboard. Title (subject to clause 10) to, and risk in the Goods shall pass to the Client upon such delivery being effected. The Supplier shall promptly provide the Client with a clean shipped bill of lading in respect of the Goods;
  - (b) the Client shall reserve the necessary space on board the agreed upon mode of transport and give the Supplier due notice of the loading berth and any revised delivery dates. The Client shall bear any additional costs caused due to the failure of the agreed upon mode of transport being available to load the Goods on the delivery date.
- 4.3 In the event of a CIF contract the following shall apply:
  - (a) the Goods shall be delivered to the Client by delivery on board the agreed upon mode of transport on or before the delivery date. The Supplier shall procure a contract of carriage and insure the Goods from dispatch until delivery on terms current in the trade for the benefit of the Client. The Supplier shall promptly tender to the Client a clean shipped bill of lading, the insurance policy and an invoice in respect of the Goods;
  - (b) the Client shall accept the documents tendered by the Supplier if they correspond to this contract and take delivery of the Goods at the port of destination and bear all other costs and charges arising out of shipment of the Goods to the port of destination.
- 4.4 In the event that the Goods are exported, and delivery of the Goods are to be subject to a CFR contract, then following shall apply:
  - (a) the Supplier shall clear the Goods for export and the Goods shall be delivered to the Client by delivery by sea to an agreed port of destination. The Supplier shall be responsible for supplying the Client with all documentation necessary to uplift the Goods from the carrier at the port of destination;
  - (b) the risk of loss or damage to the Goods, as well as any additional costs due to events occurring after the Goods have been delivered on board the shipping vessel, is transferred to the Client immediately that the Goods pass the ships rail in the port of shipment;
  - (c) the Client (unless otherwise agreed in writing) must ensure that the Goods are insured against damage and loss, and all other usual risks immediately that the Goods pass the ships rail in the port of shipment. Furthermore the Client agrees to indemnify the Supplier against any loss or damage that the Supplier may incur through the Client’s failure to comply with this clause (c).

**5. Price and Payment**

- 5.1 At the Supplier’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by the Supplier to the Client; or
  - (b) the Price as at the date of delivery of the Goods according to the Supplier’s current price list; or

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- (c) the Supplier's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Supplier reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, inaccurate measurements provided by the Client for custom or special order Goods) which are only discovered on commencement of the Services; or
  - (d) in the event of increases to the Supplier in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange, levies, duties and/or international freight and insurance charges) which are beyond the Supplier's control.
- 5.3 In the case of export sales:
- 5.4 the Client must comply with such other requirements as the Supplier may request, including providing security in the form of the Client's irrevocable letter of credit confirmed by a major national bank of the Supplier's choosing; and
- 5.5 the Client warrants that sale transactions comply with all applicable laws, including all import, export and exchange control regulations.
- 5.6 At the Supplier's sole discretion a deposit may be required.
- 5.7 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 Supplier, which may be:
- (a) on delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with the Supplier'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 Supplier.
- 5.8 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Client and the Supplier.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier 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.

**6. Delivery of Goods**

- 6.1 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 Supplier's address; or
  - (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At the Supplier's sole discretion the cost of delivery is included in the Price.
- 6.3 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 Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 The Supplier 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.
- 6.5 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 6.6 Any time or date given by the Supplier to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

**7. Risk**

- 7.1 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.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 7.3 If the Client requests the Supplier to leave Goods outside the Supplier'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.

7.4 This clause 7 shall not apply where Goods are being exported and clause 4.4 is applicable.

**8. Accuracy of Client’s Plans and Measurements**

8.1 The Supplier shall be entitled to rely on the accuracy of any plans, and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans or other information.

8.2 Where the Client is to supply the Supplier with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. The Supplier shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client

**9. Specifications**

9.1 The Client acknowledges that:

- (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in the Supplier’s fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Supplier;
- (b) while the Supplier may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that the Supplier has given these in good faith, and are estimates based on industry prescribed estimates.

9.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

9.3 The Supplier reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases the Supplier will notify the Client in advance of any such substitution.

**10. Title**

10.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid the Supplier all amounts owing to the Supplier; and
- (b) the Client has met all of its other obligations to the Supplier.

10.2 Receipt by the Supplier 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.

10.3 It is further agreed that:

- (a) the Client only shall dispose of the Goods as the Supplier’s agent and shall not represent to any third party that it is in any way acting for the Supplier and the Supplier shall not be bound by any contract(s) between the Client and any third parties;
- (b) until ownership of the Goods passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;
- (c) the Client holds the benefit of the Client’s insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (d) 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 Supplier and must pay or deliver the proceeds to the Supplier on demand;
- (e) 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 Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
- (f) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
- (g) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred;
- (h) 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 Supplier; and
- (i) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

**11. Personal Property Securities Act 1999 (“PPSA”)**

11.1 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 Supplier to the Client (if any) and all Goods that will be supplied in the future by the Supplier to the Client.

11.2 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 Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

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- (b) indemnify, and upon demand reimburse, the Supplier 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 Supplier; and
  - (d) immediately advise the Supplier 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 Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 11.1 to 11.5.

**12. Security and Charge**

- 12.1 In consideration of the Supplier 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).
- 12.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 12.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

**13. Client's Disclaimer**

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

**14. Defects**

- 14.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Supplier 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 Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods.

**15. Returns**

- 15.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 14.1; and
  - (b) the Supplier has agreed in writing to accept the return of the Goods; and
  - (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
  - (d) the Supplier will not be liable for Goods which have not been stored or used in a proper manner; and
  - (e) 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.
- 15.2 The Supplier may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of fifteen percent (15%) of the value of the returned Goods plus any freight.
- 15.3 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

**16. Warranty**

- 16.1 Subject to the conditions of warranty set out in clause 16.2 the Supplier warrants that if any defect in any workmanship of the Supplier becomes apparent and is reported to the Supplier within twelve (12) months of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by clause 16.1 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 Client to properly maintain any Goods; or
    - (ii) failure on the part of the Client to follow any instructions or guidelines provided by the Supplier; 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 Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.

(c) in respect of all claims the Supplier shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

16.3 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier 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.

16.4 To the extent permitted by statute, no warranty is given by the Supplier as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Supplier shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

**17. Consumer Guarantees Act 1993**

17.1 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 Supplier to the Client.

**18. Intellectual Property**

18.1 Where the Supplier has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier.

18.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

18.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Client.

**19. Default and Consequences of Default**

19.1 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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

19.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).

19.3 Without prejudice to any other remedies the Supplier 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 Supplier may suspend or terminate the supply of Goods to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.

19.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

(a) any money payable to the Supplier becomes overdue, or in the Supplier'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.

**20. Cancellation**

20.1 The Supplier 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 Supplier shall repay to the Client any money paid by the Client for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

20.2 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 Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

20.3 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.

**21. Privacy Act 1993**

21.1 The Client authorises the Supplier or the Supplier'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.

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- (b) disclose information about the Client, whether collected by the Supplier from the Client directly or obtained by the Supplier 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.
- 21.2 Where the Client is an individual the authorities under clause 21.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.3 The Client shall have the right to request the Supplier for a copy of the information about the Client retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Client held by the Supplier.

**22. Unpaid Seller's Rights**

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

**23. General**

- 23.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier'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.
- 23.2 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 courts of Manukau in New Zealand.
- 23.3 The Supplier 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 Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 23.6 The Client agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier 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 Supplier to provide Goods to the Client.
- 23.7 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.
- 23.8 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.