

## 1. Definitions

### In these terms and conditions:

1.1 “Engineer” means Site Weld NZ (2023) Ltd and its successors and assigns.

1.2 “Customer” means 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 to be liable for the debts of the Customer on a principal debtor basis.

1.4 “Goods” has the same meaning as in section 119 of the Contract and Commercial Law Act 2017 and are goods supplied by the Engineer to the Customer (and where the context so permits includes any supply of Services).

1.5 “Services” means all services supplied by the Engineer to the Customer and includes any advice or recommendations (and where the context so permits includes any supply of Goods).

1.6 “Price” means the cost of the Goods as agreed between the Engineer and the Customer subject to clause 4 of these terms and conditions (which, in conjunction with any quotation form “the 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 will constitute acceptance of the Contract.

2.2 Where more than one Customer has entered into this Contract, those Customers will be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of this Contract by the Customer the terms and conditions are irrevocable and can only be varied 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 will 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 will be binding provided that the Customer accepts in writing the Engineer’s quote within thirty (30) days from the date the quote was provided to the Customer.

4.2 Any variation from the plan of scheduled works or specifications will be charged for in addition to the Engineer’s quote and will be shown as variations on the invoice. Payment for all variations must be made in full at 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 will be immediately due and payable.

4.4 Time for payment for the Goods will be of the essence and stated on the invoice, quotation or any other order forms. If no time is stated then payment is required on delivery of the Goods.

4.5 At the Engineer’s sole discretion, payment for approved Customers will be made by instalments in accordance with the Engineer’s delivery/payment schedule.

4.6 At the Engineer’s sole discretion, payment for approved Customers will be due twenty (20) days following the end of the month in which a statement is provided to the Customer via post or email at the addresses provided.

4.7 Payment will be made by cash, direct credit, or by any other method agreed between the Customer and the Engineer.

4.8 The Price will be plus GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quote provided

## 5. Delivery Of Goods

5.1 The Customer will make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. Unless specifically agreed in writing delivery of the Goods may be made by the Engineer to the Customer at the Engineer’s address (once the Engineer notifies the Customer the Goods are ready for collection).

5.2 Where there is no agreement that the Engineer will send the Goods to the Customer, 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 also deemed to be a delivery of the Goods to the Customer.

5.3 The costs of carriage and any insurance which the Engineer reasonably incurs, will be reimbursed by the Customer (without any set-off or other withholding whatsoever) and will be due on the date for payment of the Price. The carrier will be deemed to be the Customer’s agent.

5.4 The Engineer may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment will be invoiced and paid for in accordance with the provisions of this Contract.

5.5 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 Contract.

5.6 The failure of the Engineer to deliver on an agreed date will not entitle either party to treat this Contract as repudiated.

5.7 The Engineer will not be liable for any loss or damage due to failure by the Engineer to deliver the Goods (or any of them) promptly or at all.

## 6. Risk

6.1 All risk in the Goods passes to the Customer on delivery.

6.2 If any of the Goods are damaged or destroyed prior to title passing to the Customer, the Engineer is entitled, without prejudice to any of its other rights or remedies under this Contract (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 this Contract. The production of this Contract 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 will inspect the Goods on delivery and will within fourteen (14) days of delivery notify the Engineer as soon as reasonably practicable of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer will 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 fails to comply with these provisions the Goods will be conclusively presumed to be in accordance with the Contract and free from any defect or damage.

7.2 Subject to any applicable rights that the Customer might have under the Consumer Guarantees Act 1993, 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 will 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 will cease and the Engineer will 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 will 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 will be the current warranty provided by the manufacturer of the Goods. The Engineer will not be bound by nor responsible for any term, condition, representation or warranty given by the original manufacturer of the Goods.

8.4 In the case of second-hand Goods, the Customer acknowledges that they had full opportunity to inspect the same and that 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 will 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 will accrue daily from the date when payment becomes due until the date of payment at a rate of 2.5% compounding per calendar month and will 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 will 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 nominee’s 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 Contract. 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 will apply: An immediate amount of the greater of \$20.00 or 10.00% of the amount overdue will be levied for administration fees which sum will become immediately due and payable in addition to the interest payable under clause 9.1.

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;

(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;

(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 may 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 will, 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 will 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, will be kept separate until the Engineer has 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 will not be deemed to be payment until that form of payment has been cleared or recognised and until then the Engineer's ownership of rights in respect of the Goods continues.

10.3 It is further agreed that:

(a) Until ownership of the Goods passes from the Engineer to the Customer, the Engineer may give notice in writing to the Customer to return all or any of Goods to the Engineer. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods cease.

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

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

11.1 Upon agreeing to this Contract in writing the Customer acknowledges and agrees that:

(a) this Contract constitutes 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 might 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 applies to this Contract.

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 if they fail to do so authorises the Engineer to do so on their behalf.

#### 12. Security & Charge

12.1 Despite anything to the contrary contained in this Contract or any other rights which the Engineer may have:

(a) Where the Customer and/or the Guarantor (if any) is the owner of land 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 that land or any other asset to the Engineer or the Engineer's nominee to secure all amounts and other monetary obligations payable under this Contract. The Customer and/or the Guarantor acknowledge and agree that the Engineer (or the Engineer's nominee) will be entitled to lodge (where appropriate) a caveat against any such land, which is to be released once all payments and other monetary obligations payable have been met.

(b) If the Engineer elects to proceed in any manner in accordance with the above clause, the Customer and/or Guarantor 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, the Customer and/or the Guarantor (if any) irrevocably nominate 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 registrable or not) including such other terms and conditions as the Engineer and/or the Engineer's nominee think fit in their absolute discretion against the joint and/or several interests of the Customer and/or the Guarantor in any land or asset in favour of the Engineer and in the Customer's and/or Guarantor's name as may be necessary to secure the 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 Contract.

#### 13. Intellectual property

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

13.2 The Customer warrants that all designs or instructions provided 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 this Contract or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Engineer will promptly repay to the Customer any deposit paid in respect of the Price for those Goods. The Engineer will 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 will be liable for any costs incurred by the Engineer up to the time of cancellation and the Customer will have no rights to the Goods following cancellation.

#### 15. Privacy Act 2020

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 providers 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 2020.

15.3 The Customer has the right to request 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 To the extent permitted by law the Customer 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 them by any servant or agent of the Engineer and the Customer acknowledges that they buy the Goods relying solely upon their own skill and judgement.

#### 17. Unpaid Engineer's Rights

17.1 Where the Customer has left any item with the Engineer for repair, modification, exchange or for the Engineer to perform any other Service in relation to the item and the 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.

#### 18. Consumer Guarantees Act 1993

18.1 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).

#### 19. General

19.1 If any provision of this Contract is determined to be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

19.2 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.

19.3 The Engineer is 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 this Contract.

19.4 In the event of any breach of this Contract by the Engineer the remedies of the Customer is limited to damages. Under no circumstances will the liability of the Engineer exceed the Price of the Goods. To the extent permitted by law the Engineer's maximum liability under this contract is limited to the greater of the value of the Goods and \$10,000.

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

19.6 The Customer will not set off against the Price amounts due from the Engineer.

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

19.8 The Engineer reserves the right to review the Contract at any time. If, following any such review, there is to be any change in the Contract, that change will take effect from the date on which the Engineer notifies the Customer of such change.