

TERMS & CONDITIONS OF TRADE WITH STAINLESS DOWN UNDER NZ LIMITED

- 1. Definitions and Interpretation:** ‘Seller’ shall mean Stainless Down Under Ltd, its successors or any person acting on behalf of and with the authority of Stainless Down Under Ltd. ‘Us’, ‘our’, or ‘we’ refers to the Seller. ‘Customer’ shall mean the customer (i.e., the party purchasing goods or services) or any person acting on behalf of and with the authority of the customer. ‘You’ or ‘your’ refers to the Customer. ‘Goods’ shall mean any items supplied by the Seller to the Customer and described in any contract, invoice, quotation, estimate, order or other work authorisation. ‘Services’ shall mean all services supplied by the Seller to the Customer, including advice or recommendations, and referred to in any contract or other document as described for ‘Goods’ above. ‘Export sale’ is a sale to a customer located outside New Zealand. ‘Domestic sale’ is a sale to a customer located in New Zealand. ‘Associated party’ means a party having the same or substantially the same shareholders as us.
- 2. Acceptance:** Any instructions, order or work authorisation received by the Seller from the Customer for the supply of Goods or Services or acceptance by the Customer of Goods or Services supplied by the Seller shall constitute acceptance of the Terms and Conditions contained herein. Upon acceptance of these terms and conditions by the Customer the terms and conditions become irrevocable and can only be altered with the written consent of the Seller.
- 3. Price:** The price specified for goods or services is based on rates and costs at the date of contracting or quoting (as applicable). All prices are payable in the currency specified in the quote. Where no currency is stipulated the currency will be as specified by the Seller. Insurance and delivery costs are not included in the price and will be added to the price. Labour hours are estimated only and you will be charged at the number of hours multiplied by the labour hour rate unless a written quote designated as a “fixed price quote for labour hours” has been signed by us. Generally, we will quote prices exclusive of New Zealand Goods and Services Tax (GST). Unless the price specifies that GST is included, or we are satisfied that the goods will be zero-rated, we will require you to pay GST in addition to the price.
- 4. Variations:** Where alterations to the specifications of goods are made by the Customer after the order has been placed we reserve the right at our sole discretion to treat this as a variation to the order and to implement a surcharge for the variation. Under such circumstances the Seller will supply the Customer with a quote for the variation. Upon acceptance of the quote the new specification will be treated as a variation order and the payment of the surcharge becomes due in full, regardless of any agreed schedule of payments for the initial order.
- 5. Payment:** Generally, the price shall be payable in full prior to delivery of the goods or completion of services. We may invoice you in instalments prior to completion of a job. We may in our absolute discretion require payment of a deposit or that the price be paid wholly or partly in advance. We may also agree a payment milestone schedule in which case payments will be due in accordance with that schedule. We may suspend any credit and require you to pay all or part of the price at any time. We may elect not to sell goods or provide services to you if payment is not received in accordance with our requirements. You may not withhold the price or deduct or set-off any amount against the price. Where we hold a deposit, we may apply that deposit in reduction of any amount owed to us. For export transactions, payment shall be made by confirmed irrevocable letter of credit or by telegraphic transfer prior to delivery/milestone (as determined by us) unless otherwise agreed in writing. Letters of credit shall, unless otherwise agreed in writing, be established through a bank approved by us and shall be irrevocable, confirmed and without recourse, payable at sight and otherwise in a form satisfactory to us. Receipt by us of a cheque, bill of exchange or other negotiable instrument shall not constitute payment and you shall remain liable for the full contract price until such cheque, bill of exchange or negotiable instrument is paid in full.
- 6. Default interest/costs:** Where any invoiced amount remains unpaid to us on the due date we may require that you pay us interest at 1.5% per month (or part month) on that unpaid amount. Payment of default interest is without prejudice to our other rights and remedies. If we take action to recover any amount due from you, or to otherwise protect our interests in relation to moneys owed by you, you agree to pay all costs (including solicitor/client costs) incurred by us in that recovery process.
- 7. Title/recovery of goods:** Prior to receiving payment in full, title in any goods supplied by us will remain with us, even if the relevant goods have been built in or permanently attached. You consent to us retaining goods until we receive payment in full. If you fail to pay on the due date, or if you are in breach of these terms, you authorise us to enter any premises to recover the goods. You indemnify us for any losses or costs we incur in recovering such goods. In particular (but without limitation) you will be responsible for any damage we cause in recovering goods (including damage we cause in recovering goods that have been built in or permanently attached). If the premises are the premises of a third party, we will enter and recover the goods as your agent. We will be entitled to sell any goods held by us and apply the proceeds towards amounts owed by you if you have failed to pay any amount due within 14 days of written demand or within 60 days of an amount becoming due (whether demanded or not).
- 8. Security Interest:** You agree that, for the purposes of the Personal Properties Securities Act 1999 (“the PPSA”), we have a security interest in the goods supplied from time to time by us to you (as detailed in each invoice supplied to you) or in respect of which we provide services. You agree to sign any documents required for us to perfect our security interest under the PPSA and authorise us to sign any such documents as your attorney. To the extent legally permitted, you waive your rights as a debtor under the PPSA. In particular, you waive the right to receive a verification statement when we register a financing statement or a financing change statement.
- 9. Intellectual property:** Where you buy goods that are designed by us, we reserve all rights in respect of ownership of, and copyright in, the design of the goods. You may not copy the design of the goods and (without limiting our remedies) indemnify us for any loss we may suffer as a result of breach of this clause.

- 10. Delivery/Shipment:** Unless agreed otherwise in writing: (a) for domestic sales, goods shall be delivered when we make them available to you or your agent “ex-works” (at our premises); and (b) for export sales, goods shall be sold “Delivered at Place (DAP) to (...named place of destination)” as per Incoterms 2000. A copy of DAP Incoterms is available from us upon request. You agree to inspect the goods upon receipt to verify that they are in good order and condition and free of defects and to review any documentation (e.g., installation checklists, specifications) supplied with the goods. You are deemed to have knowledge of the contents of any documentation supplied with the goods.
- 11. Installation:** We are not responsible for installation unless we agree in writing. The warranty under clause 16 of these terms shall be void, and we shall have no responsibility for the goods, if the installation of the goods is not in accordance with specifications or installation guidelines provided by us. If we agree to install goods, the cost of installation shall be as agreed in writing or, if not agreed, shall be a reasonable charge as specified by us. Where we agree to install or commission goods, we reserve the right to charge additional fees for any modifications required during installation or commissioning. We may also charge additional fees where we have received inaccurate or incomplete information regarding the work required to complete installation or commissioning or where installation or commissioning is affected by matters beyond our control.
- 12. Timing:** We will do our best to meet agreed time frames for providing services or delivery of goods. However, timing is not guaranteed, and we are not liable for any delays or failure to supply. Under no circumstances will the Seller be liable for any consequential delays or costs incurred by the Customer due to failure of the Seller to deliver goods or services to the agreed time frame.
- 13. Standard of work:** All warranties implied by customary practice, at law or under statute are excluded to the extent legally permitted. You must not make any warranty inconsistent with these terms if you procure goods or services from us on behalf of another person or if you on-sell goods or services supplied by us.
- 14. Matters beyond our control:** While we take care in the selection of materials and suppliers, we are not responsible for any defect, failure or delay resulting from the provision of goods or services by, or the acts or omissions of, any third party. In addition, we are not liable for any defect, failure or delay in providing services, or for any loss, damage or deterioration to any goods, where the same arises due to a cause beyond our reasonable control. We shall cease to have any responsibility for goods if you modify or rework the goods after delivery or if you cause any damage to the goods during installation or during use of the goods.
- 15. Design/specification supplied by you:** We are not responsible for any loss, cost or damage resulting directly or indirectly from any error, mis-description or inaccuracy in any design, specification or other information supplied by you. We are not obliged to check any design, specification or information supplied by you. Where goods are intended to form part of other goods, or to operate in conjunction with other goods, you are responsible for ensuring that the design or specification for the goods to be manufactured (whether such design or specification is to be supplied by us or by you) is compatible with the other goods.
- 16. Standard warranty cover/extent of liability:** Without limiting clauses 10 to 15 (inclusive), our liability for any cost, loss, damage or claim arising directly or indirectly in relation to any goods or services supplied by us, whether arising in contract, tort (including negligence) or otherwise, shall be further limited in the manner set out in this clause. If you have not paid the price in full, we are not liable for any defect in relation to goods or services. We are only liable for defects in materials or workmanship and only for a period of 24 months from delivery of goods. Where you make a claim in relation to defective materials or workmanship, our responsibility is limited to (at our option) supplying goods or services to remedy the defective goods or workmanship or providing a refund or credit for the invoice value of the defective materials or workmanship. If goods supplied by us are considered not to be dimensionally correct whether through error in the overall dimensions or due to internal placement of fixtures or fittings or the misalignment of cosmetic or other features you must notify us within 30 days of receiving the goods, beyond which time you are deemed to have accepted the goods and to have waived all claims based on such discrepancies. You shall further be deemed to have accepted goods or services and to have waived all claims unless: (a) within 30 days of becoming aware of a defect you notify us in writing setting out details of the alleged defect; and (b) you arrange (at your cost in all respects) for the affected goods to be delivered or made available to us or to our nominated agent in New Zealand for inspection and, where applicable, remedial work. Where we incur costs in investigating a claim and we are not liable under these terms and conditions you indemnify us for all costs we incur in investigating the claim (including, without limitation, any travel, accommodation and associated labour hours). We are not responsible for any indirect, consequential or special loss, loss of profits or economic loss. We are not liable for death or personal injury arising in connection with goods or services supplied by us. Where we subcontract any part of a job to an associated party, that associated party shall have the benefit of these terms as if they were party to a contract with you.
- 17. Extended warranty:** If we sign a written warranty to extend our liability over and above clause 16, that extended warranty will apply to you notwithstanding that it is inconsistent with clause 16. However, under no circumstances will our liability exceed the invoiced value of the goods supplied.
- 18. Provisions applying to commercial customers:** You acknowledge that you acquire goods or services from us for use in a business or for resale or supply to other persons in trade. Accordingly, the provisions of the Consumer Guarantees Act 1993 do not apply.
- 19. No waiver:** No delay or failure by us to act or insist on any right shall be regarded as a waiver and every right remains enforceable and may be exercised by us at any time.
- 20. Contracting out:** To the extent that any clause limiting our liability terms is not legally enforceable, such provision shall be deemed to be modified in a manner such that the contract is enforceable but so that our liability is minimised to the extent permitted by law. Where we consider (in our sole discretion) that such modification would have the effect of materially altering the burden of the contract, we may by written notice terminate the contract.
- 21. Miscellaneous:** In these terms, headings are used for convenience only and shall not affect the interpretation of any clause. These terms of trade prevail over the terms of any purchase order or any terms, contract or correspondence submitted by you. To the extent of any inconsistency, these terms of trade also prevail over any estimate or quote provided to you. New Zealand law governs these terms of trade.