

# TERMS & CONDITIONS OF TRADE

## 1. DEFINITIONS

- 1.1 "Metalcraft" shall mean Metecno NZ Ltd trading as Metalcraft Insulated Panel Systems, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Metalcraft.
- 1.3 "Products" shall mean:
  - 1.3.1 all Products of the general description specified on the front of this agreement and supplied by Metalcraft to the Customer; and
  - 1.3.2 all Products supplied by Metalcraft to the Customer; and
  - 1.3.3 all inventory of the Customer that is supplied by Metalcraft; and
  - 1.3.4 all Products supplied by Metalcraft and further identified in any invoice issued by Metalcraft to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
  - 1.3.5 all Products that are marked as having been supplied by Metalcraft or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Metalcraft; and
  - 1.3.6 all of the Customer's present and after-acquired Products that Metalcraft has performed work on or to or in which Products or materials supplied or financed by Metalcraft have been attached or incorporated.
  - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Products and Services" shall mean all products, goods, services and advice provided by Metalcraft to the customer and shall include without limitation the provision of design and consultation services and the supply of all roofing products, installation and all associated products and services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by Metalcraft to the Customer.
- 1.5 "Price" shall mean the cost of the Products and Services as agreed between Metalcraft and the Customer and includes all disbursements or charges Metalcraft pay to others on the Customer's behalf subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions received by Metalcraft from the Customer for the supply of Products and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Metalcraft to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Products and Services provided by Metalcraft to any other party.
- 3.2 The Customer authorises Metalcraft to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Products and Services shall be deemed to be sold at the current amount as such Products and Services are sold by Metalcraft at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products and Services that is beyond the control of Metalcraft between the date of the contract and delivery of the Products and Services.

## 5. PAYMENT

- 5.1 Payment for Products and Services shall be made in full without deduction for any reason whatever on or before the 20<sup>th</sup> day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Metalcraft in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.
- 5.6 Any provision for a 'pay when paid' clause or a 'pay if paid' clause shall not apply to Metalcraft when Products and Services are provided by it.

## 6. QUOTATION

- 6.1 Where a quotation is given by Metalcraft for Products and Services:
  - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
  - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
  - 6.1.3 Metalcraft reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Products and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and Services.

## 7. RISK AND DELIVERY

- 7.1 The Products and Services remain at Metalcraft risk until delivery to the Customer.
- 7.2 Delivery of Products and Services shall be deemed complete when Metalcraft, or an agent including a manufacturer, gives possession of the Products and Services directly to the Customer or possession of the Products and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to Metalcraft making time of the essence.
- 7.4 Where Metalcraft delivers Products and Services to the Customer by instalments and Metalcraft fails to deliver or supply one or more instalments the Customer shall not have the right to cancel the contract but shall have the right to claim compensation as a severable breach.
- 7.5 The Customer will ensure that Metalcraft is provided with reasonable access to the delivery address together with adequate room for unloading. The Customer indemnifies Metalcraft against all costs and liabilities Metalcraft incurs with or arising out of the delivery or in unloading.

## 8. AGENCY

- 8.1 The Customer authorises Metalcraft to contract either as principal or agent for the provision of Products and Services that are the matter of this contract.
- 8.2 Where Metalcraft enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

## 9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Products and Services supplied by Metalcraft passes to the Customer only when the Customer has made payment in full for all Products and Services provided by Metalcraft and of all other sums due to Metalcraft by the Customer on any account whatsoever. Until all sums due to Metalcraft by the Customer have been paid in full, Metalcraft has a security interest in all Products and Services.
- 9.2 If the Products and Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Products and Services shall remain with Metalcraft until the Customer has made payment for all Products and Services, and where those Products and Services are mixed with other property so as to be part of or a constituent of any new Products and Services, title to these new Products and Services shall be deemed to be assigned to Metalcraft as security for the full satisfaction by the Customer of the full amount owing between Metalcraft and Customer.
- 9.3 The Customer gives irrevocable authority to Metalcraft to enter any premises occupied by the Customer or on which Products and Services are situated at any reasonable time after default by the Customer or before default if Metalcraft believes a default is likely and to remove and repossess any Products and Services and any other property to which Products and Services are attached or in which Products and Services are incorporated. Metalcraft shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Metalcraft may either resell any repossessed Products and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and Services and credit the Customer's account with the invoice value thereof less such sum as Metalcraft reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 9.4 Where Products and Services are retained by Metalcraft pursuant to clause 9.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 9.5 The following shall constitute defaults by the Customer:
  - 9.5.1 Non payment of any sum by the due date.
  - 9.5.2 The Customer intimates that it will not pay any sum by the due date.
  - 9.5.3 Any Products and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products and Services.
  - 9.5.4 Any Products and Services in the possession of the Customer are materially damaged while any sum due from the Customer to Metalcraft remains unpaid.
  - 9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
  - 9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
  - 9.5.7 Any material adverse change in the financial position of the Customer.
- 9.6 If the Credit Repossession Act applies to any transaction between the Customer and Metalcraft, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

## 10. SECURITY INTEREST FOR SERVICE PROVIDERS

- 10.1 The Customer gives Metalcraft a security interest in all of the Customer's present and after-acquired property that Metalcraft has performed services on or to or in which Products or materials supplied or financed by Metalcraft have been attached or incorporated.

## 11. PAYMENT ALLOCATION

- 11.1 Metalcraft may in its discretion allocate any payment received from the Customer towards any invoice that Metalcraft determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Metalcraft, payment shall be deemed to be allocated in such manner as preserves the maximum value of Metalcraft's purchase money security interest in the Products and Services.

## 12. LIABILITY

- 12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Metalcraft which cannot be law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Metalcraft, Metalcraft's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 12.2 Except as otherwise provided by clause 12.1 Metalcraft shall not be liable for:
  - 12.2.1 Any loss or damage of any kind whatsoever including loss of profits consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products and Services provided by Metalcraft to the Customer; and
  - 12.2.2 The Customer shall indemnify Metalcraft against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Metalcraft or otherwise, whether or not brought by any person in connection with any matter, act, omission, or error by Metalcraft its agents or employees in connection with the Products and Services.
- 12.3 Metalcraft shall have no liability for discrepancies between estimates that may have prepared for quantities based on plans or other information given by or on behalf of the Customer and quantities actually required. The Customer warrants it has verified and in any event accepts responsibility for the accuracy of quantities ordered as being in accordance with its requirements.

## 13. WARRANTY

- 13.1 Manufacturer's warranty applies where applicable.
- 13.2 Any written warranty that Metalcraft provide to the Customer will also form part of these terms and conditions of trade.
- 13.3 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to the Products and Services except where Products are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.
- 13.4 Metalcraft does not provide any warranty that the Products are fit and suitable for the purposes for which they are required by the Customer and shall not be liable if they are not.

## 14. COPYRIGHT AND INTELLECTUAL PROPERTY

- 14.1 Metalcraft owns and has copyright in all work, software, systems, solutions, drawings, designs, specifications, electronic data and documents produced by Metalcraft in connection with the Products and Services provided pursuant to this contract and the client may use the Products and Services only if paid for in full and for the purpose for which they were intended and supplied by Metalcraft.

## 15. CONSUMER GUARANTEES ACT

- 15.1 Subject to clause 15.2 the guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products and Services from Metalcraft for the purposes of a business in terms of section 2 and 43 of that Act.
- 15.2 Should Metalcraft breach any of its obligations to a Customer, then Metalcraft's liability to that Customer shall be limited to the greater of either:
  - 15.2.1 The costs of replacing the Products in respect of which the obligation has been breached with product or equivalent specification;
  - 15.2.2 The price for those Products paid by the Customer.

## 16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 16.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Metalcraft agreeing to supply Products and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Metalcraft the payment of any and all monies now or hereafter owed by the Customer to Metalcraft and indemnify Metalcraft against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

## 17. CLAIMS AND RETURN OF PRODUCTS

- 17.1 The Customer shall be deemed to have accepted the Products and Services provided unless the Customer notifies Metalcraft otherwise within 5 days of delivery of the Products and Services to the Customer.
- 17.2 Products will only be accepted for return with prior consent of Metalcraft. A 15% restocking fee applies. Returned Products must be accompanied by original invoice, in unused and undamaged condition and still in original packaging where applicable. The Customer is liable for all costs associated with the return. There will be no returns on customised orders.
- 17.3 In the event of damage in transit the Customer is required to send to Metalcraft a written request for replacement together with the delivery docket and evidence that this was endorsed at the time of receipt of Products that the Products were damaged prior to unloading.

## 18. CANCELLATION

- 18.1 Once an order has been accepted by Metalcraft, it can only be cancelled, varied or suspended (whether in whole or in part) upon the following terms and conditions:
  - 18.1.1 No cancellation, variation or suspension will be effective or recognised unless, and only to the extent that Metalcraft agrees in writing to such cancellation, variation or suspension;
  - 18.1.2 The Customer agrees to accept delivery of all Products held by Metalcraft in respect of such order and all Products in transit to or subsequently delivered to Metalcraft for such order;
  - 18.1.3 The Customer agrees to pay all costs, expenses and liabilities incurred by Metalcraft in consequence of the cancellation, variation or suspension of the order.

## 19. CAVEAT

- 19.1 The Customer charges in favour of Metalcraft as security for the Customer's obligations to Metalcraft, all right, title and interest in any land held now by the Customer alone or jointly with anyone or acquired by the Customer at any time hereafter. If the Customer defaults in payment of any amount owed to Metalcraft, the Customer specifically authorises Metalcraft to lodge a caveat against any such property and appoints Metalcraft to be the Customer's Attorney for this purpose.

## 20. ASSIGNMENT

- 20.1 In consideration of the goods supplied to the Customer by Metalcraft the Customer assigns to Metalcraft absolutely all the Customer's right title and interest in any debt which is due to the Customer by any third party the Customer has on sold to Products supplied by Metalcraft whether or not the amount of that debt due to the Customer by the third party comprises only a part of the amount of the debt for Products supplied by Metalcraft to the Customer.

## 21. MISCELLANEOUS

- 21.1 Metalcraft shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 21.2 Failure by Metalcraft to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Metalcraft has under this contract.
- 21.3 If any provision of this contract shall be invalid, void or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.4 The client shall not assign all or any of its rights or obligations under this contract without the written consent of Metalcraft.
- 21.5 Where these terms and conditions of trade are at variance with the order or instructions from the Customer these terms and conditions of trade shall prevail.
- 21.6 If required by Metalcraft the Customer will store Products and Services supplied by Metalcraft in a way that enables them to be identified as having been supplied by Metalcraft.

Accepted

Customer: \_\_\_\_\_

Date: \_\_\_\_\_

**The Customer agrees that it is bound by the Terms and conditions of sale on the reverse hereof.**