

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "MSL" shall mean Mercer Stainless Limited also trading as Mercer Products 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 MSL.
- 1.3 "Goods" shall mean:
 - 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by MSL to the Customer; and
 - 1.3.2 all Goods supplied by MSL to the Customer; and
 - 1.3.3 all inventory of the Customer that is supplied by MSL; and
 - 1.3.4 all Goods supplied by MSL and further identified in any Invoice issued by MSL to the Customer, which Invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Goods that are marked as having been supplied by MSL or that are stored by the Customer in a manner that enables them to be identified as having been supplied by MSL; and
 - 1.3.6 all of the Customer's present and after-acquired Goods that MSL has performed work on or to or in which Goods or materials supplied or financed by MSL 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 "Goods" shall mean all goods, products, services and advice provided by MSL to the Customer and shall include without limitation the manufacture and supply of stainless products and associated services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods by MSL to the Customer
- 1.5 "Price" shall mean the cost of the Goods as agreed between MSL and the Customer and includes all disbursements eg charges MSL pay to others on the Customer's behalf subject to clause 4 of this contract.
- 1.6 "Stock Items" shall mean manufactured items that are listed or illustrated in the current MSL wholesale price list.

2. ACCEPTANCE

- 2.1 Any instructions received by MSL from the Customer for the supply of Goods 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 MSL 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 Goods provided by MSL to any other party.
- 3.2 The Customer authorises MSL 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 orally the Goods shall be deemed to be sold at the current amount as such Goods are sold by MSL 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 Goods that is beyond the control of MSL between the date of the contract and delivery of the Goods

5. PAYMENT

- 5.1 Unless otherwise agreed in writing by MSL payment for Goods shall be made in full on or before the 20th 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 MSL 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.

6. QUOTATION

- 6.1 Where a quotation is given by MSL for Goods:
 - 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 and freight unless specifically stated to the contrary;
 - 6.1.3 MSL reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods are required in addition to the quotation or the quotation is subsequently varied the Customer agrees to pay for the additional cost of such Goods.

7. RISK AND CARRIAGE

- 7.1 The Goods remain at MSL's risk until delivery to the Customer.
- 7.2 Delivery of Goods shall be deemed complete when MSL gives possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission to the Customer. Where MSL arrange the carrier no liability for alleged damage during carriage will be considered by MSL unless the Customer endorses the delivery docket of the carrier with a notation of such damage.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Goods supplied by MSL passes to the Customer only when the Customer has made payment in full for all Goods provided by MSL and of all other sums due to MSL by the Customer on any account whatsoever. Until all sums due to MSL by the Customer have been paid in full, MSL has a security interest in all Goods.
- 8.2 If the Goods 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 Goods shall remain with MSL until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to MSL as security for the full satisfaction by the Customer of the full amount owing between MSL and Customer.
- 8.3 The Customer gives irrevocable authority to MSL to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after default by the Customer or before default if MSL believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. MSL 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. MSL may either resell any repossessed Goods 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 Goods and credit the Customer's account with the invoice value thereof less such sum as MSL reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4 Where Goods are retained by MSL pursuant to clause 8.3 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.
- 8.5 The following shall constitute defaults by the Customer:
 - 8.5.1 Non payment of any sum by the due date.
 - 8.5.2 The Customer intimates that it will not pay any sum by the due date.
 - 8.5.3 Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.
 - 8.5.4 Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to MSL remains unpaid.
 - 8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets.
 - 8.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
 - 8.5.7 Any material adverse change in the financial position of the Customer.

9. SECURITY INTEREST FOR SERVICE PROVIDERS

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

10. PAYMENT ALLOCATION

- 10.1 MSL may at its discretion allocate any payment received from the Customer towards any invoice that MSL 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 MSL, payment shall be deemed to be allocated in such manner as preserves the maximum value of MSL's purchase money security interest in the Goods.

11. DISPUTES AND RETURN OF GOODS AND STOCK ITEMS

- 11.1 Except where goods or stock items have been incorrectly supplied or are found to be faulty, goods or stock items will only be accepted for return by MSL if:
 - 11.1.1 MSL, at its sole discretion, has given its prior written consent to the return of such goods or stock items in the form of either a Returned Materials Advice ("RMA") Verification or other written confirmation issued by MSL;
 - 11.1.2 All goods or stock items accepted for return must be accompanied by a copy of the RMA Verification or other written confirmation issued by MSL;
 - 11.1.3 The goods or stock items are returned within thirty (30) days of the date of the invoice;
 - 11.1.4 Goods or stock items are returned in the same condition they were in when despatched by MSL to the Customer, including but not limited to the goods or stock items being in their original packaging;
 - 11.1.5 Except where goods or stock items have been incorrectly supplied or are found to be faulty, MSL will charge a handling and restocking fee of:
 - 15% of invoice value where goods or stock items are returned within fifteen (15) days of invoice date, or
 - 20% of invoice value where goods or stock items are returned after fifteen (15) days but before thirty (30) days of invoice date.
 - 11.1.6 No goods or stock items that have been modified in any manner at the request of the Customer will be accepted for return except where modified goods or stock items have been incorrectly supplied or are found to be faulty.

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 MSL which cannot by 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 MSL, MSL'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 MSL shall not be liable for:
 - 12.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods and Services by MSL to the Customer, including 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 Goods provided by MSL to the Customer; and
 - 12.2.2 The Customer shall indemnify MSL 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 MSL or otherwise, brought by any person in connection with any matter, act, omission, or error by MSL its agents or employees in connection with the Goods.

13. COPYRIGHT AND INTELLECTUAL PROPERTY

- 13.1 MSL owns and has copyright in all drawings, specifications, designs, software and other technical information produced and provided by it in connection with the Goods & Services provided pursuant to this contract and the client may use the Goods only if paid for in full and for the purpose for which they were intended and supplied by MSL.
- 13.2 The Customer warrants that any design or instruction given by the Customer to MSL shall not be such as will cause an infringement of any patent, registered design, trademark or copyright in the performance of the contract. The Customer agrees and undertakes to indemnify MSL for any loss or costs associated with such an infringement.

14. CONSUMER GUARANTEES ACT

- 14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from MSL for the purposes of a business in terms of section 2 and 43 of that Act.

15. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 15.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for MSL agreeing to supply Goods 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 MSL the payment of any and all monies now or hereafter owed by the Customer to MSL and indemnify MSL 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.

16. CANCELLATION

- 16.1 Any cancellation or suspension of any contract entered into by the Customer with MSL or any confirmed order for Goods and Services given shall not affect MSL's claim for the contracted price which, less any materials not yet purchased, shall immediately become due and payable to MSL.
- 16.2 MSL may at its sole discretion at any time and for any reason suspend or cancel a Customer's credit account without giving prior notice. Upon cancellation any amount owing by the Customer will immediately become due and payable to MSL.

17. NOTICES

- 17.1 Every notice required to be given under these terms and conditions of trade will be deemed to be given if delivered personally, posted or faxed to the intended recipient at his/her or its last known address or facsimile number.
- 17.2 Unsolicited email The Customer agrees/disagrees to receive promotional information electronically.

18. WARRANTY

- 18.1 MSL warrants that goods and stock items supplied are of merchantable quality. If goods or stock items are found to be defective MSL will at its discretion, elect whether to repair, replace or provide a refund to the Customer.
- 18.2 Notwithstanding clause 18.1 above, MSL will not be responsible for any goods or stock items damaged in transit that are not brought to MSL's attention within five (5) days of delivery.
- 18.3 Where any carrier rejects any damaged goods or stock items claim made by MSL as a result of a Customer claim for damage this rejection will in turn be deemed to be a rejection by MSL itself and any goods or stock items if credited by MSL will be charged in full and become payable by the Customer.

19. MISCELLANEOUS

- 19.1 MSL shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 19.2 Failure by MSL 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 MSL has under this contract.
- 19.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.4 Where the Customer and MSL have entered into any other agreement either verbally or in writing then these terms and conditions of trade shall take precedence over such an agreement.