

MSL STANDARD TERMS AND CONDITIONS OF SALE

The following terms shall be incorporated into each contract entered into between the Customer and MSL for the supply of Goods except to the extent expressly varied by signed agreement in writing between them.

1. PRICE

- 1.1 The price shall be increased by:
 - (a) the amount of any GST and other taxes and duties which may be applicable; and
 - (b) the amount of any increase in the cost of any items (including any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods prior to the date of delivery.
- 1.2 A contract is created and the Customer is bound to pay the price when MSL accepts the Customer's order in writing. Subject to clause 3.2, each accepted order shall, constitute a separate contract. A quotation does not create a binding contract until the Customer places an order which is then accepted by MSL.
- 1.3 Alterations to any price list shall be effective from the date specified by MSL and shall apply to all orders accepted by MSL on or after that date.

2. PAYMENT

- 2.1 Payment is due by the 20th of the month following the date of invoice.
- 2.2 MSL may impose a credit limit, and alter the credit limit without notice. Where the credit limit is exceeded, MSL may refuse to supply Goods to the Customer.
- 2.3 The Customer may not withhold payment or make any deductions from or set off any amount against any Amount Owing without MSL'S prior written consent.

3. DELIVERY

- 3.1 Delivery shall be made at MSL'S premises when the Goods are made available for despatch, or such other premises as agreed by the parties. If MSL arranges transportation, storage or insurance of the Goods for the Customer, MSL does this as the Customer's agent. Any liability or cost incurred by MSL in providing these services shall form part of the Amount Owing and shall be paid immediately by the Customer to MSL upon a claim being made.
- 3.2 MSL may deliver the Goods by instalments. Each instalment shall be treated as a separate contract subject to these terms. Failure to fully deliver the Goods shall not entitle the Customer to cancel any contract relating to the Goods.
- 3.3 Any time stated for delivery is an estimate only. MSL is not liable for any delay in delivery.

4. RISK AND SECURITY

- 4.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on delivery.
- 4.2 The Customer grants to MSL a security interest under the Personal Property Securities Act 1999 ("PPSA") in all the Goods MSL agrees to sell to the Customer under any contract as security for payment of the Amount Owing and for the performance from time to time of the Customer's other obligations to MSL under the relevant contract.
- 4.3 MSL may allocate all amounts received from the Customer in any manner it determines including any manner required to preserve any purchase money security interest in the Goods.
- 4.4 The Customer agrees that to the extent permissible under the PPSA, MSL excludes its obligation to the Customer under the PPSA in respect of any contract for the sale of Goods, or the security under such contracts, and the Customer waives all its rights against MSL to the extent permissible under the PPSA.
- 4.5 The Customer agrees that MSL shall have the right to complete and register a mortgage over any property owned by the Customer and/or any Guarantor of the Customer to secure the Amount Owing and MSL shall have the right at its discretion to place a caveat on any such property for the purpose of this clause and the Customer and/or the Guarantor hereby irrevocably appoints MSL as the attorney of the Customer and/or the Guarantor for the purpose of MSL exercising its rights under this clause whilst any Amount Owing remains outstanding.

5. WARRANTIES

- 5.1 If the Goods are acquired by the Customer for business purposes, the Consumer Guarantees Act 1993 ("CG Act") does not apply to those Goods.
- 5.2 The only guarantees applying to the Goods, are those agreed to and confirmed in writing by MSL.
- 5.3 The Customer may only reject goods that do not comply with the CG Act if the customer notifies MSL in writing within seven days following delivery and MSL can inspect the goods.
- 5.4 Goods that do not comply with the CG Act shall at MSL's discretion be repaired or replaced, or MSL may refund the price.
- 5.5 To the extent permitted by law, MSL excludes any liability for any Claim by the Customer or any other person, relating to or arising from the supply of Goods not confirmed by MSL in writing, and the Customer indemnifies MSL against any Claim, MSL'S liability for any Claim shall not exceed the price of the Goods.
- 5.6 The Customer agrees to indemnify MSL upon demand against any liability or cost incurred by MSL under the CG Act as a result of any breach by the Customer of any of its obligations under that Act.
- 5.7 Nothing in these terms is intended to contract out of the provisions of the CG Act except to the extent permitted by that Act.

6. DEFAULT

- 6.1 If an Event of Default occurs:
 - (a) MSL may suspend or terminate any contract; and
 - (b) any Amount Owing shall immediately become due and payable notwithstanding the due date for payment has not arisen; and
 - (c) MSL is entitled to recover from the Customer all costs that MSL may incur in attempting to collect the Amount Owing including full solicitor client costs and any other moneys owing by the Customer to MSL from time to time, whether in relation to any contract or on any other account whatsoever.
- 6.2 If the Customer does not pay the Amount Owing by the due date:
 - (a) MSL may charge the Customer a penalty of 1.5% per month calculated daily on the Amount Owing from due date until payment is received in full; and
 - (b) any discounts may be disallowed.

7. PAYMENT VALIDITY

- 7.1 The Customer acknowledges that MSL continues to supply the Customer on condition that all payments received by MSL from the Customer are valid and made in the ordinary course of the Customer's business.
- 7.2 The Customer further acknowledges that MSL receives all payments in the ordinary course of the Customer's business, in good faith and in the reasonably held belief as to

the validity of those payments unless and until the Customer gives notice in writing to MSL:

- (a) of the Customer's then inability to pay its due debts; and
 - (b) the Customer's intention or purpose in making any such payment is to enable MSL to receive more towards satisfaction of its debt than it would otherwise have received or have been likely to have received in any liquidation of the Customer; and until receipt of such notice, MSL shall be entitled to assume that all payments received from the Customer are made in the ordinary course of the Customer's business.
- 7.3 The Customer acknowledges that MSL has, by accepting each payment from the Customer, altered its position in reliance on the validity of that payment by:
 - a) delaying revocation of the authority granted by MSL to the Customer pursuant to the clauses above headed Risk and Security;
 - b) the continued supply by MSL to the Customer after the receipt of such payment, whether or not those Goods are paid for by the Customer;
 - c) using the payment for MSL own purposes; and
 - d) if the payment is made after the due date by foregoing its immediate right to take action against the Customer and any guarantor in relation to the late payment.

8. FORCE MAJEURE

- 8.1 Without limiting any other provisions of these terms, neither MSL nor the Customer shall be liable for any delay or failure in the performance of any obligation or the exercise of any right under these terms or for any loss or damage if such performance or exercise is prevented or hindered by a force majeure event. Nothing in this clause shall excuse payment of the Amount Owing as it becomes due under these terms.
- 8.2 The rights and obligations of either party which are affected by a force majeure event shall be suspended during the continuance of the event, and either party claiming to be affected by the event shall give immediate notice to the other party containing full particulars of the event. The party giving notice under this clause shall take all reasonable steps to mitigate the effects of the event. Neither party shall be required to remedy any force majeure event if to do so would require it contrary to its judgement to settle a strike or labour dispute or otherwise submit to the demands of opposing parties.

9. USE OF INFORMATION

- 9.1 The Customer agrees that MSL may obtain information about the Customer from the Customer or any other person (including other members of the MSL group of companies and any credit or debt collection agencies) in the course of MSL'S business, including credit assessment, debt collection and direct marketing activities.
- 9.2 Where the customer is a company, then all the directors of the company shall sign acceptance of these terms and in so doing agree that MSL may obtain information about each individual director under the same provisions of clause 9 of these terms.
- 9.3 The Customer agrees that MSL may use any information it has about the Customer for credit assessment and debt collection purposes, and give that information to any other person, including any credit or debt collection agency and other members of the MSL group of companies. The Customer agrees that any other information collected by MSL about the Customer is accessed or collected for the use of any member of the MSL group of companies in the course of its business, including direct marketing activities.
- 9.4 The Customer must notify MSL of any change in circumstances that may affect the accuracy of any information provided by the Customer to MSL or the MSL group of companies.

10. OTHER AGREEMENTS

- 10.1 If there is any inconsistency between these terms and any order submitted by the Customer (whether in writing, verbally or by Electronic Data Interchange (EDI)) or any other arrangement between the parties, these terms prevail unless otherwise expressly agreed in writing by the parties.

11. WAIVER

- 11.1 If MSL exercises or fails to exercise any right or remedy available to it, this shall not prejudice MSL'S rights in exercising that or any other right or remedy unless expressly waived by MSL in writing.

12. DIMENSIONS, PLANS AND SPECIFICATIONS

- 12.1 All customary building industry tolerances shall apply to the dimensions and measurements of Goods unless MSL and the Customer agree otherwise in writing.
- 12.2 MSL shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
- 12.3 If the giving of an estimate or quotation for the supply of Goods involves MSL estimating measurements and quantities, the Customer must verify the accuracy of such estimate or quotation before a contract is made.
- 12.4 Should the Customer require any changes to MSL estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate, before placing an order based on that estimate, and in the case of a quotation, before acceptance of that quotation.
- 12.5 Where the Customer requests changes to be made to estimated quantities or measurements after MSL has accepted the Customer's order in writing, the price shall be adjusted appropriately and any estimated delivery date rescheduled.

13. PRODUCT RETURNS

- 13.1 MSL at its complete discretion may allow the Customer to return Goods other than defective or non-complying Goods, and MSL reserves the right to charge a return fee up to 40% of the price of such Goods and relevant freight charges.

14. ASSIGNMENT

- 14.1 MSL is entitled at any time to assign to any other person all or part of the debt owing by the Customer to MSL.

15. PATENTS

- 15.1 The customer warrants that any design or instruction furnished to MSL and the use of that will not cause MSL to infringe any patent, registered design or trademark in the execution of the customers order.
- 15.2 The customer agrees to indemnify MSL against infringement or unauthorised use of patents, trademarks, designs or copyrights arising out of the manufacture and use of the goods. Furthermore it is specially agreed that the sale and purchase of the goods does not confer on the customer any license or rights under any patents, trademarks, designs or copyrights which are the property of MSL or of a third party.

16. REVIEW OF TERMS

- 16.1 MSL reserves the right to review any of these terms at any time. Any change will take effect from the next transaction following the date on which MSL notified the Customer of such change.

17. WORDS USED IN THESE STANDARD TERMS AND CONDITIONS OF SALE

- 17.1 "Amount Owing" means the price charged by MSL for the Goods, and any other sums which MSL is entitled to charge under these terms which remain unpaid.
- 17.2 "MSL" means Manufacturing Suppliers Ltd, including its successors and assigns.
- 17.3 "Claim" includes any claim:
- (a) for damages of any kind, including, but not limited to damages for breach of contract;
 - (b) for loss of profits; or
 - (c) for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly; and
 - (d) for compensation, demand, remedy, liability or action.
- 17.4 "Customer" means the person purchasing the Goods from MSL pursuant to these terms, including that person's successors and permitted assigns.
- 17.5 An "Event of Default" means an event where:
- (a) the Customer fails to comply with these terms or any other contract with MSL; or
 - (b) the Customer commits an act of bankruptcy; or
 - (c) the Customer enters into any composition or arrangement with its creditors; or
 - (d) if the Customer is a company:
 - (i) the Customer does anything which would make it liable to be put into liquidation; or
 - (ii) a resolution is passed or an application is made for the liquidation of the Customer;

or
(iii) a receiver or statutory or official manager is appointed over all or any of the Customer's assets.

- 17.6 "force majeure event" means any event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under these terms.
- 17.7 "Goods" means all goods ordered by the Customer and supplied by MSL under these terms (as detailed on each invoice issued to the Customer) and includes any services forming part of the supply of goods.
- 17.8 "person" includes a corporation, association, firm, company, partnership or individual.
- 17.9 "price" means the purchase price of the Goods and any costs payable by the Customer under clauses 1 and 3.1 of these terms.
- 17.10 "these terms" means these MSL standard terms and conditions of sale;
- 17.11 References to any legislation includes as amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.
- 17.12 These terms shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

CUSTOMER ACCEPTANCE

- I/We : (a) confirm that the information provided is true and correct and acknowledge that MSL may terminate this agreement if such information is incorrect ;
- (b) agree to be bound by all the terms and conditions of trading herein ;
- (c) confirm that no information has been withheld of which MSL should be aware in considering this application for credit ;
- (d) agree and understand that MSL may obtain, use and disclose information about me/us for credit assessment, debt collection and/or marketing activities ;
- (e) We, the Directors, hereby consent to Manufacturing Suppliers Ltd obtaining, using and disclosing personal information about each of us for credit assessment, debt collection and marketing activities in the course of assessing this application and for the duration of the account;
- (f) Understand that my/our/company's ownership of goods is affected by the "Risk and Security" section in the Manufacturing Suppliers Ltd standard terms and conditions of sale.

Signed by the applicant(s) or director(s) (if a company) or all the partners or trustees.

1. (Signature) _____ 2. _____ 3. _____

1. (Please print full name) _____ 2. _____ 3. _____

1. (Office held) _____ 2. _____ 3. _____

In the presence of: _____ In the presence of: _____ In the presence of: _____
(Signature) (Signature) (Signature)

Full Name of Witness: _____ Full Name of Witness: _____ Full Name of Witness: _____

Address: _____ Address: _____ Address: _____

Dated this _____ day of _____ 20 _____

FOR OFFICE USE ONLY	
NEW ACCOUNT CODE:	FREIGHT:
AREA:	PRICE LEVEL:
REP:	REP SIGNATURE:
ACCOUNT APPROVED:	

DEED OF GUARANTEE & INDEMNITY

In favour of **MANUFACTURING SUPPLIERS LTD** ("the Company")

Guarantor(s): Full Name: _____ Full Name: _____
Residential Residential
Address: _____ Address: _____

_____ (the "Guarantor")
Customer: _____ (the "Customer")

IN CONSIDERATION of the Company at the request of the Guarantor (as is now acknowledged) providing credit to, and extending other valuable consideration to, the Customer:

1. I/We shall be answerable to and responsible to the Company for due payment by the Customer for all such goods and/or services as may be supplied from time to time by the Company to the Customer, together with all interest charges and recovery costs charged by the Company to the Customer.
2. This agreement shall be a continuing guarantee to the Company for all debts whatsoever and whensoever contracted by the Customer in respect of all goods supplied to the Customer by the Company and the obligations under this guarantee shall not be affected by any of the following:
 - (a) Any indulgence or extension of time given to the Customer or any variation of the terms of contract as between the Company and the Customer.
 - (b) The death or bankruptcy or winding up of the Customer or any of the Guarantors hereunder.
 - (c) The Customer's liability under the contract for supply being or becoming invalid illegal or unenforceable through any act or omission or in terms of any legislation:
 - (d) The release or discharge of or any indulgence extended to any of the Guarantors by the Company.
3. "The Guarantor agrees that the Company shall have the right and liberty to complete and have registered a MORTGAGE over any property owned by the Guarantor to secure monies owed by the Customer or the Guarantor and the Company shall also have the right to place a caveat on any such property for the purpose of this provision and the Guarantor hereby irrevocably appoints the Company as the Guarantor's attorney for the purpose of executing such mortgage."
4. In the event of there being more than one Guarantor, then the obligations of the Guarantors shall be joint and several and the liability of the parties executing the guarantees shall not be affected by the refusal or failure of any of the intended Guarantors to sign the guarantee.
5. Although as between the Customer and the Guarantor, the Guarantor may be surety only, yet as between the Guarantor and the Company the Guarantor shall be deemed to be a principal debtor and shall not be released by any matter or thing the happening of which would otherwise release one liable as a surety only.

DATED the _____ day of _____ 20 _____

SIGNED by _____ SIGNED by _____

ALSO PRINT NAME _____ ALSO PRINT NAME _____

in the presence of _____ in the presence of _____

Full Name of Witness _____ Full Name of Witness _____

Witness Address _____ Witness Address _____