

CONDITIONS OF SALE

These Conditions of Sale apply whenever Shearmac Aluminium & Joinery Limited ("Seller") supplies any goods or services to any person ("Buyer"), unless expressly agreed otherwise in writing. By requesting the supply of goods or services from the Seller, the Buyer acknowledges and agrees to these Conditions of Sale.

1 THE AGREEMENT

- 1.1 These Conditions of Sale, and the Seller's quotation or other sales confirmation issued by the Seller ("the Quotation"), constitute the entire agreement between the parties for the supply of the goods and services referred to in the Quotation and exclude (to the extent permitted by law) all other representations, promises, undertakings, terms, conditions and warranties (whether express or implied), (together, "the Agreement").
- 1.2 Once the Quotation is accepted by the Buyer, there shall be a binding contract with the Seller which may be varied or cancelled only with the written agreement of the parties (subject to clause 7.4).

2 SUPPLY

- 2.1 Goods and services will be supplied on the basis, and to the location, set out in the Quotation (or as otherwise agreed in writing)
- 2.2 Any supply date given is an estimate only. The Seller is not liable for any delay (howsoever caused). The Seller may supply the goods and services before and after any given date, including by instalments.
- 2.3 Unless otherwise agreed in writing, supply "At Seller's Premises" of the goods, or of any instalment of the goods, shall be complete immediately the Seller notifies the Buyer that the Goods are complete and available for removal from the Seller's premises. If the Buyer fails within 5 working days of such notice to uplift the goods, the Seller may, at its sole discretion, store the goods or transport them to the installation premises charging all associated storage or transportation costs to the Buyer.
- 2.4 Supply "To Installation Premises" shall be complete upon the goods, or any instalment of the goods, being unloaded at those premises.
- 2.5 Supply "By Installation at Installation Premises" shall be complete upon the goods, or any instalment of the goods, having been installed in a proper and tradesmanlike manner. The Buyer must:
- (a) provide the Seller, and its contractors and employees, in a timely manner with all-weather access to the installation premises and other facilities as reasonably required by the Seller to supply and install the goods;
 - (b) obtain and maintain all necessary consents and approvals required by applicable law in respect of the supply and installation of the goods and notify the Seller of any conditions relating to those consents and approvals;
 - (c) ensure that the installation premises are safe for installation of the goods, including taking all practicable steps to avoid or minimise any health and safety risks and notifying the Seller of all matters and things at those premises which might constitute a hazard.

3 SPECIFICATIONS, PRICE AND PAYMENT

- 3.1 Any quoted price is calculated using costs at date of Quotation, and is subject to any increased or additional applicable costs, taxes or duties arising between the date of Quotation and the date of supply.
- 3.2 Unless the Seller has already measured the structure, the quantities and measurements in the Quotation are based on specifications supplied by the Buyer and if the Seller finds any

inaccuracy in those specifications, or any unforeseen site conditions at the installation premises or consent conditions which result in increased cost to the Seller, the Seller or consent conditions may recalculate the price payable by the Buyer.

- 3.3 Before manufacture of the goods begins, the Buyer may request an alteration to the specifications for the goods provided that the alteration will not (in the Seller's sole opinion) unreasonably interfere with the Seller's manufacturing programme and the Seller may recalculate the price payable by the Buyer.
- 3.4 The Buyer warrants that any designs, drawings or specifications which the Buyer provides to the Seller will not infringe any intellectual property rights of any third party. The Buyer indemnifies the Seller against any liability the Seller may incur as a result of its use of those designs, drawings and specifications.
- 3.5 The Seller may withdraw a Quotation before it is accepted and, in any event, a Quotation will lapse, without notice, 30 days after it is given.
- 3.6 The Buyer must pay all amounts set out in each Seller invoice, in full, without any set-off or deduction, by the due date and in the manner specified on the invoice.
- 3.7 If any amount payable under this Agreement is not paid by the due date, without prejudice to any other rights or remedies the Seller may have:
- (a) The Seller may cancel or suspend the supply of any goods or services;
 - (b) Any discount offered to the Buyer may be withdrawn, in which case the Buyer will be liable for the full, undiscounted, invoiced price;
 - (c) The Buyer will, on demand, pay interest at 2% above the current overdraft rate charged by the Seller's principal trading bank, calculated on a daily basis from the due date until payment is received in full and accruing both before and after judgment;
 - (d) The Buyer shall be liable to pay all expenses and legal costs of the Seller (including those calculated as between solicitor and client) in recovering any outstanding payment and interest.
- 3.8 Each invoice issued by the Seller is a payment claim under the Construction Contracts Act 2002. The Seller may issue invoices at any time after acceptance of a Quotation.
- 3.9 The Seller is a participant in the Smart-Trade™ rewards programme and may, at its discretion, award "Points" to programme members for the purchase of goods or services provided those goods and services are paid for when due and the Buyer otherwise complies with these Conditions of Sale (and any other agreement with the Seller). The Smart-Trade™ rewards programme is operated by a third party and governed by separate terms and conditions. The Seller has no involvement in or responsibility for the operation of the programme.

4 TITLE AND RISK

- 4.1 Until all amounts owing to the Seller by the Buyer and any of the Buyer's Related Companies (as defined in the Companies Act 1993) have been paid (in cash or cleared funds):
- (a) All property in the goods supplied shall remain with the Seller;
 - (b) The Buyer must hold the goods as bailee. The Buyer (or its contractor) may install the goods only to a temporary and incomplete extent and so as to allow identification and removal without any damage to any other property; and

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- (c) The Seller may retain any documentation relating to the goods, including producer statements.
- 4.2 Immediately supply has occurred in accordance with clause 2, risk of any loss, damage or deterioration of or to the Goods supplied shall pass to the Buyer.
- 5 DEFECTS**
- 5.1 Where goods are subject to a separate manufacturer's warranty, the Seller will pass on the benefit of that warranty to the Buyer where the Seller is able to do so. Unless expressly agreed otherwise in writing, all other representations and warranties in relation to the goods or services, whether express or implied, are excluded to the maximum extent permitted by law.
- 5.2 If the Seller is liable for any defect in the goods or services, its liability is limited, at the Seller's option, to either repairing or replacing the defective goods, re-performing the defective services; or refunding the price paid by the Seller for the defective goods or services.
- 5.3 Any and all claims in respect of goods or services supplied or these Conditions of Sale must be notified in writing to the Seller within 7 days of supply of the goods or services. Any claims not made within this timeframe will be invalid and the Seller will have no liability whatsoever in respect of such claims. The Seller shall be given reasonable access to investigate any claim, and may, at its discretion, remove the relevant goods to its premises.
- 5.4 The Seller shall not be liable for any defect arising from fair wear and tear, wilful damage, negligence, extreme weather conditions, failure to follow the Seller's (or manufacturer's) recommended maintenance programme or other instructions for use, failure to use the Seller's (or manufacturer's) recommended flashings and pre-cladding trim preparation system, misuse, or any alteration or repair of the goods not authorised by the Seller, nor for any defect arising from a drawing, design or specification supplied by the Buyer.
- 5.5 Notwithstanding any other provision of this Agreement, the Seller's maximum aggregate liability arising out of or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, will not exceed the price paid by the Buyer for the goods or services the subject of the relevant claim. The Seller will not in any circumstances be liable for any indirect or consequential loss, loss of profit, savings or goodwill or special or exemplary damages.
- 6 SECURITY AND INDEMNITY**
- 6.1 The Seller acknowledges the retention of title in clause 4 creates a security interest in the goods and their proceeds under the Personal Property Securities Act 1999 ("PPSA"). The Buyer will do all things and provide all further assurances reasonably required by the Seller to enable the Seller to register and perfect that security interest and obtain and maintain a first ranking priority position over the goods and their proceeds. In default of doing so, the Buyer in consideration of the provision of or agreement to provide credit appoints the Seller and every officer of the Seller as its attorney to do all things contemplated by this clause. The Buyer must advise the Seller immediately in writing of any proposed change in the Buyer's name or other registration details for the security interest. To the maximum extent permitted by applicable law, the parties agree that:
- (a) The Buyer waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest;
- (b) The Buyer waives its rights and, with the Seller's agreement, contracts out of Buyer's rights under the sections referred to in section 107(2) of the PPSA; and
- (c) Nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Agreement.
- 6.2 If: (i) the Buyer breaches these Conditions of Sale (or any other agreement with the Seller); (ii) the Buyer suffers any insolvency event (including any act of bankruptcy, the inability to pay its debts as they fall due, the appointment of a receiver, liquidator or statutory manager or making or attempting an arrangement or composition with its creditors); (iii) any event occurs or information becomes known to the Seller which, in the Seller's opinion, might materially affect the Buyer's creditworthiness, the Buyer's ability or willingness to comply with its obligations under these Conditions of Sale (or any other agreement with the Seller) or place the goods "at risk" (as defined in the PPSA), then without limiting any other right or remedy the Seller may have, the Seller may:
- (a) suspend or terminate the supply of goods and services (in whole or in part) permanently or until the Buyer pays a deposit satisfactory to the Seller with the balance of the purchase price for the goods and services due prior to supply (in which case the terms of Supply shall be ex-factory and clause 2.3 shall apply notwithstanding anything else in this Agreement); or
- (b) enter the premises where the goods are located and take possession of and remove the goods. The Buyer will procure that the Seller has all necessary rights to enable, and indemnifies the Seller against all liabilities, expenses and costs (including solicitor-client) arising from, such entry and removal.
- 7 GENERAL**
- 7.1 Where goods and services are supplied and acquired in trade and the Buyer is in trade, the parties agree that the Consumer Guarantees Act 1993 does not apply.
- 7.2 If any provision or any part of any provision, of this Agreement is, or becomes invalid or unenforceable, that invalidity or unenforceability shall not affect the other provisions, and part provisions (if any), of this Agreement, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable part of this Agreement.
- 7.3 The Seller is not liable for any loss or damage or any failure or delay in the performance of its obligations caused by any event or circumstances beyond the Seller's reasonable control.
- 7.4 The Seller may vary these Conditions of Sale from time to time. Any such variation will be effective from the date specified by the Seller in any written notice provided by the Seller or published on the Seller's website, but will not apply to any Quotation accepted by the Buyer prior to such effective date unless the Seller notifies the Buyer accordingly (in which case the Buyer will be deemed to have accepted such variation unless the Buyer cancels the Quotation within 7 days from receipt of such notification).
- 7.5 The Buyer may not assign any of its rights and obligations to any person without the prior written consent of the Seller.
- 7.6 This Agreement is governed by New Zealand law. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.