

# TERMS & CONDITIONS OF TRADE

## 1. DEFINITIONS

- 1.1. "MHM NZ" shall mean MHM New Zealand Limited 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 MHM NZ.
- 1.3. "Goods" shall mean:
  - 1.3.1. all Goods of the general description specified on the front of this agreement and supplied by MHM NZ to the Customer; and
  - 1.3.2. all Goods supplied by MHM NZ to the Customer; and
  - 1.3.3. all inventory of the Customer that is supplied by MHM NZ; and
  - 1.3.4. all Goods supplied by MHM NZ and further identified in any invoice issued by MHM NZ 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 MHM NZ or that are stored by the Customer in a manner that enables them to be identified as having been supplied by MHM NZ; and
  - 1.3.6. all of the Customer's present and after-acquired Goods that MHM NZ has performed work on or to or in which Goods or materials supplied or financed by MHM NZ 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 MHM NZ 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 MHM NZ to the Customer.
- 1.5. "Price" shall mean the cost of the Goods as agreed between MHM NZ and the Customer and includes all disbursements eg charges MHM NZ 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 MHM NZ wholesale price list.

## 2. ACCEPTANCE

- 2.1. Any instructions received by MHM NZ 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 MHM NZ 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 MHM NZ to any other party.
- 3.2. The Customer authorises MHM NZ 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 Goods shall be deemed to be sold at the current amount as such Goods are sold by MHM NZ 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 MHM NZ between the date of the contract and delivery of the Goods.

## 5. PAYMENT

- 5.1. Unless otherwise agreed in writing by MHM NZ 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 MHM NZ 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 electronic payments is deemed payment in full. Cheques, bill of exchange, or other negotiable instruments are not valid forms of payment and will not be accepted (these are no

longer valid forms of payment by New Zealand banks).

- 5.5. A deposit may be required.

## 6. QUOTATION

- 6.1. Where a quotation is given by MHM NZ 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, duties, tariffs and freight unless specifically stated to the contrary;
  - 6.1.3. MHM NZ 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 MHM NZ's risk until delivery to the Customer.
- 7.2. Delivery of Goods shall be deemed complete when MHM NZ 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 MHM NZ arrange the carrier no liability for alleged damage during carriage will be considered by MHM NZ 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 MHM NZ passes to the Customer only when the Customer has made payment in full for all Goods provided by MHM NZ and of all other sums due to MHM NZ by the Customer on any account whatsoever. Until all sums due to MHM NZ by the Customer have been paid in full, MHM NZ 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 MHM NZ 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 MHM NZ as security for the full satisfaction by the

Customer of the full amount owing between MHM NZ and Customer.

- 8.3. The Customer gives irrevocable authority to MHM NZ 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 MHM NZ 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. MHM NZ 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. MHM NZ 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 MHM NZ reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4. Where Goods are retained by MHM NZ 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 MHM NZ 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. 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 MHM NZ a security interest in all of the Customer's present and after-acquired property that MHM NZ has performed services on or to or in which Goods and Services or materials supplied or financed by MHM NZ have been attached or incorporated.

## 10. PAYMENT ALLOCATION

- 10.1. MHM NZ may at its discretion allocate any payment received from the Customer towards any invoice that MHM NZ 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 MHM NZ, payment shall be deemed to be allocated in such manner as preserves the maximum value of MHM NZ'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 MHM NZ if:
- 11.1.1. MHM NZ, 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 MHM NZ;
  - 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 MHM NZ;
  - 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 MHM NZ 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, MHM NZ will charge a handling and restocking fee of:
    - 11.1.5.1. 15% of invoice value where goods or stock items are returned within fifteen (15) days of invoice date, or
    - 11.1.5.2. 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 MHM NZ 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 MHM NZ, MHM NZ'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 MHM NZ 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 MHM NZ 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 MHM NZ to the Customer; and
  - 12.2.2. The Customer shall indemnify MHM NZ 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 MHM NZ or otherwise, brought by any person in connection with any matter, act, omission, or error by MHM NZ its agents or employees in connection with the Goods.

## 13. COPYRIGHT AND INTELLECTUAL PROPERTY

- 13.1. MHM NZ, 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 MHM NZ.
- 13.2. The Customer warrants that any design or instruction given by the Customer to MHM NZ

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 MHM NZ 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 MHM NZ 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 MHM NZ 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 MHM NZ the payment of any and all monies now or hereafter owed by the Customer to MHM NZ and indemnify MHM NZ 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 MHM NZ or any confirmed order for Goods and Services given shall not affect MHM NZ's claim for the contracted price which, less any materials not yet purchased, shall immediately become due and payable to MHM NZ.
- 16.2. MHM NZ 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 MHM NZ.

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

## 19. MISCELLANEOUS

- 19.1. MHM NZ 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 MHM NZ 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 MHM NZ 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 MHM NZ 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.

## 20. INTERPRETATION

- 20.1 Unless and except to the extent expressly stated otherwise the MHM Firm Proposal (if any), if there is any difference, inconsistency, or ambiguity among the provisions of the Supply Agreement, precedence shall be given, **first**, to the MHM Firm Proposal; **second**, to any Change Orders (if any); **Third**, to the Purchase Order; **forth**, to any Special Terms and Conditions (if any); **fifth** to any Master Agreement or any other Agreements and Documents (if any). Unless specified otherwise in a Change Order, the Supply Agreement (if any), the Purchase Order, any Exceptions, any Special Terms and Conditions or any Other Agreement and Document, any term which has a meaning assigned to it in these General Terms and Conditions shall have such meaning in all parts of the MHM Firm Proposal.