

Fin Sheet Metals Limited - Terms & Conditions of Trade

1. Definitions

- 1.1 "Fin Sheet Metals" means Fin Sheet Metals Limited, its successors and assigns or any person acting on behalf of and with the authority of Fin Sheet Metals Limited.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by Fin Sheet Metals to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between Fin Sheet Metals and the Customer in accordance with clause 2 below.
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 1.2 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Customer does not wish to allow Cookies to operate in the background when using Fin Sheet Metals' website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.

2. Price and Payment

- 2.1 The Price shall be as indicated on invoices provided by Fin Sheet Metals to the Customer in respect of the Goods supplied.
- 2.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation, or any other order forms. If no time is stated then payment shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 2.3 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Fin Sheet Metals an amount equal to any GST Fin Sheet Metals must pay for any supply by Fin Sheet Metals under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

3. Risk

- 3.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 3.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Fin Sheet Metals is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Fin Sheet Metals is sufficient evidence of Fin Sheet Metals' rights to receive the insurance proceeds without the need for any person dealing with Fin Sheet Metals to make further enquiries.

4. Title to Goods (Including any incidental items supplied as part of any Services)

- 4.1 Fin Sheet Metals and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Fin Sheet Metals all amounts owing to Fin Sheet Metals; and
- (b) the Customer has met all of its other obligations to Fin Sheet Metals.
- 4.2 Receipt by Fin Sheet Metals of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 4.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 4.1 that the Customer is only a bailee of the Goods and must return the Goods to Fin Sheet Metals on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Fin Sheet Metals and must pay to Fin Sheet Metals the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Fin Sheet Metals and must pay or deliver the proceeds to Fin Sheet Metals on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Fin Sheet Metals and

must sell, dispose of or return the resulting product to Fin Sheet Metals as it so directs.

- (e) the Customer irrevocably authorises Fin Sheet Metals to enter any premises where Fin Sheet Metals believes the Goods are kept and recover possession of the Goods.
- (f) Fin Sheet Metals may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Fin Sheet Metals.
- (h) Fin Sheet Metals may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

5. Personal Property Securities Act 1999 ("PPSA")

- 5.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Fin Sheet Metals for Services – that have previously been supplied and that will be supplied in the future by Fin Sheet Metals to the Customer.
- 5.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Fin Sheet Metals may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Fin Sheet Metals for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Fin Sheet Metals.
- 5.3 Fin Sheet Metals and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 5.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 5.5 Unless otherwise agreed to in writing by Fin Sheet Metals, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 5.6 The Customer shall unconditionally ratify any actions taken by Fin Sheet Metals under clauses 5.1 to 5.5.

6. Default and Consequences of Default

- 6.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Fin Sheet Metals' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 6.2 If the Customer owes Fin Sheet Metals any money the Customer shall indemnify Fin Sheet Metals from and against all costs and disbursements incurred by Fin Sheet Metals in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Fin Sheet Metals' collection agency costs, and bank dishonour fees).
- 6.3 Further to any other rights or remedies Fin Sheet Metals may have under this contract, if a Customer has made payment to Fin Sheet Metals by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Fin Sheet Metals under this clause 6 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

7. Security and Charge

- 7.1 In consideration of Fin Sheet Metals agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 7.2 The Customer indemnifies Fin Sheet Metals from and against all Fin Sheet Metals' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Fin Sheet Metals' rights under this clause.
- 7.3 The Customer irrevocably appoints Fin Sheet Metals and each director of Fin Sheet Metals as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 7 including, but not limited to, signing any document on the Customer's behalf.

8. Privacy Policy

- 8.1 All emails, documents, images or other recorded information held or used by Fin Sheet Metals is Personal Information as defined and referred to in

Fin Sheet Metals Limited - Terms & Conditions of Trade

clause 8.3 and therefore considered confidential. Fin Sheet Metals acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Fin Sheet Metals acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Fin Sheet Metals that may result in serious harm to the Customer, Fin Sheet Metals will notify the Customer in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

- 8.2 Notwithstanding clause 8.1, privacy limitations will extend to Fin Sheet Metals in respect of Cookies where the Customer utilises Fin Sheet Metals' website to make enquiries. Fin Sheet Metals agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Fin Sheet Metals when Fin Sheet Metals sends an email to the Customer, so Fin Sheet Metals may collect and review that information ("collectively Personal Information")
- If the Customer consents to Fin Sheet Metals' use of Cookies on Fin Sheet Metals' website and later wishes to withdraw that consent, the Customer may manage and control Fin Sheet Metals' privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 8.3 The Customer authorises Fin Sheet Metals or Fin Sheet Metals' agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by Fin Sheet Metals from the Customer directly or obtained by Fin Sheet Metals from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 8.4 Where the Customer is an individual the authorities under clause 8.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 8.5 The Customer shall have the right to request (by e-mail) from Fin Sheet Metals, a copy of the Personal Information about the Customer retained by Fin Sheet Metals and the right to request that Fin Sheet Metals correct any incorrect Personal Information.
- 8.6 Fin Sheet Metals will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 8.7 The Customer can make a privacy complaint by contacting Fin Sheet Metals via e-mail. Fin Sheet Metals will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at <http://www.privacy.org.nz>.