

**1. Definitions**

- 1.1 "MIM" means Conicol Holdings Limited T/A Made In Metal its successors and assigns or any person acting on behalf of and with the authority of Conicol Holdings Limited T/A Made In Metal.
- 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 MIM 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 MIM and the Customer in accordance with clause 4 below.

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with MIM's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and MIM.

**3. Change in Control**

- 3.1 The Customer shall give MIM not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by MIM as a result of the Customer's failure to comply with this clause.

**4. Price and Payment**

- 4.1 At MIM's sole discretion the Price shall be MIM's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 MIM reserves the right to change the Price if a variation to MIM's quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as availability of machinery, safety considerations, delay in acquiring specialist equipment to complete the works or as a result of any increase to MIM's in the cost of materials and labour) will be charged for on the basis of MIM's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At MIM's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by MIM, which may be:
  - (a) for certain approved Customers, 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;
  - (b) the date specified on any invoice or other form as being the date for payment; or
  - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by MIM.
- 4.5 Payment may be made by cash, cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and MIM.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to MIM an amount equal to any GST MIM must pay for any supply by MIM 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.

**5. Delivery of Goods**

- 5.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that the Customer or the Customer's nominated carrier takes possession of the Goods at MIM's address.
- 5.2 At MIM's sole discretion the cost of delivery is in addition to the Price.
- 5.3 MIM may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.4 Any time or date given by MIM to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and MIM will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

**6. Risk**

- 6.1 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.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, MIM is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by MIM is sufficient evidence of MIM's rights to receive the insurance proceeds without the need for any person dealing with MIM to make further enquiries.
- 6.3 If the Customer requests MIM to leave Goods outside MIM's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 6.4 The Customer acknowledges that MIM is only responsible for parts that are manufacturer or repaired by MIM and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third

---

## Made In Metal – Terms & Conditions of Trade

---

party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify MIM against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.

### **7. Dimensions, Plans and Specifications**

- 7.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless MIM and the Customer agree otherwise in writing.
- 7.2 MIM shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
- 7.3 If the giving of an estimate or quotation for the supply of Goods involves MIM estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of MIM's estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.
- 7.4 Should the Customer require any changes to MIM's 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.

### **8. Title**

- 8.1 MIM and the Customer agree that ownership of the Goods shall not pass until:
  - (a) the Customer has paid MIM all amounts owing to MIM; and
  - (b) the Customer has met all of its other obligations to MIM.
- 8.2 Receipt by MIM 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.
- 8.3 It is further agreed that:
  - (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to MIM on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for MIM and must pay to MIM 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 MIM and must pay or deliver the proceeds to MIM 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 MIM and must sell, dispose of or return the resulting product to MIM as it so directs.
  - (e) the Customer irrevocably authorises MIM to enter any premises where MIM believes the Goods are kept and recover possession of the Goods.
  - (f) MIM 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 MIM.
  - (h) MIM may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### **9. Personal Property Securities Act 1999 ("PPSA")**

- 9.1 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 previously supplied by MIM to the Customer (if any) and all Goods that will be supplied in the future by MIM to the Customer.
- 9.2 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 MIM may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, MIM 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 a financing change statement or a change demand without the prior written consent of MIM; and
  - (d) immediately advise MIM of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.3 MIM and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5 Unless otherwise agreed to in writing by MIM, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6 The Customer shall unconditionally ratify any actions taken by MIM under clauses 9.1 to 9.5.

### **10. Customer's Disclaimer**

- 10.1 The Customer hereby disclaims any right to rescind, or cancel any contract with MIM or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by MIM and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

**11. Defects**

- 11.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify MIM of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford MIM an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which MIM has agreed in writing that the Customer is entitled to reject, MIM's liability is limited to either (at MIM's discretion) replacing the Goods or repairing the Goods.
- 11.2 Goods will not be accepted for return other than in accordance with 11.1 above.

**12. Warranty**

- 12.1 Subject to the conditions of warranty set out in clause 12.2 MIM warrants that if any defect in any workmanship of MIM becomes apparent and is reported to MIM within six (6) months of the date of delivery (time being of the essence) then MIM will either (at MIM's sole discretion) replace or remedy the workmanship.
- 12.2 The conditions applicable to the warranty given by clause 12.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Customer to properly maintain any Goods; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by MIM; or
    - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and MIM shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without MIM's consent.
  - (c) in respect of all claims MIM shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 12.3 For Goods not manufactured by MIM, the warranty shall be the current warranty provided by the manufacturer of the Goods. MIM shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 12.4 To the extent permitted by statute, no warranty is given by MIM as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. MIM shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 12.5 The conditions applicable to the warranty given on Goods supplied by MIM are contained on the "Warranty Card" that will be supplied with the Goods.
- 12.6 In the case of second hand Goods, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by MIM as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. MIM shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

**13. Consumer Guarantees Act 1993**

- 13.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by MIM to the Customer.

**14. Intellectual Property**

- 14.1 Where MIM has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of MIM.
- 14.2 The Customer warrants that all designs, specifications or instructions given to MIM will not cause MIM to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify MIM against any action taken by a third party against MIM in respect of any such infringement.
- 14.3 The Customer agrees that MIM may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which MIM has created for the Customer.

**15. Default and Consequences of Default**

- 15.1 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 MIM's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Customer owes MIM any money the Customer shall indemnify MIM from and against all costs and disbursements incurred by MIM in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MIM's collection agency costs, and bank dishonour fees).
- 15.3 Without prejudice to any other remedies MIM may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions MIM may suspend or terminate the supply of Goods to the Customer. MIM will not be liable to the Customer for any loss or damage the Customer suffers because MIM has exercised its rights under this clause.
- 15.4 Without prejudice to MIM's other remedies at law MIM shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to MIM shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to MIM becomes overdue, or in MIM's opinion the Customer will be unable to make a payment when it falls due;

---

## Made In Metal – Terms & Conditions of Trade

---

- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 16. Cancellation

- 16.1 MIM may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice MIM shall repay to the Customer any money paid by the Customer for the Goods. MIM shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by MIM as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 17. Privacy Act 1993

- 17.1 The Customer authorises MIM or MIM's agent to:
  - (a) access, collect, retain and use any information about the Customer;
    - (i) (including 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 MIM from the Customer directly or obtained by MIM 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.
- 17.2 Where the Customer is an individual the authorities under clause 17.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 17.3 The Customer shall have the right to request MIM for a copy of the information about the Customer retained by MIM and the right to request MIM to correct any incorrect information about the Customer held by MIM.

### 18. Unpaid Seller's Rights

- 18.1 Where the Customer has left any item with MIM for repair, modification, exchange or for MIM to perform any other service in relation to the item and MIM has not received or been tendered the whole of any monies owing to it by the Customer, MIM shall have, until all monies owing to MIM are paid:
  - (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 18.2 The lien of MIM shall continue despite the commencement of proceedings, or judgment for any monies owing to MIM having been obtained against the Customer.

### 19. Dispute Resolution

- 19.1 All disputes and differences between the Customer and MIM touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

### 20. General

- 20.1 The failure by MIM to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect MIM's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Hamilton courts of New Zealand.
- 20.3 MIM shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by MIM of these terms and conditions (alternatively MIM's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 20.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by MIM nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.5 MIM may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 20.6 The Customer agrees that MIM may amend these terms and conditions at any time. If MIM makes a change to these terms and conditions, then that change will take effect from the date on which MIM notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for MIM to provide Goods to the Customer.
- 20.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.