

## **CONDITIONS OF SALE**

These Conditions of Sale apply to each offer to sell, quotation, contract and other commercial transaction for the supply of all present and after acquired goods or services as described in the attached Schedule by **PRO STEEL LIMITED** (the "Company") to every purchaser (the "Purchaser"). These Conditions of Sale shall be read in conjunction with any Special Conditions of Sale which shall prevail to the extent of any inconsistency with these Conditions of Sale.

### **1. INTERPRETATION**

In these Conditions of Sale, unless otherwise inconsistent with the context, "person" shall include corporation, "goods or services" shall include services, and "Purchaser" shall mean and include the person to whom any quotation is made and shall include any person offering to contract with the Company on these terms and conditions.

Words importing the singular number shall be deemed to include the plural and vice-versa. Words importing any gender shall be deemed to include each other gender.

### **2. ACCEPTANCE**

Receipt of any order will be deemed to be acceptance by the Purchaser of these Conditions of Sale, notwithstanding anything that may be stated to the contrary on the Purchaser's order.

### **3. PRICE**

- (a) Unless otherwise specified prices quoted do not include transportation costs, insurance, installation or maintenance costs.
- (b) The prices quoted are based on present day cost of labour and materials and will be subject to contract price adjustment at the option of the Company. The Company reserves the right to review prices without notice. Further, the Company is entitled to increase the price to cover additional costs incurred at the Purchaser's request.

### **4. DELIVERY**

- (a) All goods or services are at the risk of the Purchaser from the time of delivery, which shall be deemed to take place when the goods or services are delivered by the Company to a carrier for transport to the Purchaser. Any quoted time for delivery by the Company shall be deemed to be estimated only and are not to be treated as a condition of sale and no claim shall lie against the Company for failure to deliver within such time.
- (b) The Company reserves the right to cancel delivery of the goods or services or such instalment of goods or services without prejudice to its rights to recover all sums owing to it in respect of deliveries already made.
- (c) Where the Purchaser does not take delivery of the goods or services by the delivery date specified or at such later date as the parties agree, the Purchaser shall pay reasonable storage costs until such time as the Purchaser accepts the goods or services, such cost to be determined by the Company, and the Company shall be entitled to invoice the Purchaser in accordance with clause 12.

### **5. CANCELLATION BY THE PURCHASER**

No order shall be cancelled without the consent of the Company and in such cases the Purchaser shall be liable to pay the Company all costs and expenses incurred by the Company, the Company's overseas suppliers and any local suppliers, in fulfilling the order up to such date of cancellation.

### **6. RETURNS AND CLAIMS**

- (a) No goods or services will be authorised for acceptance of return and therefore credit unless:
  - (i) the request is made within 14 days of receipt of the goods or services;

- (ii) the Company has in its discretion given approval for the return of the goods or services and has issued a Returned Goods or services Authorisation (RGA) number to the Purchaser for such return;
  - (iii) the goods or services are in a new, unused condition in its original carton with all the original packing;
  - (iv) all related dispatch charges have been paid;
  - (v) the documentation accompanying the goods or services shows the original invoice number, date and Returned Goods or services Authorisation (RGA) number.
- (b) Any claim for short delivery or non-delivery must be made within 7 days of receipt of the goods or services.
  - (c) Notwithstanding the above provisions, any goods or services sent by the Company to the Purchaser in error will be returned to the Company at the Company's expense and the Company will reimburse the Purchaser for the invoiced price of the goods or services, including freight to and from, at the quoted rate as determined by the Company's freight forwarder.

## **7. TITLE**

- (a) The Purchaser and the Company agree that property in, and legal and equitable ownership of, the goods or services shall not pass to the Purchaser until it has paid the purchase price of the goods or services and all other goods or services supplied by the Company to the Purchaser in full to the Company.
- (b) Where the Company has not been paid the purchase price of the goods or services in full and the Company has delivered the goods or services to the Purchaser, the Purchaser agrees that the relationship between the Company and the Purchaser shall be fiduciary and that the Purchaser shall hold the goods or services as bailee for the Company and, shall store the goods or services in a manner that clearly shows the ownership of the Company and shall keep separate records in respect of the goods or services.
- (c) Notwithstanding the provisions of sub-clause (b), the Purchaser may sell the goods or services to a third party in the ordinary course of the Purchaser's business and deliver them to such party prior to payment in full of the purchase price to the Company. If the goods or services are sold prior to payment in full, the Purchaser will be deemed to have done so as agent for the Company and the proceeds of such sale will be the property of the Company. The Purchaser shall hold the proceeds of such sale upon trust, on account for the Company, and keep them in a separate fund from its own money.
- (d) If any of the goods or services are mixed or incorporated in other goods or services, ("the mixed goods or services") before payment, the Purchaser agrees that the property in the mixed goods or services shall be and remain with the Company until such payment has been made in full. The Purchaser shall hold the mixed goods or services as bailee for the Company and will store the mixed goods or services in such a manner that they are clearly identifiable as the property of the Company and will keep separate records in respect of the same. If the Purchaser sells the mixed goods or services it will hold the proceeds of such sale on trust for the Company and will account to the Company for the value of the goods or services and keep the proceeds in a fund separate from its own money and will keep separate records in respect of such money.
- (e) Notwithstanding that ownership of and property in the goods or services may not have passed to the Purchaser risk in the goods or services shall pass to the Purchaser when the goods or services are delivered to the Purchaser or into the custody of the party acting on the Purchaser's behalf and the Purchaser shall be obliged to insure the goods or services from the time of delivery to the Purchaser and pending payment in full to insure the goods or services in the name of the Company and the Purchaser for their respective interest.

## **8. REPOSSESSION**

- (a) If for any reason whatsoever the Purchaser fails to make payment to the Company of any moneys due to the Company in accordance with these Conditions of Sale then, despite section 109 of the Personal Property Securities Act 1999 ("the Act"), and in addition to the rights contained in that section, and without prejudice to any other rights of the Company, the Company may recover any or all of the goods or services or the mixed goods or services (as defined in clause 7(d)) and re-sell the goods or services or

the mixed goods or services without accounting to the Purchaser for the proceeds.

- (b) The Purchaser shall permit the Company and grants to the Company an irrevocable right and authority at any time to enter any premises occupied by the Purchaser at which the goods or services or mixed goods or services are from time to time normally kept or stored to enable the Company, in the event of default on the part of the Purchaser in payment of any moneys owing to the Company, to remove the goods or services or mixed goods or services from such premises whether or not the removing or retaking thereof shall cause any damage or injury to the Purchaser's premises. The Company shall not be liable for any such damage or injury unless such damage or injury is caused solely by the wilful negligence of the Company, its servant or agents.
- (c) For the purpose of the Company's entrance to any such premises, the production by the Company of a copy of this document shall constitute evidence of the Company's authority to enter such premises and, at the discretion of the Company, to remove such goods or services.
- (d) If the Company procures the removal of the goods or services or the mixed goods or services from the Purchaser's premises pursuant to the provisions of clause 7 or 8, then any costs (including legal expenses) incurred by the Company in connection with such removal and delivery of the goods or services or mixed goods or services to the Company's premises and otherwise in enforcing or attempting to enforce its rights pursuant to clause 7 or 8 shall be borne by the Purchaser who shall indemnify the Company accordingly. The Company shall be entitled to deduct all such costs from any proceeds of the sale of goods or services or mixed goods or services recovered from the Purchaser.

## **9. EXPENSES**

The Purchaser agrees to pay to the Company, in addition to all other sums required to be paid by the Purchaser, all legal, debt collection and other expenses incurred by the Company in collecting, realizing or enforcing the payment of any moneys due from the Purchaser to the Company under these Conditions of Sale.

## **10. INSOLVENCY AND DEFAULT**

If

- (a) the Purchaser makes default in any payment due hereunder or fails to take delivery at the specified time; or
- (b) a resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Purchaser; or
- (c) a Receiver is appointed over any of the assets of the Purchaser; or
- (d) the Purchaser makes or proposes to make any arrangement with its creditors; or
- (e) the Purchaser is placed under official management; or
- (f) an execution is levied upon the assets of the Purchaser and is not within seven days satisfied; or
- (g) the Purchaser becomes insolvent or is adjudicated bankrupt; or
- (h) the Purchaser no longer carries on business or threatens to cease carrying on business;

then and, in such event, the Company may at its option:

- (i) Demand payment of all or part of such sums due;
- (j) Require security for such obligations to its full satisfaction before any further supplies are made to the Purchaser;
- (k) Withhold further deliveries;
- (l) Cancel the contract without prejudice to its rights hereunder and seek damages accordingly.

## **11. LICENCE**

In the event of the sale of goods or services requiring the importation into New Zealand of any goods or services, the contract for sale is conditional upon granting of the necessary export or import licences or permits to remit monies overseas.

## **12. PAYMENT**

- (a) Payment is due on the 20<sup>th</sup> of the month following the month in which the invoice was issued.
- (b) The Purchaser shall pay penalty interest (in addition to the amount due) on any amount due and unpaid from the due date until the date of payment at 2% per month above the current overdraft rate which the Company has with its principal trading bank.

## **13. DESCRIPTION AND SPECIFICATION**

While every effort is made to ensure their accuracy, the description, illustrations and material contained in any catalogues, price list or other descriptive matter, provided by or on behalf of the Company, represent the general nature only of the items described and the Company reserves the right to modify the design of goods or services without notice.

## **14. NO GUARANTEE OR WARRANTY**

- (a) The Company gives no warranty and is subject to no liability of any kind in respect of any item it does not manufacture except to the extent required by law. However, in any case where the Company is able to make a successful claim under a warranty given by the manufacturer, it will so far as possible pass the benefit of that claim on to the Purchaser (but so that nothing requires the Company to commence any proceedings against the manufacturer or incur any expense in connection with any claim by the Purchaser).
- (b) The Company's liability in any case of defect or fault shall be limited to the purchase price of the goods or services in respect of which such liability arises and the Company shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage arising.
- (c) The Company shall not be responsible for any damage caused either to the goods or services supplied or as a result of the malfunction of such goods or services if:
  - (i) the goods or services are fitted by unqualified tradesman; or
  - (ii) the goods or services are fitted in an untradesmanlike manner; or
  - (iii) the goods or services are in any way adapted to a use for which they are not specifically intended; or
  - (iv) the goods or services are added to or repaired using components not recommended or approved by the manufacturer of such goods or services.

## **15. WAIVER**

Failure by the Company to exercise any right under these Conditions of Sale or to insist upon strict performance of any term or condition shall not be deemed a waiver of any rights which the Company may have and shall not, and nor shall any express waiver, be deemed to be a waiver of any subsequent breach of any term or condition.

## **16. FORCE MAJEURE**

The Company shall not be liable to the Purchaser for any loss by the Purchaser caused by the Company's failure to observe these conditions, or of any delay or failure to perform its obligations, if such failure or delay is occasioned by any cause beyond the Company's reasonable control and, without limiting the generality of the foregoing, such causes include war, fires, floods, strikes, lock outs, delays in transport, breakdowns in machinery, restrictions or prohibitions by any government or semi-government authorities or embargoes.

## **17. SEVERABILITY**

If any provision of these Conditions of Sale is held invalid, unenforceable or illegal for any reason, but is capable of being read down, it shall be read down to the extent necessary to render it binding and enforceable. If it is not capable of being so read down, then such work or words or, if required, the whole provision shall thereupon be severed and the remainder of these conditions shall otherwise remain in full force and effect.

#### **18. PERSONAL PROPERTY SECURITIES ACT 1999**

- (a) The Purchaser grants to the Company a security interest in terms of the Personal Property Securities Act 1999 (“the Act”) in all present and after acquired goods or services and their proceeds.
- (b) On the request of the Company the Purchaser shall promptly execute any documents and do anything else required by the Company to ensure that the security interest created under this Agreement constitutes a first ranking perfected security interest over the goods or services and their proceeds including providing any information the Company reasonably requires to complete a financing statement or financing change statement. The Purchaser waives any right to receive a copy of a verification statement under the Act.
- (c) The Purchaser will pay to the Company all costs, expenses, and other charges incurred, expended or payable by the Company in relation to the filing of a financing statement or financing change statement in connection with these Conditions of Sale.
- (d) The Company and the Purchaser agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the Act shall apply to these Conditions of Sale.
- (e) The Company and the Purchaser also agree that the rights of the Purchaser as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the Act shall not apply to these Conditions of Sale.

#### **19. ACKNOWLEDGEMENT**

- (a) The Purchaser acknowledges that it has received a copy of these Conditions of Sale and in particular that the terms contained in this agreement constitute a security agreement for the purposes of the Personal Property Securities Act 1999.
- (b) The parties acknowledge that in accordance with section 43(2) of the Consumer Guarantees Act 1993 and with the exception of that section, nothing in the Consumer Guarantees Act 1993 shall apply to the transactions between the Company and the Purchaser.

#### **20. GOVERNING LAWS**

This Agreement is to be governed by, and construed in accordance with, the laws of New Zealand and the Purchaser hereby submits to the exclusive jurisdiction of the New Zealand courts.