

TERMS OF TRADE

Please read all terms below.

Terms:

<p>1. DEFINITIONS:</p> <p>"Stewart Fabrications" or "Company" shall mean Stewart Fabrications Limited, or any agents or employees thereof.</p> <p>(a) "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 Stewart Fabrications.</p> <p>(b) "Goods and Services" shall mean all goods, products, services and advice provided by Stewart Fabrications to the Customer.</p>	<p>6. QUOTATION:</p> <p>Unless otherwise agreed a quotation given by Stewart Fabrications for Goods and Services shall be valid for thirty (30) days from the date of issue.</p> <p>(a) Stewart Fabrications reserves the right to alter the quotation because of circumstances beyond its control, such as COVID-19 Price rises.</p> <p>(b) Where Goods and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods and Services.</p>
<p>2. ACCEPTANCE:</p> <p>Any instructions received and agreed to by Stewart Fabrications from the Customer for the supply of Goods and Services shall constitute a binding contract and acceptance of the Terms and Conditions contained herein.</p> <p>(a) Terms and Conditions are subject to change without notice, however the version in force at the time of acceptance shall be deemed as being the accepted Terms and Conditions.</p>	<p>7. RISK:</p> <p>Delivery of Goods and Services shall be deemed complete when Stewart Fabrications gives possession of the Goods and Services directly to the Customer or possession of the Goods and Services is given to a carrier, courier, or other Bailee for purposes of transmission to the Customer.</p> <p>(a) The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to Stewart Fabrications and Stewart Fabrications accept that timeframe.</p>
<p>3. SERVICES:</p> <p>The Customer will give reasonable assistance to the Stewart Fabrications to perform the Services by:</p> <p>(a) (I) Giving clear instructions; (II) Promptly providing any information or content required from the Customer for Stewart Fabrications to complete the Services; (III) Ensuring that the Services and goods derived from these Services are fit for the purpose the Customer intends for them and meet any appropriate statutory, regulatory, governmental and industry and environmental controls, standards of practices.</p>	<p>8. FORCE MAJEURE:</p> <p>Stewart Fabrications will not be in breach of these Terms of Trade and will not be liable to the Customer or any Guarantor for costs or delay attributable in whole or in part to action by any government or governmental agency or other external agency or event, including, without limitation, natural disaster, global pandemic or emergency, industrial action, civil disorder, equipment failure, banking or computer system disruption or interruption of power supplies or any other event beyond Stewart Fabrications control.</p>
<p>4. PRICE:</p> <p>All prices are exclusive of GST and other taxes and duties which, if payable, are payable by the Customer.</p> <p>(a) Stewart Fabrications may change its prices without notice to the Customer.</p> <p>(b) Where no price is stated in writing or agreed to orally the Goods and Services shall be deemed to be sold at the current amount as such Goods and Services are sold by Stewart Fabrications at the time of the contract.</p> <p>(c) The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of Stewart Fabrications between the date of the contract and delivery of the Goods and Services.</p>	<p>9. RETURN OF GOODS:</p> <p>Any Goods returned for credit must be received at the company workshop from which they were dispatched within 14 (fourteen) days from date of sale.</p> <p>(a) Goods returned for credit after 14 (fourteen) days from date of sale will attract a 10% or \$30 plus GST (whichever is greater) restocking fee.</p> <p>(b) Goods approved for return must be in the same resalable condition and be unaltered and undamaged.</p> <p>(c) Return freight costs must be prepaid by the Customer.</p> <p>(d) Stewart Fabrications will only accept returns of current stock lines, no custom made, or modified parts will be accepted for credit.</p> <p>(e) Stewart Fabrications reserves the right to reject products not conforming to all clauses in section 9.</p>
<p>5. PAYMENT:</p> <p>Unless the Customer has an approved Credit Account with Stewart Fabrications, payment in full is required before any goods will be released.</p> <p>(a) Where the Customer has an approved Credit Account with Stewart Fabrications payment for Goods and Services shall be made in full on or before the 20th day of the month following the date of the invoice (the 'due date').</p> <p>(b) Any expenses, disbursements and legal costs incurred by Stewart Fabrications 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.</p> <p>(c) Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.</p> <p>(d) A deposit may be required.</p> <p>(e) Any discount given on invoices charged to a Credit Account are subject to the invoice being paid in full by the due date as specified in clause 5(b) above.</p> <p>(f) Interest may be charged on any amount owing after the 'due date' at the rate of 2% per month.</p>	<p>10. WATERJET CUTTING:</p> <p>All electronic drawing files (DXF, DWG, Solidworks etc) must be scaled 1:1, clean and ready for processing. Please also include overall measurements of drawings for referencing.</p> <p>(a) All electronic drawing files (DXF, DWG, Solidworks etc) must have a unique name, if a supplied file is the same name as one previously supplied by the Customer, we will deem it as being the same.</p> <p>(b) A separate file is required for each profile.</p> <p>(c) Customer supplied material must be within specification to fit our toolsets and machines.</p> <p>(d) Should a customer supply their own material we may require a material certificate, we offer no guarantee, and the job is processed completely at the customers risk on an "all care – no responsibility" basis.</p> <p>(e) Where material to be waterjet cutting has protective "Fibre Film" this will not be removed prior to cutting Stewart Fabrications accepts no responsibility for damage caused by "Fibre Film" sticking to cut parts.</p> <p>(f) Due to engineering processes, we recommended all parts be cleaned and dried by the Customer before installation or further processing.</p>

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<p>11. (a) Personal Liability Where the Customer is a company, the persons signing these Terms of Trade on behalf of the Customer shall be personally liable for all of the obligations of the Customer under these Terms of Trade as if those persons signed as a guarantor.</p>	<p>19. (a) Severance If any provision of these Terms of Trade are found to be illegal, invalid or unenforceable, that provision shall be read down to the extent necessary and reasonable in all circumstances to give it a valid operation or partial character. If any provision cannot be so read down, that provision will be void and severable and the remaining provisions will not in any way be affected or impaired.</p>
<p>12. (a) COLLECTION AND USE OF INFORMATION: The Customer authorises Stewart Fabrications 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 and Services provided by Stewart Fabrications to any other party.</p>	<p>20. (a) RIGHTS OF THE COMPANY TO DISPOSE OF GOODS: In the event that Stewart Fabrications retains or regains possession of the goods ordered by the Customer and the Customer has not paid for the goods within Stewart Fabrications Terms of Trade then Stewart Fabrications may dispose of the goods and may claim from the Customer any loss Stewart Fabrications has suffered in relation to same.</p>
<p>13. (a) INSURANCE: It shall be the Customer's responsibility to insure and to keep insured any goods it supplies to the Company's premises for processing whilst those goods remain at the Company's premises.</p>	<p>21. (a) SUB-CONTRACTING: The Customer acknowledges that Stewart Fabrications may sub-contract all or any part of the works that Stewart Fabrications has been contracted to carry out on such terms as it deems fit and to which the Customer hereby agrees.</p>
<p>14. (a) DESIGN OF PRODUCT: In the event that the design of the product is other than that of Stewart Fabrication's, Stewart Fabrications shall not be liable for any replacement cost or damage as a result of failure of product.</p>	<p>22. (a) STORAGE FEE: All goods left with Stewart Fabrications for more than seven (7) days after completion of processing shall attract a storage fee equal to 10% of the total invoice value each week.</p>
<p>15. (a) PROFILE CUTTING: Stewart Fabrications reserves the right to waterjet cut as a cutting option for the materials being used to create the design of the product for the Customer.</p>	<p>23. (a) USE OF IMAGES FOR ADVERTISING: The Customer hereby consents to Stewart Fabrications using images of finished works in its advertising material, including social media platforms.</p>
<p>16. (a) MATERIAL GRADE AND SPECIFICATION: Stewart Fabrications reserves the option to choose what material grade suits the Customer's order unless the Customer specifies in writing a particular material grade and/or cutting finish.</p>	<p>24. (a) OWNERSHIP OF SCRAP MATERIAL: Unless the Customer requests the offcuts or scrap material in writing at the time the order is placed Stewart Fabrications has the right to dispose of the material at the completion of works.</p>
<p>17. (a) Miscellaneous: Stewart Fabrications shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control. (b) Failure by Stewart Fabrications 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 Stewart Fabrications Ltd has under this contract. (c) 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. (d) The client shall not assign all or any of its rights or obligations under this contract without the written consent of Stewart Fabrications Ltd. (e) Where these Terms and Conditions of Trade are at variance with the order or instructions from the Customer these Terms and Conditions of Trade shall prevail. (f) Unless Stewart Fabrications Ltd elects otherwise, any dispute between the parties is to be dealt with in accordance with the Arbitration Act 1996.</p>	<p>25. (a) GENERAL LIEN: The Customer agrees that Stewart Fabrications may exercise a general lien against any Goods and Services or property belonging to the Customer that is in the possession of Stewart Fabrications for all sums outstanding under this contract and any other contract to which the Customer and Stewart Fabrications are parties. (b) If the lien is not satisfied within seven (7) days of the due date Stewart Fabrications may, having given notice of the lien at its option either: (I) Remove such Goods and Services and store them in such a place and in such a manner as Stewart Fabrications shall think fit and proper and at the risk and expense of the Customer; (II) Or sell such Goods and Services or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.</p>
<p>18. (a) INTELLECTUAL PROPERTY & COPYRIGHT: The Company shall retain the copyright in all drawings, specifications and other technical information of any products produced for the Customer unless otherwise agreed in writing. (b) If the Customer provides the Stewart Fabrications with any specifications, designs or drawings for the production or manufacture of any item or items then the Customer hereby warrants that the use of these designs, drawing or specifications will not infringe any third party's rights and the Customer hereby indemnifies Stewart Fabrications against any claims, demands, suits or actions in relation thereto. (c) Any technical information, knowledge or processing methods at any time transmitted either orally or in writing by Stewart Fabrications will remain the property of Stewart Fabrications and will be considered confidential and will not be used for any purpose without prior written consent of the Company.</p>	<p>26. (a) WARRANTY: No representation, condition, warranty or premise expressed or implied by law or otherwise applies to the Goods and Services except where goods are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract. (b) Stewart Fabrications does not provide any warranty that the Goods and Services are fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not. (c) Stewart Fabrications MUST be given the opportunity to repair or replace any defective part.</p>

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<p>27. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)</p> <p>(a) Title in any Goods and Services supplied by Stewart Fabrications passes to the Customer only when the Customer has made payment in full for all Goods and Services provided by Stewart Fabrications and of all other sums due to Stewart Fabrications by the Customer on any account whatsoever. Until all sums due to Stewart Fabrications by the Customer have been paid in full, Stewart Fabrications has a security interest in all Goods and Services.</p> <p>(b) If the Goods and Services 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 and Services shall remain with Stewart Fabrications until the Customer has made payment for all Goods and Services, and where those Goods and Services are mixed with other property so as to be part of or a constituent of any new Goods and Services, title to these new Goods and Services shall be deemed to be assigned to Stewart Fabrications as security for the full satisfaction by the Customer of the full amount owing between Stewart Fabrications and Customer.</p> <p>(c) The Customer gives irrevocable authority to Stewart Fabrications to enter any premises occupied by the Customer or on which Goods and Services are situated at any reasonable time after default by the Customer or before default if Stewart Fabrications believes a default is likely and to remove and repossess any Goods and Services and any other property to which Goods and Services are attached or in which Goods and Services are incorporated. Stewart Fabrications 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. Stewart Fabrications may either resell any repossessed Goods and Services 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 Services and credit the Customer's account with the invoice value thereof less such sum as Stewart Fabrications reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.</p> <p>Where Goods and Services are retained by Stewart Fabrications pursuant to clause 10.3 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.</p> <p>(d) The following shall constitute defaults by the Customer: (I) Non-payment of any sum by the due date. (II) The Customer intimates that it will not pay any sum by the due date. (III) Any Goods and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods and Services.</p> <p>(e) (IV) Any Goods and Services in the possession of the Customer are materially damaged while any sum due from the Customer to Stewart Fabrications remains unpaid. (V) The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or landlord distains against any of the Customer's assets. (VI) A Court judgement is entered against the Customer and remains unsatisfied for seven (7) days. (VII) Any material adverse change in the financial position of the Customer.</p>	<p>29. LIABILITY:</p> <p>(a) The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Stewart Fabrications 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 Stewart Fabrications, Stewart Fabrications Limited 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.</p> <p>(b) Except as otherwise provided by clause 17(a) Stewart Fabrications shall not be liable for: (I) Any loss or damage of any kind whatsoever 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 and Services provided by Stewart Fabrications to the Customer; and (II) The Customer shall indemnify Stewart Fabrications 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 Stewart Fabrications or otherwise, brought by any person in connection with any matter, act, omission, or error by Stewart Fabrications its agents or employees in connection with the Goods and Services. Stewart Fabrication's total liability will not exceed that of the original invoice value.</p> <p>(c) The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and Services from Stewart Fabrications for the purposes of a business in terms of section 2 and 43 of that Act.</p>
<p>28. Amendment</p> <p>(a) The Company may amend these Terms of Trade at any time. The amendment applies from when the Company either notifies the Customer of that change in writing or by publication on the Company's website.</p>	<p>30. CANCELLATION:</p> <p>(a) Stewart Fabrications shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of Goods and Services to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.</p> <p>(b) Any cancellation or suspension of this agreement shall not affect Stewart Fabrications claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the Customer's obligations to Stewart Fabrications under this contract.</p>
<p>31. Governing Law</p> <p>(a) The law of New Zealand applies to these Terms of Trade.</p>	