

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "GSE" means Gilbert Sheetmetal & Engineering Limited, or any agents or employees thereof.
- 1.2 "Customer" means the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing goods and services from GSE.
- 1.3 Cash Customers means casual customers who do not have a customer account open with GSE.
- 1.4 Account Customers means customers who do have an account open with GSE.
- 1.5 "Goods" means:
- 1.5.1 all Goods of the general description specified on the front of this agreement and supplied by GSE to the Customer; and
- 1.5.2 all Goods supplied by GSE to the Customer; and
- 1.5.3 all inventory of the Customer that is supplied by GSE; and
- 1.5.4 all Goods supplied by GSE and further identified in any invoice issued by GSE to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
- 1.5.5 all Goods that are marked as having been supplied by GSE or that are stored by the Customer in a manner that enables them to be identified as having been supplied by GSE; and
- 1.5.6 all of the Customer's present and after-acquired Goods that GSE has performed work on or to or in which goods or materials supplied or financed by GSE have been attached or incorporated.
- 1.5.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.5.8 "All goods, services and advice provided by GSE to the Customer and includes without limitation the fabrication of sheetmetal and all charges for labour, hire charges, insurance charges, freight costs, or any fee or charge associated with the supply of Goods by GSE to the customer.
- 1.6 "Price" means the cost of the Goods as agreed between GSE and the Customer and includes all disbursements and charges GSE pays to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 All instructions from the Customer to GSE for the supply of goods shall be in writing and shall provide the specification and quantity of the goods to be supplied and shall constitute a binding contract between the Customer and GSE and acceptance by the Customer of these terms and conditions.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises GSE 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 GSE to any other party.
- 3.2 The Customer authorises GSE 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 Prior to the commencement of any work GSE will provide either a written estimate of costs or a written quotation for the work to be undertaken.
- 4.1.1 Where a written estimate is provided the Customer acknowledges that such estimate is an indication of price only and that the final price shall be either (i) the Company's current price at the date of delivery of the goods or (ii) the price as indicated on invoices provided by GSE to the Customer in respect of the product/or services supplied upon delivery of the said product.
- OR
- 4.2 Where a written quotation is provided then:
- 4.2.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
- 4.2.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
- 4.2.3 GSE reserves the right to alter the quotation because of circumstances beyond its control.

5. VARIATION

- 5.1 All requested variations to the work specifications, quantity or any other matter relating to the nature or quality of the goods shall be provided by the customer in writing to GSE. GSE will endeavour to provide an estimate of the resulting consequential price alteration. Where no such estimate of price alteration is given by GSE, the Customer accepts that the final price shall be that set out in clause 4.1.1 (i) or clause 4.1.1 (ii).
- 5.2 The Customer acknowledges that any such variations may delay the delivery date of the Goods and the Customer indemnifies GSE from any loss to the Customer arising howsoever from such delay.

6. PAYMENT

- 6.1 **Cash Customers** - A deposit amounting to 100% of the estimate or quote given by GSE to the Customer shall be payable upon acceptance of the estimate or quote provided by GSE to the Customer.
- Account Customers** – No deposit is required. GSE will invoice the Customer upon delivery of the Goods. Payment is due in full on the 20th day of the month following the date of the invoice.
- 6.2 Interest will be charged on any amount owing after the due date at the rate of 10% per month or part month.
- 6.3 Any expenses, disbursements and legal costs incurred by GSE 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.
- 6.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

7. RISK

- 7.1 The Goods remain at GSE's risk until delivery to the Customer.
- 7.2 Delivery of Goods shall be deemed complete when GSE 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.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Goods supplied by GSE passes to the Customer only when the Customer has made payment in full for all Goods provided by GSE and of all other sums due to GSE by the Customer on any account whatsoever. Until all sums due to GSE by the Customer have been paid in full, GSE 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 GSE 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 GSE as security for the full satisfaction by the Customer of the full amount owing between GSE and Customer.

- 8.3 The Customer gives irrevocable authority to GSE 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 GSE 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. GSE 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. GSE 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 GSE reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4 Where Goods are retained by GSE 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 credit 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 GSE 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 A 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. PAYMENT ALLOCATION

- 9.1 GSE may in its discretion allocate any payment received from the Customer towards any invoice that GSE 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 GSE, payment shall be deemed to be allocated in such manner as preserves the maximum value of GSE's purchase money security interest in the Goods.

10. DISPUTES

- 10.1 Any claim relating to defective goods must be made in writing within thirty (30) days of delivery.

11. LIABILITY

- 11.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon GSE 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 GSE, GSE's liability shall, where it is allowed, be excluded or it not able to be excluded only apply to the minimum extent required by the relevant statute.
- 11.2 Except as otherwise provided by clause 11.1 GSE shall not be liable for:
- 11.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods by GSE 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 GSE to the Customer; and
- 11.2.2 The Customer shall indemnify GSE 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 GSE or otherwise, brought by any person in connection with any matter, act, omission, or error by GSE its agents or employees in connection with the Goods.

12. WARRANTY

- 12.1 Warranties do not apply.

13. COPYRIGHT AND INTELLECTUAL PROPERTY

- 13.1 GSE owns and has copyright in all goods designed and produced by GSE, drawings, specifications, models, photographs, documents and software produced by GSE in connection with the Goods 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 GSE.

14. CONSUMER GUARANTEES ACT

- 14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from GSE 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 GSE 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 GSE the payment of any and all monies now or hereafter owed by the Customer to GSE and indemnify GSE 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. GENERAL LIEN

- 16.1 The Customer agrees that GSE may exercise a general lien against any goods and services or property belonging to the Customer that is in the possession of GSE for all sums outstanding under this contract and any other contract to which the Customer and GSE are parties.
- 16.2 If the lien is not satisfied within 7 days of the due date GSE may, having given notice of the lien at its option either:
- 16.2.1 Remove such goods and services and store them in such a place and in such a manner as GSE shall think fit and proper and at the risk and expense of the Customer; or
- 16.2.2 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 the costs of sale without being liable to any person for damage caused.

17. MISCELLANEOUS

- 17.1 GSE shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 17.2 Failure by GSE 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 GSE has under this contract.
- 17.3 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.

Signed: _____

On behalf of (company): _____