

LOCKER GROUP (NZ) LIMITED (Coy No 101326) GENERAL TERMS & CONDITIONS OF SALE

1. DEFINITIONS

- 1.1 "Seller" shall mean Locker Group (NZ) Limited or its agents and employees.
- 1.2 "Buyer" shall mean the buyer or any person acting on behalf of and with the authority of the buyer purchasing Goods from the Seller.
- 1.3 "Guarantor" means the person or persons or entity who agrees herein to be liable for the debts of the Buyer.
- 1.4 "Goods" means all metal and screening products supplied by the Seller to the Buyer as described in a Quotation provided by the Seller to the Buyer.
- 1.5 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 3 of these terms and conditions.
- 1.6 "Quotation" shall mean the document given by the Seller to the Buyer describing primarily the Goods to be supplied by the Seller to the Buyer and the Price thereof.

2. ACCEPTANCE

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and may be varied or cancelled only in accordance with these terms and conditions or with the written consent of the Seller.
- 2.2 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.3 These terms and conditions form the basis on which the Seller supplies and sells Goods to the Buyer. Each such supply and sale shall be effected pursuant to these terms and conditions. The Quotation and any other invoice or document evidencing or describing any Goods is incorporated into and forms part of these terms and conditions.
- 2.4 These terms and conditions of sale are paramount and to the extent that there is any conflict between any provision of them and the Quotation and any other invoice or document evidencing or describing any Goods or relating to the supply and sale thereof, these terms and conditions of sale will prevail.

3. PRICE AND PAYMENT

- 3.1 At the Seller's sole discretion the Price shall be as indicated on the Quotation and any other invoices provided by the Seller to the Buyer in respect of Goods supplied.
- 3.2 The price excludes GST and any delivery costs.
- 3.3 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable and any delivery costs.
- 3.4 The Price may be increased by the amount of any reasonable increase in the cost of the Goods, including any changes in exchange rates, that is beyond the control of the Seller between the date of the Quotation and receipt by the Buyer of the Goods.
- 3.5 Time for payment for the Goods shall be of the essence. Payment for Goods purchased from the Seller must be on a cash with order basis, following which the Seller will issue a tax invoice to the Buyer.
- 3.6 Notwithstanding Clause 3.5, in the event that the Buyer has a trade account with the Seller, payment shall be due on the 20th day of the month following the date of the invoice.
- 3.7 Interest on overdue invoices shall accrue from the date when payment becomes due until the date of payment at a rate of 2.5% per calendar month or part thereof.
- 3.8 Any expenses, disbursements and legal costs incurred by the Seller in the enforcement of any rights contained in this contract shall be paid by the Buyer, including any reasonable solicitor's fees or debt collection agency fees.
- 3.9 Where a deposit is paid by the Buyer to the Seller, such deposit shall be non-refundable.
- 3.10 All payments (including payments made by electronic funds transfer, direct debit, direct credit or credit card) shall be made to the Seller at its head office in Auckland.

4. QUOTATIONS

- 4.1 The Seller may from time to time provide Quotations for the supply of Goods. Any Quotations that the Seller may provide are valid for one month from the date of the Quotation. However the Seller reserves the right to modify or withdraw the Quotation at any time and will endeavour to inform the Buyer in respect of any such modifications.
- 4.2 Any Quotation made by the Seller is not an offer to sell and no order given in pursuance of any Quotation shall bind the Seller until accepted by the Seller in writing or by the commencement of the supply of the Goods as subject of the order.

5. SUPPLY AND DELIVERY OF GOODS

- 5.1 Unless otherwise agreed in writing by the parties, supply of the Goods from the Seller to the Buyer shall be completed immediately upon removal of the Goods by or on behalf of the Buyer from the Seller's premises.
- 5.2 Delivery of the Goods by any means whatsoever including delivery arranged on the Buyer's behalf by the Seller shall be solely at the Buyer's expense and risk. The Buyer acknowledges that the Seller has no responsibility or liability whatsoever in respect of the delivery of Goods to the Buyer.
- 5.3 The Seller has the right to make partial deliveries against the Buyer's purchase order and to invoice each partial delivery separately.

6. RISK

- 6.1 Notwithstanding that ownership in the Goods may not have passed to the Buyer risk in the Goods shall pass to the Buyer on supply of the Goods to the Buyer as defined in Clause 5 and the Buyer shall be obliged to insure the Goods from the time of supply to the Buyer and pending payment in full insure the Goods in the name of the Seller and the Buyer for the respective interest.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions, to receive all insurance proceeds payable in respect of the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. The Seller will apply the insurance proceeds as follows:
 - (a) first, in payment of the price of the Goods that are damaged or destroyed, if unpaid;
 - (b) second, in payment of any other sums payable to the Seller by the Buyer on any account or pursuant to these terms and conditions;
 - (c) third, any balance is to be paid to the Buyer.
- 6.3 Notwithstanding any period of credit, legal and beneficial ownership of any and all Goods shall remain with the Seller until payment in full is made for them and for all other Goods supplied by the Seller to the Buyer.
- 6.4 If payment is overdue in whole or in part in respect of any of the Goods the Seller may (without prejudice to any of its other rights) recover and/or resell the Goods or the mixed goods referred to in Clause 6.7 or any of them and may enter upon the Buyer's premises or any other place where the Goods and/or the mixed goods are stored by its servants or agents for that purpose (and the Buyer grants to the Seller an irrevocable right and authority to so recover, re-enter and re-sell), provided that the Seller may only recover and resell for its own account sufficient of the Goods and/or the mixed goods to satisfy all unpaid liability in respect of all Goods and the costs of resale. If any excess is recovered by the Seller, it shall not be liable in damages but shall account for the excess to the Buyer.
- 6.5 Until payment is made in full by the Buyer for the Goods, the Buyer will store the Goods in such a manner that they are clearly identifiable as the property of the Seller and will keep separate records in respect of the Goods.
- 6.6 If the Goods are sold or otherwise disposed of by the Buyer prior to payment in full, the Buyer will have been deemed to have done so as agent for the Seller and the proceeds of such sale will be the property of the Seller. The Buyer will hold the proceeds of such sale on trust, on account for the Seller, and keep them in a separate fund from its own money.
- 6.7 Where the Seller has reasonable cause to believe:
 - (a) The Buyer has not strictly complied with these terms and conditions and, in particular, default of payment; or
 - (b) The Buyer has or will commit an act of bankruptcy or, being a company, has had a receiver appointed or about to be appointed, or is declared insolvent;Despite Section 109 of the Personal Property Securities Act 1999 ("the Act"), and in addition to the rights contained in that section, the Seller may recover any or all of the Goods or the mixed goods and re-sell the Goods or the mixed goods and for such purpose may at any time of the day or night enter by force if necessary upon any premises where such Goods or mixed goods are reasonably thought to be stored (and the Buyer grants to the Seller an irrevocable right and authority to so recover, re-enter and re-sell).
- 6.8 In exercising its rights pursuant to this clause, the Seller shall be entitled to deduct from any sale of Goods or mixed goods recovered from the Buyer all the liabilities and expenses (including legal expenses) incurred by the Seller in enforcing or attempting to enforce its rights pursuant to this clause 6.

7. PERSONAL PROPERTY SECURITIES ACT 1999

- 7.1 The Buyer grants to the Seller a security interest in all present and after acquired Goods and their proceeds.
- 7.2 On the request of the Seller the Buyer shall promptly execute any documents and do anything else required by the Seller to ensure attachment and perfection of the security interest over the Goods and their proceeds including providing any information the Seller reasonably requires to complete a financing statement or a financing change statement. The Buyer waives any right to receive a copy of a verification statement under the Act.
- 7.3 The Buyer will pay to the Seller all costs, expenses and other charges incurred, expended or payable by the Seller in relation to the filing of a financing statement or a financing change statement in connection with these terms and conditions.

8. CERTAIN PROVISIONS NOT TO APPLY

- 8.1 The buyer waives any right to receive a verification statement under the Act. The Seller and the Buyer agree that nothing in sections 114(1)(a), 133 and 134 of the Act shall apply to these terms and conditions, and the Buyer's rights as debtor in sections 116, 120(2), 121, 125-7, 129 and 131 of the Act shall not apply.

9. ACKNOWLEDGEMENT

- 9.1 The Buyer acknowledges that it has received a copy of these terms and conditions and in particular that the terms contained in this agreement constitute a security agreement for the purposes of the Act.

- 9.2 The Buyer will not allow a security interest to be registered over the Goods in priority to the security interest held by the Seller.

10. DEFECTS

- 10.1 Subject to the provisions of clause 12, the Buyer shall inspect the Goods on supply as defined in clause 5 and shall within 24 hours of supply notify the Seller of any alleged defect. Any claim by the Buyer of damage or loss should then be endorsed on the carrier's receipt and a detailed claim in writing for any damage or loss must

- be received by the carrier and the Seller within 5 working days of the date of the Seller's delivery docket. All claims and notifications in terms of this clause must be sent by recorded delivery and failure to comply with these conditions may invalidate any claim at the Seller's discretion. The Buyer shall afford the Seller an opportunity to inspect the Goods. If the Buyer fails to initially notify the Seller of any alleged default within 24 hours of supply, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and Quotation and free from any defect.
- 10.2 The Consumer Guarantees Act 1993 and/or the Fair Trading Act 1986 may imply warranties or conditions or impose obligations upon the Seller which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such legally mandatory terms or conditions imposed on the Seller, the Seller's liability shall only apply to the minimum extent required by that statute or provision and those legal obligations shall be restricted and modified so that only the legally essential obligations contained in those statutes apply to any Goods supplied by the Seller. If such statutory provisions nevertheless do not apply, then the Seller's liability under this contract shall be limited at the Seller's sole discretion to:
- (a) replacing the defective Goods; or
 - (b) refunding the Price paid by the Buyer to the Seller for the defective Goods.
- 10.3 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Buyer acquires Goods from the Seller for the purposes of a business in terms of Section 2 and 43 of that Act.
- 10.4 Subject to the provisions contained in clause 10 above:
- (a) any Goods supplied but not manufactured by the Seller shall be covered only by the express warranty, if any, of the manufacturer of such Goods and any such warranty shall be void if the Buyer replaces any Goods supplied or proposed to be supplied by the Seller with Goods supplied by any other entity;
 - (b) the Seller shall be under no liability to the Buyer in respect of any Goods that have been improperly stored or handled or which have not been installed, operated or maintained according to instructions given by the Seller to the Buyer or contained in supplier furnished manuals;
 - (c) The Buyer acknowledges that the Seller has no responsibility or liability whatsoever for any finishing works undertaken on the Goods notwithstanding that these finishing works may have been arranged on the Buyer's behalf by the Seller. The Buyer accepts full responsibility for ensuring that such finishing works are completed to the Buyer's satisfaction in all respects. Such finishing works may include but not be limited to powder coating and galvanising the goods.
 - (d) The Buyer acknowledges that the Buyer is fully responsible for installing the Goods and that the Seller has no responsibility or liability in respect of installation of the Goods or any loss or damage direct or indirect howsoever arising therefrom.
- 10.5 Without restricting the limitations and exclusions of liability contained elsewhere in these terms and conditions and to the extent permitted by law, the Sellers' liability in relation to the supply of the Goods and the Goods themselves is limited to the purchase price of the Goods in respect of which such liability arises. The Seller is not responsible for any direct, indirect or consequential injury, loss or damage whatsoever and howsoever arising.
- 11. INTELLECTUAL PROPERTY**
- 11.1 Where the Goods are manufactured by the Seller to the Buyer's specification, the Buyer hereby warrants that the manufacture and supply of the Goods by the Seller will not infringe intellectual property rights (including but not limited to a patent, registered design, trademark, copyright or other proprietary right) of any other person. The Buyer indemnifies the Seller against any liability to or action by a third party for infringement or alleged infringement of any intellectual property right.
- 11.2 Copyright in all drawings, specifications and other technical information provided by the Seller under these terms and conditions and all other intellectual property rights including but not limited to trademarks and patents are vested in the Seller.
- 12. TOLERANCES**
- 12.1 In signing the Quotation, the Buyer accepts the dimensions and specifications set out therein.
- 12.2 References to sheet size, strand width, gauge and weight are approximate only. Whilst every effort is made for these figures to be accurate, it must be understood that the specification of Goods manufactured and supplied by the Seller is subject to normal trade tolerances.
- 12.3 In no event shall the Seller be responsible for any consequential loss, penalties, expenditure, damages or losses suffered or incurred by the Buyer arising out of any delay in delivery or caused by or arising out of any use of or dealing with the Goods, whether arising from any defect in the Goods, installation of the Goods, finishing works carried out to the Goods, unsuitability for the Buyer's purpose, negligence by the Seller or its employees or agents in any other way.
- 13. SECURITY AND CHARGE**
- 13.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- (a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) To give effect to the provisions of clause 13(a) to (b) inclusive hereof the buyer and/or the Guarantor (if any) do hereby irrevocably appoint the Seller as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller shall think fit in its absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
- 14. CANCELLATION**
- 14.1 The Seller may cancel these terms and conditions or cancel supply of the Goods at any time before the Goods are supplied by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price for the Goods. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 Once placed, no order may be cancelled by the Buyer except in writing and then only with the prior written consent of the Seller which the Seller may withhold at its discretion and without being required to give a reason.
- 15. PRIVACY ACT**
- 15.1 The Buyer authorises the Seller to collect, retain, disclose to any person and use any information about the Buyer, for the purpose of assessing the Buyer's creditworthiness, enforcing any rights under these terms and conditions or marketing the Goods provided by the Seller to any other party.
- 16. GUARANTORS**
- 16.1 Any personal guarantee made by any third party shall not exclude the Buyer in any way whatsoever from the liabilities and obligations contained in these terms and conditions. The Guarantor(s) and the Buyer shall be jointly and severally liable under the terms and conditions.
- 17. GENERAL**
- 17.1 If any of the terms and conditions is held by a Court to be ineffective by virtue of non-registration, illegality or otherwise, then such condition, or part of it, shall be severed from all other conditions without affecting the validity or enforceability of all other conditions or part of them.
- 17.2 The law of New Zealand shall govern all contracts and the Buyer hereby submits to the exclusive jurisdiction of the New Zealand courts.
- 17.3 The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out a breach by the Seller of these terms and conditions.
- 17.4 The Buyer shall not set off against the Price amounts due from the Seller.
- 17.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 17.6 The Seller is entitled at any time to assign to any other person all or part of the debt owing by the Buyer to the Seller without the prior consent of the Buyer.
- 17.7 The Seller reserves the right to review these terms and conditions at any time from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer in writing of such change.
- 17.8 The Seller shall not be liable for delay or failure to perform the Seller's obligations under this contract arising from any act of God or if the cause of the delay or failure is beyond the Seller's control.
- 17.9 Non stock items, being Goods not stocked by the Seller and ordered by the Seller from its suppliers to the Buyer's specifications, are not returnable by the Buyer to the Seller.
- 18. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**
- 18.1 If the Buyer is a company or trust, the director(s) or trustee(s) signing the Quotation or Application for Trading Account, in consideration for the Seller agreeing to supply Goods and grant credit to the Buyer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to the Seller the payment of any and all monies now or hereafter owed by the Buyer to the Seller and indemnify the Seller against non-payment by the Buyer. Any personal liability of a signatory hereto shall not exclude the Buyer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and the Buyer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.
- 19. FORCE MAJEURE**
- 19.1 The Seller shall not be liable for any delay or failure to provide or deliver the Goods, directly or indirectly caused by any event or circumstance beyond its reasonable control and including (but not limited to) an act of God, fire, flood or riot, war, act of terrorism, embargo strike, labour dispute, theft, or weather conditions materially impeding the provision or delivery of the Goods. Following such an occurrence the Seller will notify the Buyer as soon as it is able.