

Customer Terms of Trade

1. Definitions and Interpretation

1.1 In these Terms of Trade:

"Application" means the Credit Application submitted by the Customer to the Company and accepted by the Company;

"Company" means Meneghello Nominees Pty Ltd ATF The Vanrook Unit Trust t/as Meneghello Galvanizing Industries (ABN 30 325 522 619) and its successors and assigns;

"Contract" has the meaning provided in clause 2 of these Term of Trade;

"Customer" means any legal entity which purchases the Services from the Company;

"Customer's Steel" means the steel owned by the Customer and supplied to the Company for the application of the Services.

"Dispute" means a dispute between the parties in respect of any fact, matter or thing arising out of or in connection with the Services or the Contract;

"Dispute Notice" means written notice given by one party to the other giving full particulars of the Dispute and that party's view of the correct position in relation to the Dispute;

"Interest" means the rate of interest calculated at 4% plus the prime lending rate of the Company's overdrafts of \$100,000 and above;

"PPSA" means the Personal Property Securities Act (2009) (Cth) and any associated regulations or subsidiary legislation;

"PPSR" means the Personal Property Securities Register established in accordance with s147 of the PPSA;

"Services" means any galvanising, transport, packaging and/or blasting and painting services supplied by the Company to the Customer in accordance with the Contract;

"Terms of Trade" means these terms of trade as may be amended from time to time in accordance with clause 11.4.

1.2 These Terms of Trade:

- (a) replace all prior Terms of Trade issued by the Company to the Customer in respect of the Services from the date the Customer is given notice of these Terms of Trade or accepts them in accordance with clause 11.4.
- (b) and the other documents comprising the Contract take precedence over any of the Customer's terms including any purchase order issued by the Customer.

2. The Contract

2.1 These Terms of Trade together with

- (a) any completed Application accepted by the Company;
- (b) any Guarantee provided by the Customer and/or its directors or shareholders in favour of the Company;
- (c) any quotation issued by the Company to the Customer stated to be binding on the parties;
- (d) any other supply agreement between the parties, together make up the contract between the Company and the Customer for the provision of the Services.

2.2 In the event of any inconsistency between these Terms of Trade and the other documents comprising the Contract these Terms of Trade take priority to the extent of the inconsistency.

2.3 By purchasing the Services the Customer agrees to be bound by the Contract.

3. Customer Orders and Delivery

3.1 The Customer may order the Services from time to time by providing a purchase order to the Company in a form and containing such information as the Company may require.

3.2 The Company reserves the right to accept or reject any order submitted by the Customer at its absolute discretion.

3.3 The Customer acknowledges and agrees that any time or date nominated by the Company for the completion of the Services is an estimate only and does not constitute a condition of the Contract.

3.4 The Company shall not be liable to the Customer for any losses (including damages) arising as a result of any delay in providing the Services which is caused by an event or circumstance which is not within the reasonable control of the Company.

3.5 The Customer's Steel remains at the risk of the Customer notwithstanding that it may be located at the Company's premises or transported by way of the Company's vehicles and the Customer must keep the Customer's Steel fully insured.

3.6 All costs and charges incurred by the Company in respect of the transportation, packaging or delivery of the Customer's Steel will be at the cost of the Customer and the Customer shall reimburse the Company for such costs and charges when invoiced by the Company in accordance with clause 5.

- 3.7 The Customer acknowledges and agrees that the Company:
- (a) is not a common carrier and shall not be responsible for any damage to the Customer's Steel while such steel is being transported on the Company's vehicles; and
 - (b) does not deliver to construction sites, wharfs or residences, unless by prior arrangement.
- 3.8 Any inspection of the Customer's Steel by a Customer or by an independent testing authority after the provision of the Services shall be carried out at the Company's premises prior to delivery of the Customer's Steel to the Customer.
- 3.9 The Customer's Steel inspected in accordance with clause 3.8 will not be dispatched until the Customer has given its approval or acceptance of the Services in writing.
- 3.10 The Company shall not be responsible for any delays in delivery due to the Customer's failure to inspect the Customer's Steel.
- 3.11 Any Customer's order which is not subject to inspection shall be deemed to be accepted by the Customer upon delivery of the Customer's Steel to the Customer.
- 4. Standard of The Services**
- 4.1 The Customer must satisfy itself as to the suitability of the Customer's Steel supplied to the Company for the provision of the Services.
- 4.2 Without limiting any other term of the Contract, the Company shall not be liable for any damage, loss or claim suffered by the Customer as a result of providing unsuitable steel or steel which is used in any way that is contrary to the manufacturer's instructions or recommendations.
- 4.3 The Customer acknowledges and agrees:
- (a) some steels and cast iron may vary in chemistry due to manufacturing impurities which may cause coatings of various appearance with some impurity levels resulting in galvanizing which does not meet Australian Standards.

(By way of example, steel with a silicon content equal to or less than 0.01% such as aluminium-killed steels such as "laser plate" may not reach the coating thickness requirements of the Australian Standards.)
 - (b) the Customer has no right to reject the Services if the Customer's Steel is affected by manufacturing impurities as mentioned in clause 4.3(a) above;
 - (c) the Customer's Steel must be suitably prepared for galvanizing and if in the reasonable opinion of the Company such steel does not meet the standard required, then the Company reserves the right to reject the Customer's Steel for galvanizing and charge the Customer for any costs incurred by the Company in taking delivery and handling the Customer's Steel or carry out preparatory work on the Customer's Steel at the Customer's cost in order for it to meet safety and quality standards; and
 - (d) the Services are applied to the Customer's Steel at the risk of the Customer.
- 4.4 The Customer warrants that to the best of the Customer's knowledge and belief, the Customer's Steel is free from any defect or fault.
- 5. Payment Terms**
- 5.1 The Customer shall pay all invoices by the due date specified on the Company's invoice and if there is no date specified then within 30 days of the end of the month in which the invoice was issued.
- 5.2 The Customer must pay all invoices in full without demand, deduction, abatement, counter-claim or set-off and in Australian dollars.
- 5.3 If the Customer defaults in making payment to the Company in accordance with this clause 5 the Company may at its absolute discretion:
- (a) suspend or cancel any credit account or facility held by the Customer and require that any orders accepted by the Company prior to the default must be paid for prior to the Services being provided;
 - (b) charge the Customer Interest on the amount due from time to time calculated monthly from the date on which such default arose until such date all amounts and Interest are paid in full;
 - (c) require the Customer to reimburse the Company for all costs, including legal costs, incurred by the Company as a consequence of the Customer's failure to make payment for the Services in accordance with this clause 5;
 - (d) suspend or cancel any order and refuse to supply further Services until payment is made; and
 - (e) retain the Customer's Steel by way of lien as security for all money payable to the Company by the Customer for Services provided.
- 6. Confidentiality**
- 6.1 The Customer acknowledges and agrees that all pricing information and any other commercially sensitive or confidential information relating to the Services, the business of the Company and the Contract is strictly confidential ("Confidential Information").
- 6.2 Other than disclosure to its professional advisers or if required to disclose information by law, the Customer shall not permit any of its officers, employees, agents, contractors or related bodies corporate to disclose any Confidential Information to any person, without the prior written consent of the Company.
- 6.3 This clause 6 shall survive the termination of the Contract or these Terms of Trade.

7. PPSR Security

- 7.1 Terms used in this clause 7 have the same meaning as defined in the PPSA unless otherwise defined.
- 7.2 The Customer acknowledges that the Contract and these Terms of Trade constitute a security agreement for the purposes of section 20 of the PPSA and that the goods are collateral being described in any order or other part of the Contract.
- 7.3 The Customer acknowledges and agrees that the Company's interests in the goods are interests held as security for the payment of a monetary obligation or the performance of any other obligation for the purposes of the PPSA (Security Interest) and that the Company is the holder of a Purchase Money Security Interest (PMSI) by virtue of these Terms of Trade and/or the PPSA.
- 7.4 The Customer consents to the Company effecting a registration on the PPSR (in any manner the Company considers appropriate) in relation to any interest arising under or in connection with these Terms of Trade, any Contract or otherwise arising under the PPSA and the Customer agrees to provide all assistance reasonably required by the Company to facilitate such registrations.
- 7.5 The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any registration on the PPSR.
- 7.6 To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Company of any interest provided for by these Terms of Trade or any Contract, the parties agree that the following provisions of the PPSA do not apply:
- (a) to the extent that section 115(1) of the PPSA allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142, and 143; and
 - (b) in addition, to the extent that section 115(7) of the PPSA allows them to be excluded: sections 127, 129(2) and (3), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.
- 7.7 If section 115(1) of the PPSA does not allow section 125 of the PPSA to be excluded, the Customer agrees that at any time after any interest provided for by these Terms of Trade or any Contract has become enforceable, the Company may delay disposing of, or taking action to retain, the whole or part of the collateral to the extent permitted by law.
- 7.8 Where the Company has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
- 7.9 The Customer hereby consents to and appoints the Company to be an interested person and the Customer's authorised representative for the purposes of section 275(9) PPSA.
- 7.10 Subject to this clause 7 but regardless of any other terms in these Terms of Trade or any Contract, notices or documents required or permitted to be given to either party for the purposes of the PPSA must be given in accordance with the PPSA.

- 7.11 The Customer agrees to notify the Company in writing of any change to the Customer's details as provided in the Application, within 5 days from the date of such change.
- 7.12 The Customer agrees not to register or permit to be registered, a financing statement or a financing change statement in relation to the goods in favour of a third party without the prior consent of the Company.

8. Liability and Indemnity

- 8.1 The Company shall not be liable to the Customer:
- (a) for any loss or damage, consequential or otherwise, which is not a direct result of a breach by the Company of the Contract; and
 - (b) for any claim, damage, loss, liability, cost, expense or payment which the Customer suffers, incurs or becomes liable for in respect of the Services where it is shown that the Customer's Steel is defective or faulty.
- 8.2 The Customer releases the Company and its agents, employees or consultants from any or all liability to the Customer for any loss, damage or claim under clause 8.1.
- 8.3 The Customer shall indemnify the Company and its officers, agents, employees and consultants against:
- (a) any claim or claims that are made against the Company by or on behalf of any third party for any loss or damage (including property damage and injury or death) arising from or in connection with the Services except to the extent that such loss or damage was caused by the negligent act or omission of the Company or its officers, agents, employees and consultants; and
 - (b) all liability, claims, damage, loss, costs and expenses (including without limitation legal fees, costs and disbursements on a full indemnity basis) incurred by the Company as a result of a breach by the Customer of a term of the Contract.

9. Exclusion of Implied Conditions and Warranties

- 9.1 The Customer acknowledges and agrees that:
- (a) the only conditions and warranties which are binding on the Company in respect of the Services are those imposed and required to be binding by statute and, to the extent permitted by law, all other conditions and warranties whether express or implied by law in respect of the Services are expressly excluded.
 - (b) the Company's liability arising from the breach of any conditions or warranties (if any) will, at the Company's option, be limited to and completely discharged by providing the Services again.

10. GST

- 10.1 "GST" means GST within the meaning of the GST Act. "GST Act" means A New Tax System (Goods & Services Tax) Act 1999.

- 10.2 GST is payable by the Customer on the Services provided by the Company to the Customer and the price payable for the Services will be increased by an amount equal to the amount of GST payable.
- 10.3 The Company shall separately identify the amount of GST payable by the Customer on the Company's tax invoice.
- 11. Miscellaneous**
- 11.1 The Contract constitutes the entire agreement between the parties and contains all of the representations, warranties, covenants and agreements of such parties and there are no other oral statements, representations, undertakings, covenants or agreements between the parties whether expressed or implied.
- 11.2 Any notice, demand or other communication required to be given or made under the Contract shall be in writing and shall be delivered personally or sent by Express Post to each of the parties at their respective addresses or sent by email.
- 11.3 No waiver of any provision of the Contract by any of the parties shall be effective unless it is in writing and then such waiver shall be effective only in the specific instance and for the purpose for which it was given.
- 11.4 The Company reserves the right to vary all or any of these Terms of Trade upon providing 30 days' written notice to the Customer. The placing of an order or acceptance of the Services by the Customer after notice has been given is deemed to be an acceptance by the Customer of the amended Terms of Trade.
- 11.5 The Contract is governed by and construed in accordance with the laws of Western Australia
- 12. Disputes**
- 12.1 If a Dispute arises then either party may give a Dispute Notice to the other party and if a Dispute Notice is given then the Dispute shall be determined in accordance with this clause 12.
- 12.2 If not resolved within 14 days of the Dispute Notice (or such longer period as the parties may agree), the Dispute shall be referred to the authorised representative of each party who shall meet and undertake genuine and good faith negotiations with a view to resolving the Dispute.
- 12.3 If all efforts to resolve the Dispute under clause 12.2 fail and:
- (a) 21 days has expired since the giving of the Dispute Notice (or such longer period of time as the parties may agree); and
- (b) the quantum of the Dispute is less than AUD\$50,000, then the Dispute shall be submitted for expert determination to be conducted by a person appointed by the parties or, failing agreement on such appointment within 35 days after the giving of the Dispute Notice, a person appointed by the President for the time being of the Law Society of Western Australia. The person appointed ("the Expert") shall act as an expert and not an arbitrator and his or her decision shall be final and binding upon the parties. The Expert shall determine the dispute within 90 days of his or her appointment.
- 12.4 Each party will bear its own costs in respect of any expert determination undertaken in accordance with clause 11.3 and each party shall pay one-half of the Expert's costs.
- 12.5 If the Dispute is not resolved under clause 12.2 within 21 days after the giving of the Dispute Notice (or within such longer period of time as the parties may agree) AND the quantum of the Dispute is more than AUD\$50,000, then either party may commence legal proceedings against the other to resolve the Dispute.
- 12.6 This clause 12 shall survive the termination of the Contract.