

TERMS & CONDITIONS OF TRADE

1. What is the purpose of this agreement?

1.1 This agreement sets out the terms that apply to the relationship between you (and “your”) and **Mercer Stainless Limited** also trading as **Mercer Building Products, Mercer Medical and Mercer Interiors** (“we”, “us” and “our”).

2. What information about you can we collect?

2.1 You agree to provide us with and allow us to use information necessary to give effect to this agreement and provide you with the goods and services (“your information”). We will not hold your information longer than required for the purposes of its collection.

2.2 Unless your consent is withdrawn in writing, you agree to us disclosing any of your information:

- to give effect to or enforce our obligations under this agreement or a finance agreement; or
- when authorised by you or required by law;
- to assess your credit worthiness; and
- to market any of our goods and services to another person or entity.

2.3 We will not use your information unless we have reasonably ensured it is accurate, complete, relevant and not misleading. If we give your information to another entity we will do everything reasonably within our power to prevent unauthorised use or disclosure of your information.

2.4 You may access any of your information and ask us to correct any mistakes in it.

3. What are our products and services?

3.1 “Products and services” and “product(s)” means and includes, without limitation, all goods and inventory (whether separate, attached to something or performed work on), services and out of pocket expenses provided to you by us and identified:

- in any account, financial agreement, application, order form, packing slip, wholesale list, email, supply request, quote, invoice, statement, payment claim or other document issued by us to you, which are deemed to be incorporated into and form part of this agreement; or
- as ours by marking or a manner of storage enabling them to be identified as ours.

4. What is the price?

4.1 The price is the cost of the products and services as agreed between you and us from time to time including all out of pocket expenses. You agree to reasonable changes in the price at any time.

4.2 If no price is stated in writing or orally agreed, the products and services will be deemed to be provided at the cost that we provide those products and services at the time of the transaction.

5. What happens when we give you a quote?

5.1 When we give you a quote for products and services:

- unless otherwise agreed or withdrawn in writing, the quote will be valid for thirty (30) days from the date of issue;
- the quote will be exclusive of GST and freight unless stated otherwise;
- we have the right to alter the quote because of circumstances beyond our control; and
- you agree to pay for the extra costs incurred where other products and services are required in addition to the quote or you request alterations.

6. When and how do you pay us?

6.1 You agree to pay us:

- on or before the 20th day of the month following the date of our invoice (“the due date”) unless otherwise agreed in writing;
- interest on any amount you owe after the due date at a rate of 2.5% per month or part month;
- any expenses, including debt collection and legal costs, that we incur as a result of enforcing any of our rights contained in this agreement;
- without set-off, deduction or counterclaim; and
- a deposit when required.

6.2 We may require progress payments and invoice by payment claims under the Construction Contracts Act 2002.

6.3 We may require a credit card retention for products and services, the value of which you agree will be deducted from your credit card. All payments by credit card will incur an extra charge of 2.5% of the value of the invoice.

6.4 You agree to us allocating or reallocating any payment received from you towards any invoice. If no allocation is made then it is deemed to be in such a way that preserves the maximum value of our purchase money security interest in the products.

7. What warranties apply?

7.1 Manufacturer’s warranty where applicable.

7.2 If you are in trade, you agree that the Consumer Guarantees Act 1993 does not apply.

7.3 Subject to any obligation to you under the Consumer Guarantees 1993 and the Carriage of Goods Act 1979, if we are deemed to be liable to you for any loss or damage of any kind, arising from the provision of services to you, including consequential loss, whether suffered or incurred by you or another person or entity and whether in contract or tort or otherwise, then it is agreed by you, that our total liability is limited to the value of the products and services provided to you.

7.4 We are not liable for delay or failure to perform our obligations if the cause is beyond our control.

7.5 You agree that samples of products shown to you may vary from products provided to you.

8. What if you want to return a product?

If a product is faulty or incorrectly supplied we may refund, repair or replace the product or credit your account at our discretion.

8.1 Acceptance of a product returned for reason other than fault or incorrect supply is at our absolute discretion and subject to the following:

- you must notify us within seven (7) days;
- the product must be in the same condition and packaging as when provided to you;
- the product must not have been modified in any manner at your request;
- you will be responsible for the cost of returning the product and we may charge a re-stocking fee of:

- 15% of the original value of the invoice if the products are returned within fifteen (15) days of the invoice date; or

- 20% of the original value of the invoice if the products are returned after fifteen (15) days but before thirty (30) days of the invoice date.

- we may refund, repair or replace the product or credit your account at our discretion.

9. What ownership and security rights do we have?

9.1 Until you have paid us in full for all products provided by us we retain ownership of and hold a security interest in all products.

9.2 You agree that we hold security interest in all of your present and after acquired property that we have provided to you or performed services on or to which a product is attached. You agree to waive your entitlement under s 148 of the Personal Property Securities Act 1999 to receive a copy of a verification statement where we have registered our interest.

9.3 You agree that we may exercise a general lien against any products subject to services in our possession for any default. You also agree to use the products for the purpose for which they were intended and provided to you by us.

9.4 We own all existing and new intellectual property rights connected to the products and services and any brands associated with the products and services. You fully indemnify us for any intellectual property infringements we may make when acting in accordance with your instructions.

9.5 If you fail to pay us for products and services, then you agree that such failure gives rise to a legal or equitable estate or interest (“the interest”) in your land on which the products and services were carried out and affixed and that the interest entitles us to register a caveat against your land pursuant to the Land Transfer Act 1952 and its amendments or any legislation in substitution thereof. A caveat is a notice that is registered against the title of your land, which informs anyone who searches that title that we have a right to or interest in that land.

10. When are we responsible for the products?

10.1 We are responsible for the products until the products are delivered to you or leave our premises or our service is complete, whichever applies.

10.2 Delivery to you is complete when we give the products directly to you or another person who will give the products to you or leave them on your premises.

10.3 We may make partial deliveries of products listed in one order or invoice.

10.4 The time stated for delivery is an estimate only, we are not responsible for any delay in delivery.

11. When may we cancel this agreement?

11.1 We have the right by notice to suspend or cancel any part of any agreement for the provision of products and services to you if you default by:

- failing to pay or indicating you will not pay any sum owing by the due date;
- any of your creditors seizing or indicating they will seize any products provided to you;
- products in your possession becoming materially damaged while any amount owed to us remains unpaid;
- being bankrupted, insolvent, under statutory management or put into liquidation;
- a receiver being appointed over or a landlord possessing any of your assets;
- a court judgment entered against you remaining unsatisfied for seven (7) days;
- breaching the terms of this agreement; and
- an adverse material change in your financial position.

11.2 Cancellation or suspension will not affect our claims for any amount due at the time of cancellation or suspension, damages for any breach of your obligations under this agreement and any other legal rights we may have. Upon cancellation of this agreement any amount owed by you will become due to us and current orders terminate.

11.3 You agree that if you default and the default is not remedied within seven (7) days of it occurring, we may enter any premises occupied by you to inspect or retrieve any products. We may store and/or sell any products and credit the net sale proceeds to your account.

12. Does a personal guarantee apply?

12.1 If you are a director of a company or the trustee of a trust:

- in exchange for us agreeing to supply products and services and grant credit to the company or the trust, you also sign this agreement in your personal capacity, and jointly and severally personally undertake as principal debtors, to pay everything that the company or trust owes us, and to indemnify us against non-payment and/or default; and
- any personal liability of you as director or trustee will not exclude the company or trust from the liabilities and obligations contained in this agreement.

13. What else are you agreeing to?

13.1 On occasions we may outsource (contract out) part of work required to produce the products and services. You agree to pay for all amounts due in connection with the outsourcing.

13.2 If required, you will store or use goods in such a way that they can be identified as provided by us.

13.3 If we fail to enforce any of the terms of this agreement it will not be deemed to be a waiver of any of the rights or obligations we have under this agreement.

13.4 If any of these terms are determined to be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining terms will not be affected.

13.5 This agreement supersedes all prior agreements, representations and warranties. Any instructions we receive from you will be subject to this agreement. We may waive any of our rights under this agreement or mutually vary any terms of this agreement in writing. General changes to these terms will be published on our website.

13.6 You agree that all documentation related to this agreement may be served on you by email.

13.7 If any dispute arises between you and us we must be notified in writing within seven (7) days.