

TERMS AND CONDITIONS OF TRADE

Effective from October 2019

The following terms and conditions apply to credit facilities and all purchases of goods and services from any Perry Metal Protection Company as defined in clause 1.6 below

1 DEFINITIONS

- 1.1 "Customer" means the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.2 "Goods" means all goods and services provided by Perry to the Customer and without limitation shall include all charges for labour and work, hire charges, or any fee or charge associated with the supply of goods.
- 1.3 "Guarantor" means that person (or persons) or entity who agrees herein to be liable for the debts of the Customer.
- 1.4 "PPSA" means the Personal Property Securities Act 1999.
- 1.5 "Order" means an agreement between Perry and the Customer for Perry to supply goods and/or Services to the Customer.
- 1.6 "Perry" means Perry Metal Protection Ltd, together with any other subsidiary an/or related company of Perry Metal Protection Ltd from time to time.
- 1.7 "Quote" means a written offer from Perry to the Customer to supply Goods and Services for a specified price subject to the terms and conditions of such offer.

2 TERMS OF SALE

- 2.1 Perry will supply goods to you the Customer on these terms only unless Perry agrees otherwise in writing.
- 2.2 Perry may however amend these terms from time to time.
- 2.3 Perry are under no obligation to accept all or any of the Customers orders.

3 ORDERS, QUOTES, ESTIMATES

- 3.1 Perry may decline in whole or in part any orders at its sole discretion.
- 3.2 Where the terms of this contract are at variance with the order or instruction from the Customer this contract shall prevail.
- 3.3 A Customers acceptance of a Quote constitutes an agreement to purchase Goods or Services on these Terms and Conditions.
- 3.4 Quotes are prepared from the information supplied to Perry by the Customer,
- 3.5 Perry will not be liable nor will Perry be bound by the Quote where
 - a. The information is inaccurate or any information omitted and/or
 - b. Any variations made by the Customer which results in the work being different from that quoted.
- 3.6 Unless otherwise stated prices do not include GST
- 3.7 When goods are required in addition to the quotation the Customer agrees to pay the additional cost of such goods.
- 3.8 An estimate for price or quantities is not binding on Perry.
- 3.9 When the Customer purchases goods by quantity from Perry the supplied Goods shall be determined by the measurement of the Goods across the Perry weighbridge.
- 3.10 Perry will hold the Quote fixed for three months from the date of the Quote.
- 3.11 Perry may charge any cost increases at the end of the three month period.
- 3.12 Perry may charge any increased cost from the date of the Quote caused by any alteration or modification requested by the Customer after the date of the Quote or any increase in cartage rates as advised by the NZRT Association
- 3.13 The Quote must be accepted by the Customer in writing within 90 days unless Perry tells the Customer in writing that it has been withdrawn.
- 3.14 Once the Customer has accepted a Quote the Customer may not cancel it without Perry's written consent. If Perry do provide their written consent to cancel, the Customer will be liable to refund to Perry all costs and expenses incurred by Perry in filling the order up to the date of cancellation.

4 DELIVERY

- 4.1 Where Perry do not undertake delivery, risk in the goods passes to the Customer at the time possession is given to the Customer or the Customers nominated carrier.
- 4.2 Where Perry do undertake delivery Perry are not a common carrier and do not undertake the obligations or liabilities of a common carrier.
- 4.3 Where Perry have agreed to leave a public road or street to deliver the goods to the Customer then; the Customer is responsible for providing suitable means of access and the Customer will be liable for all costs, damages and expenses incurred (including consequential loss) if the Customer fails to provide suitable means of access.
- 4.4 Perry reserve the right to refuse to deliver goods to the Customer if in Perry's opinion or in the opinion of Perry's representative there is no suitable access.
- 4.5 Perry may charge the Customer normal hourly truck hire rates for delays caused by the Customer, or the Customer's agents or contractors.
- 4.6 The Customer must pay all delivery and insurance charges (if any)

5 CUSTOMER PROPERTY

- 5.1 All Customers property supplied to Perry by or on behalf of the Customer will be held at the customers' risk

6 DISCOUNT

- 6.1 Where the Customer receives a discount based on volume for Goods or services and the Customer fails to purchase the total volume of Goods or services Perry reserves the right to withdraw such discount.

7 PAYMENTS

- 7.1 The Customer must pay the price and other charges on the 20th of the month following the date of purchase or service.
- 7.2 Perry may however require the Customer to pay sooner possibly before the goods are sent to the Customer.

8 WORKERS LIEN

- 8.1 The Customer acknowledges that Perry has a workers lien over any of the Customers equipment upon which services have been performed in order to secure the obligations the Customer has to pay for such services and any other obligations.

9 SECURITY INTEREST

- 9.1 In addition to the lien referred to in clause 8.1 the Customer grants to Perry a security interest over any goods or any property belonging to the Customer that is in the possession of Perry for all sums outstanding under this contract.
- 9.2 If the security interest is not satisfied within 7 days of the due date Perry may having given notice of the security interest at its option either
 - (a) remove such goods or property and store them in such a place and in such a manner as Perry shall think fit and proper and all the risk and expense of the Customer Or
 - (b) sell such goods or property or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the security interest and costs of sale without being liable to any person for damage caused.

10 ABANDONED GOODS

- 10.1 Without prejudice to Perry's rights under clauses 8 and 9, if the Customer does not collect the Goods within 90 days of Perry completing the galvanizing, Perry may sell the Goods to a scrap metal dealer or other purchaser and apply the proceeds of sale as follows:
 - (a) in payment of any amount owed by the customer to Perry;
 - (b) to meet Perry's storage costs of the Goods at the rate of 50c per kilogram per month from the date the goods were ready to be collected until the date of sale;
 - (c) forfeiture of the balance of the funds to Perry subject to the Customer's right to request that the balance be paid to the Customer.

11 CREDITS

- 11.1 If Perry are holding any monies payable to the Customer or Perry have given the Customer a credit such monies or credit may be applied in reduction of any debt owing by the Customer to any other Company in the Perry Group

12 OWNERSHIP

- 12.1 Perry will remain the owner of the goods the Customer purchases from them until all sums the Customer owes to Perry or to any Perry Group Company for any reason are paid in full, and even if the Customer incorporates the goods with other products.
- 12.2 Perry can always enter premises where the goods are located (or where Perry believe them to be located) and take possession of and/or remove them while Perry remain the owner.
- 12.3 If the Customer wishes to resell any goods before the Customer becomes the owner, the Customer may do so only if the sale is genuine and made in the ordinary course of the Customers business The Customer must promptly account to Perry for the proceeds of the sale and will hold any proceeds on trust for Perry until the Customer does so.

13 OVERDUE PAYMENT

- 13.1 The Customer must pay default interest at the rate of 2.5% per month on overdue payments calculated from the date payment is due until Perry receive payment.
- 13.2 Perry may review their default rate from time to time.
- 13.3 The Customer must immediately pay all costs (including collection agency and legal costs) incurred by Perry in collecting or attempting to collect the Customers overdue payments.
- 14 **OUR RIGHTS**
- 14.1 If a Default Event occurs then;
 - (a) Perry will be entitled to cancel all or part of the Customer's orders which have not been delivered in full; and
 - (b) All amounts the Customer owe Perry whether due for payment or not will be immediately due and payable; and Perry may reclaim goods in the Customers possession or control and dispose of them for Perry's own benefit as Perry think fit.

- 14.2 For the purposes of this clause a 'default event' occurs if
 - (a) A payment by the Customer is overdue: or
 - (b) In Perry's opinion the Customer is unlikely to be able to pay their debts immediately

15 WARRANTIES

- 15.1 Perry warrant that the goods supplied by them are free from defects.

- 15.2 All other guarantees, warranties and representations in relation to the goods or their supply are excluded except the extent that Perry can not lawfully exclude them.

16 CONSUMER GUARANTEES ACT 1993

- 16.1 When the Customer purchases goods or services from Perry for business purposes, then the guarantees and rights expressed or implied in the Consumer Guarantees Act in the Customers favour do not apply to the goods or services.

17 LIMITATION OF LIABILITY

- 17.1 Perry will not be liable for any in direct or consequential loss incurred by the Customer as a result of any act or omission by Perry.
- 17.2 Perry will not be liable to the Customer for failure to deliver by specified date, or for loss caused by anything which is beyond Perry's reasonable control
- 17.3 Perry's liability to the Customer is otherwise limited to the value of the goods and or services supplied by Perry and associated with the Customers claim.
- 17.4 Perry may at their option and as appropriate either:
 - (a) Replace defective goods or
 - (b) Pay the Customer the price (excluding gst) the Customer paid Perry for the goods and or services
- 17.5 Perry will not however accept responsibility for any defective goods, unless;
 - (a) The Customer notify Perry of the defect within 14 days of the Customer receiving the goods, and
 - (b) The Customer allow Perry to fully investigate their claim
- 17.6 This clause will not apply to the extent that the law prohibits Perry from limiting their liability

18 WAIVER

- 18.1 If Perry delay or do not exercise any of their rights or remedies that will not be a waiver of the right or remedy.
- 18.2 Any waiver or consent Perry gives you the Customer must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.

19 SEVERABILITY

- 19.1 If part of this agreement is deemed to be invalid, illegal or unenforceable the validity existence legally and enforceability of the remaining provisions shall not be affected prejudiced or impaired.

20 PERSONAL PROPERTY SECURITIES ACT

- If Perry register their security interest on the Personal Properties Securities Registrar you the Customer waiver the requirement to receive a copy of the Registration Verification statement. The Customer also waives any rights it may have under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131 and 133 of the Personal Property Securities Act 1999.

21 ASSIGNMENT

- 21.1 The Customer shall not assign all or any of its rights or obligation under this agreement without the written consent of Perry.

22 GOVERNING LAW

- 22.1 These terms will be governed by New Zealand Law and you the Customer agree to submit to the exclusive jurisdiction of the New Zealand Courts.

23 GUARANTORS

- 23.1 Any personal guarantee made by any third party shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The guarantors and Customer shall be jointly and severally liable under the terms and condition of this contract.

24 MISCELLANEOUS

- 24.1 Any notices to the Customer may be given by posting the notice to the Customer last known postal address or by faxing notice to Customers last known facsimile number or by email message sent to Customers last known e mail address.

25 WEBSITE

- 25.1 All goods and services which are displayed on the Perry Website are subject to Perry's Terms and Conditions of Trade

26 DISPUTE RESOLUTION

- 26.1 Both Perry and the Customer must first discuss the dispute and in good faith try and settle it between themselves, and if they can't resolve the dispute they must then refer it to mediation by a LEADR qualified person.
This clause will not apply to application by either Perry or the Customer for urgent interlocutory relief.

Initial