



ALRITE STEEL & SERVICES NZ LTD

P. O. Box 98-967, Manukau 2241, Auckland, New Zealand

Phone: +64 9 270 2008 Fax: +64 9 270 2009 Email: info@alrite.co.nz

GENERAL AGREEMENT AND CONDITIONS OF SALE OF GOODS BETWEEN

ALRITE STEEL & SERVICES NZ LIMITED

Hereafter referred to as “the Seller”

AND THE PURCHASER OF GOODS

Hereafter referred to as “the Buyer”

1. Price

- (a) All prices quoted are based upon rates and charges at the date of quotation but price is subject to availability of materials at the date of order.
- (b) If at the date of order any item quoted is not available the Seller will not be bound to supply that item. If a substitute product is offered it will be at rates current at the time of that offer and any previous rate provided will not be binding.
- (c) Unless expressly stated otherwise all prices quoted will be exclusive of GST.

2. Supply:

- (a) The Seller supplies on these terms only, all other conditions and warranties implied by law are expressly excluded in so far as the law will allow.
- (b) The receipt of an order of goods from the Buyer will be deemed to be acceptance by the Buyer of these Conditions of Sale of Goods, notwithstanding anything that may be stated to the contrary in the Buyer's conditions.
- (c) No variation or modification of these terms and conditions will be binding on the Seller unless accepted by the Seller in writing.
- (d) No order of goods, once accepted by the Seller, may be cancelled or varied by the Buyer except with the Seller's written consent.

3. Inspection

- (a) Where the goods are not stocked by the Seller the Buyer may request in writing that the Seller cause the manufacturer to inspect the goods and issue a certificate of inspection/quality certificate in respect thereof prior to shipment.
- (b) If requested by the Buyer and agreed by the Seller in writing, the Seller shall facilitate a third party inspection of the goods to be supplied. The Buyer shall be responsible for advising about third party inspection requirements and the inspecting party's details. The Buyer shall be responsible for all costs and any margin charged by the Seller thereon for the third party inspection, and if notified after the order has been made shall be a variation to the supply contract.
- (c) The Seller will only act as a facilitator and will not be responsible for incorrect or misleading statements made by the manufacturer, or any third party inspector.

4. Suitability, Warranty & Limitations of Liability

- (a) The goods supplied to the Buyer do not include any recommendation or warranties by the Seller, that the goods are fit for any particular purpose. It is the Buyer's responsibility to ensure that the grade and type of goods chosen (including coatings and fittings) are suitable for the environment in which they will be installed and that the goods are suitable for the intended end use.
- (b) Any remedy of the Buyer shall be under this Agreement or statute where applicable, any liability of the Seller arising by way of negligence or other common law cause of action is expressly excluded. In any event the Seller shall not be responsible to the Buyer for any special, incidental, consequential, indirect or exemplary damages and the Seller's liability shall be limited to the actual loss suffered by the Seller or the price of the goods, whichever is the lesser.
- (c) The provisions of the Consumer Guarantees Act 1993 will not apply where the Buyer obtains the goods for the purposes of a business. The Seller shall assume the Buyer is acquiring goods for business purposes unless expressly notified otherwise.



ALRITE STEEL & SERVICES NZ LTD

P. O. Box 98-967, Manukau 2241, Auckland, New Zealand

Phone: +64 9 270 2008 Fax: +64 9 270 2009 Email: info@alrite.co.nz

5. Further Sale of Goods

If the Buyer on-sells the goods to its customer, the Buyer:

- (a) Will not give any guarantees or make any representations on behalf of the Seller except within the limits of any technical literature which may be agreed in writing between the Buyer and the Seller.
- (b) Will contract out of the Consumer Guarantees Act 1993 insofar as the Buyer is able.
- (c) Will oblige each of its own customers in writing to likewise contract out of the Consumer Guarantees Act 1993 insofar as they are able if they are to on sell the goods .
- (d) The Buyer agrees to and hereby indemnifies the Seller against any claim made against the Seller in breach of this clause. Such indemnity shall extend to all damages, expense, costs, consequential loss, legal costs (on a full indemnity basis) and any other loss howsoever caused that the Seller suffers.

6. Insurance:

- (a) For all FOB sales Freight and transit insurances are the Buyer's responsibility, unless expressly agreed otherwise. The goods become the responsibility of the Buyer once they leave the Seller or manufacturer. The Seller will have no responsibility for the goods during transit. The Seller will not be responsible for any insurance cover arranged for the Buyer.
- (b) The Buyer may, at their own expense, request that the Seller arrange for insurance cover for the goods.
- (c) The Seller may, at its sole discretion refuse any request to arrange for insurance cover of the goods.

7. Delivery

- (a) The date of Bill of Lading/Invoice shall be deemed to be conclusive evidence of the date of shipment.
- (b) Partial shipments shall be permitted.
- (c) A variation of a fixed percentage (mentioned in each individual contract/order) of the total quantity and total amount shall be allowed.
- (d) Delivery dates are approximate. Time is not of the essence in respect of any delivery date and the Seller shall not be liable for loss or damage to the Buyer or its customers due to late delivery of goods.

8. Payment:

The terms of payment are as follows, depending on the type of order placed. For:-

- (a) 'Custom made' orders payment is due in full on the date the order is placed (due date);
- (b) 'Indent' orders payment is due in full seven days after delivery (due date);
- (c) 'Stock' payment is due in full on the 20th of the month following delivery (due date).
- (d) The order type, 'Custom Made', 'Indent' 'Stock' will be indicated in the documentation provided by the Seller.
- (e) Unless stated otherwise on the quotation or sales invoice, payment is due in all cases without deductions of any nature whatsoever, whether by way of set off, counter claim, or other equitable or lawful claim.
- (f) The Seller may issue interim invoices for part of an order.

9. Retention of Title and the Personal Property Securities Act

- (a) The ownership of the goods supplied by the Seller will remain with the Seller until payment for those goods has been made in full, and for payment of all other monies due and owing to the Seller.
- (b) The Buyer grants the Seller a security interest in all of the Buyer's present and after-acquired property under section 36 of the Personal Property Securities Act (PPSA).
- (c) The Buyer consents to the Seller registering on the Personal Property Security Register (PPSR) a general security over all of the Buyer's assets and a security interest over all goods supplied by the Seller.
- (d) The Buyer waives the right to receive a copy of the verification statement of any registration on the PPSR under the PPSA.
- (e) Until such time as payment is made in full, the Buyer will store and maintain the goods in good condition, and ensure that the goods are identified in such a way that they are clearly the property of the Seller.
- (f) If, prior to ownership in the goods passing to the Buyer in under clause 9, the goods become incorporated into another object (hereinafter called the object) the Buyer agrees that the Seller will retain a vested interest in these objects as follows:
 - i. For objects which are not fixtures, ownership of the new object shall remain with the Seller until such time as ownership has passed in terms of clause 9. The Buyer may sell the object described,



ALRITE STEEL & SERVICES NZ LTD

P. O. Box 98-967, Manukau 2241, Auckland, New Zealand

Phone: +64 9 270 2008 Fax: +64 9 270 2009 Email: info@alrite.co.nz

but shall assign to the Seller the sale proceeds of the same, in satisfaction or part satisfaction of the debt to the Seller, and if the sale price is greater than the debt, then the assignment shall be to the extent of the amount due.

- ii. Should the object become permanently incorporated into a fixture, the Buyer shall assign to the Seller, any amount due to the Buyer, as consideration for goods and services in relation to the fixture in satisfaction or part satisfaction of the debt to the Seller, and if the amount due to the Buyer is greater than the debt, then the assignment shall be to the extent of the amount due.
 - iii. Any consideration received by the Buyer as described in 9(f)(i), or 9(f)(ii) above shall be held in trust for the Seller, and the Buyer shall take all precautions and actions necessary to ensure that the consideration is preserved for the benefit of the Seller.
- (g) The Buyer hereby irrevocably gives the Seller, its agents and servants, leave and licence, at any time after the purchase price of any goods has become due and has not been paid, and without the necessity of giving any notice, to enter on and into any premises occupied by the Buyer to search for and remove any of the goods supplied to the Buyer, or in which the Seller has ownership as aforesaid without being liable in any way to the Buyer or any person or any company claiming through the Buyer.

10. Default in Payment:

Should the Buyer fail to pay by the due date, the Seller reserves the right to charge interest at the current bank overdraft rates for the period that the account remains unpaid, with interest accruing on a daily basis, until payment is received. All legal costs, expenses and other fees incidental to recovery will be payable by the Buyer (on a full indemnity basis).

11. Force Majeure

- (a) If a shipment is prevented or delayed in whole or in part by reason of force majeure, including but not limited to, any prohibition, licence or any other acts of any government or restriction imposed by any government, war, revolution, riot, strike or other labour disputes, fire, flood, typhoon, peril or accident of the sea, inability to obtain transportation or any other causes beyond the control of the Seller, then the Seller shall not be liable for non-shipment or late shipment of the goods or for non-performance of this agreement.
- (b) If any of the events set forth in the preceding paragraph 11 (a) occurs either party has the right to terminate the individual contract affected thereby, by giving notice to the other party of cancellation and proof of the relevant force majeure event.
- (c) Upon termination as set out in 11(b) the Buyer will still be liable to the Seller for the price agreed for the product. The due date for payment will become the 20th of the month following the notice of cancellation by force majeure. Clause 6 of these terms and conditions will survive the cancellation. Apart from payment and insurance obligations as noted each party shall have no liability or obligations under this agreement and any individual contract.

12. Claims

- (a) All claims are subject to clause 4 above.
- (b) Claims relating to quantity, length, type or weight will not be considered or allowed, unless the Seller is notified in writing of such a claim within seven days of delivery of the goods to the Buyer.
- (c) On receipt of such claim, as described in 12 (b) above, the Seller will be given a reasonable opportunity to investigate any such claim.
- (d) The Seller will not be responsible for any claims of consequential losses, or any claims by a third party.
- (e) The Seller will not be responsible for any claims associated with –
 - i. Delivery on any specified date;
 - ii. Loss caused by factors outside the Seller's control;
 - iii. Testing of goods;
 - iv. Any equipment or plant damage;
 - v. Any act or omission by any subcontractor;
 - vi. Percentage of the goods to be treated becoming wastage or scrap;
 - vii. Deterioration of the goods supplied, due to exposure to the elements;



ALRITE STEEL & SERVICES NZ LTD

P. O. Box 98-967, Manukau 2241, Auckland, New Zealand

Phone: +64 9 270 2008 Fax: +64 9 270 2009 Email: info@alrite.co.nz

- viii. Communications errors due to the transmission by facsimile machines, telex, electronic mail or similar, where the Buyer has chosen that form of communication;
- ix. Any third party or to the Public.

13. Governing law & Arbitration

- (a) These terms and conditions will be governed by the law of New Zealand. The Buyer irrevocably agrees to submit to the exclusive jurisdiction of the New Zealand courts.
- (b) All disputes, controversies, or differences which may arise between the parties, out of or in relation to or in connection with this agreement, or for the breach thereof, shall be finally settled by arbitration to be held in New Zealand in accordance with the rules of the Arbitrators' and Mediators' Institute of New Zealand. The award rendered by the arbitrator(s) shall be final and binding upon all parties concerned.
- (c) Before referring a dispute to arbitration the Buyer and the Seller shall take all reasonable steps to settle the dispute between themselves. Including providing a clear communication of the facts of the dispute to the other party and allowing sufficient time for investigation and negotiation.

14. General

- (a) The illegality, invalidity or unenforceability of a provision or part of a provision of these terms and conditions under any law will not affect the legality, validity or enforceability of that provision under any other law; or the legality, validity or enforceability of the remaining part of the provision or the terms and conditions as a whole.
- (b) The Buyer will be liable to pay all costs and expenses (including legal costs calculated as between solicitor and own client) borne by the Seller for any consequences relating to any breach of these terms and conditions by the Buyer.
- (c) The Buyer warrants that if the Buyer gives the Seller any design or other instructions, neither the Buyer in so doing, nor the Seller in receiving and/or following such instructions, will breach any intellectual property rights or other rights or interests of any person.
- (d) The Buyer will not use the Seller's trademarks/logo unless agreed otherwise in writing.

15. Consent to Terms and Conditions

The undersigned hereby acknowledges and agrees to the following:

- (a) The Buyer has applied to have a credit account opened with the Seller, on the terms and conditions contained in this agreement.
- (b) The Buyer declares that the stated information is true and correct in every particular.
- (c) Should there be any variation to any information supplied by the Buyer in the Credit Application Form or in the structure of the Buyer's business (such as conversion to or from a company or trust), the Seller shall forthwith be notified in writing. Unless such notification is given, and accepted by the Seller the original Buyer and the persons who signed as guarantors in this application form/agreement shall remain liable to the Seller as though any goods or services supplied by the Seller were supplied to the original Buyer.
- (d) Persons signing & submitting these terms & agreement on behalf of the Buyer are implied to have necessary authority.
- (e) Consumer Credit Information: The Seller may obtain, from a credit reporting agency, a credit report containing personal credit information about the Buyer/persons signing this form for the purpose of assessing this application in relation to commercial credit provided by the Seller.

YOUR SIGNATURE ON THE AGREEMENT TO OPEN A CREDIT ACCOUNT AND BECOME A BUYER FOR ALRITE STEEL & SERVICES NZ LTD. SHALL SHOW ACCEPTANCE OF ALL THE TERMS & CONDITIONS CONTAINED IN THIS FORM

The Buyer's Consent

1) NAME OF DIRECTOR _____	2) NAME OF DIRECTOR _____
SIGNATURE _____	SIGNATURE _____
DATE _____	DATE _____

The Buyer's Signature



ALRITE STEEL & SERVICES NZ LTD

P. O. Box 98-967, Manukau 2241, Auckland, New Zealand

Phone: +64 9 270 2008 Fax: +64 9 270 2009 Email: info@alrite.co.nz

FOR AND ON BEHALF OF _____

AS TRUSTEE FOR _____

DATED _____

WITNESS NAME _____

SIGNATURE _____ DATED _____

Personal Guarantee(s)

- (f) The undersigned guarantor(s) agree to be personally liable for any and all amounts due and owing by the Buyer.
- (g) In the event that the Buyer owes any money to the Seller, the Buyer and the guarantor(s) agree that the Seller is not required to exhaust remedies against the Buyer before pursuing the guarantor(s). The Seller has the right to elect which parties it will pursue for payment.

Guarantor(s) Consent

1) NAME OF GUARANTOR _____	2) NAME OF GUARANTOR _____
SIGNATURE _____	SIGNATURE _____
DATE _____	DATE _____
WITNESS NAME _____	
SIGNATURE _____	DATED _____

The Buyer's Signature