

Paramount Stainless Ltd – Terms & Conditions of Trade

1. Definitions		
1.1 "Paramount" means Paramount Stainless Limited, its successors and assigns or any person acting on behalf of and with the authority of Paramount Stainless Limited.		
1.2 "Client" means the persons buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.		
1.3 "Goods" means all Goods or Services supplied by Paramount to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).		
1.4 "Price" means the Price payable for the Goods as agreed between Paramount and the Client in accordance with clause 6 below.		
2. Acceptance		
2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.		
2.2 These terms and conditions may only be amended with Paramount's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Paramount.		
3. Electronic Transactions Act 2002		
3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.		
4. Authorised Representatives		
4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to Paramount as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies Paramount in writing that said person is no longer the Client's duly authorised representative).		
4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise Paramount in writing of the parameters of the limited authority granted to their representative.		
4.3 The Client specifically acknowledges and accepts that they will be solely liable to Paramount for all additional costs incurred by Paramount (including Paramount's profit margin) in providing any Goods, Services or variations requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).		
5. Change in Control		
5.1 The Client shall give Paramount not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by Paramount as a result of the Client's failure to comply with this clause.		
6. Price and Payment		
6.1 At Paramount's sole discretion the Price shall be either: (a) as indicated on any invoice provided by Paramount to the Client; or (b) the Price as at the date of delivery of the Goods according to Paramount's current price list; or (c) Paramount's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.		
6.2 Paramount reserves the right to change the Price if a variation to Paramount's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases in the cost of labour, or fluctuations in the dollar value of metal prices that result in increases to Paramount in the cost of raw materials) will be charged for on the basis of Paramount's quotation and will be shown as variations on the invoice.		
6.3 At Paramount's sole discretion a non-refundable deposit may be required.		
6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Paramount, which may be: (a) on delivery of the Goods; (b) by way of instalments/progress payments in accordance with Paramount's payment schedule; (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices; (d) the date specified on any invoice or other form as being the date for payment; or (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Paramount.		
6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Paramount.		
6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Paramount an amount equal to any GST Paramount must pay for any supply by Paramount under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.		
7. Delivery of Goods		
7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that: (a) the Client or the Client's nominated carrier takes possession of the Goods at Paramount's address; or (b) Paramount (or Paramount's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.		
7.2 At Paramount's sole discretion the cost of delivery is in addition to the Price.		
7.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Paramount shall be entitled to charge a reasonable fee for redelivery and/or storage.		
7.4 Paramount may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.		
7.5 Subject to clause 7.6 it is Paramount's responsibility to ensure that the Services start as soon as it is reasonably possible.		
7.6 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Paramount claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Paramount's control, including but not limited to any failure by the Client to: (a) make a selection; or (b) have the site ready for the Services; or (c) notify Paramount that the site is ready.		
7.7 Any time or date given by Paramount to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Paramount will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.		
8. Risk		
8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.		
8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Paramount is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Paramount is sufficient evidence of Paramount's rights to receive the insurance proceeds without the need for any person dealing with Paramount to make further enquiries.		
8.3 If the Client requests Paramount to leave Goods outside Paramount's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.		
8.4 Where Paramount is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Paramount shall not be liable for any claims, damages, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.		
8.5 Where the contract does not include installation of Goods by Paramount, Paramount shall not be liable for any defect or damage resulting from incorrect or faulty installation.		
8.6 Any advice, recommendation, information, assistance or service provided by Paramount in relation to Goods or Services supplied is given in good faith, is based on Paramount's own knowledge and experience and shall be accepted without liability on the part of Paramount and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.		
9. Accuracy of Client's Plans and Measurements		
9.1 Paramount shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Paramount accepts no		
responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.		
9.2 In the event the Client gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Paramount places an order based on these measurements and quantities. Paramount accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.		
10. Access		
10.1 The Client shall ensure that Paramount has clear and free access to the work site at all times to enable them to undertake the Services. Paramount shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Paramount.		
11. Underground Locations		
11.1 Prior to Paramount commencing any work the Client must advise Paramount of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.		
11.2 Whilst Paramount will take all care to avoid damage to any underground services the Client agrees to indemnify Paramount in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.		
12. Compliance with Laws		
12.1 The Client and Paramount shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.		
12.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.		
12.3 The Client agrees that the site will comply with any work health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.		
13. Title		
13.1 Paramount and the Client agree that ownership of the Goods shall not pass until: (a) the Client has paid Paramount all amounts owing to Paramount; and (b) the Client has met all of its other obligations to Paramount.		
13.2 Payment by Paramount of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.		
13.3 It is further agreed that: (a) until ownership of the Goods passes to the Client in accordance with clause 13.1 that the Client is only a bailee of the Goods and must return the Goods to Paramount on request. (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Paramount and must pay to Paramount the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed. (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Paramount and must pay or deliver the proceeds to Paramount on demand. (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Paramount and must sell, dispose of or return the resulting product to Paramount as it so directs. (e) the Client irrevocably authorises Paramount to enter any premises where Paramount believes the Goods are kept and recover possession of the Goods. (f) Paramount may recover possession of any Goods in transit whether or not delivery has occurred. (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Paramount. (h) Paramount may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.		
14. Personal Property Securities Act 1999 ("PPSA")		
14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that: (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to Paramount for Services – that have previously been supplied and that will be supplied in the future by Paramount to the Client.		
14.2 The Client undertakes to: (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Paramount may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; (b) indemnify, and upon demand reimburse, Paramount for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby; (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Paramount; and (d) immediately advise Paramount of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.		
14.3 Paramount and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.		
14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.		
14.5 Unless otherwise agreed to in writing by Paramount, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.		
14.6 The Client shall unconditionally ratify any actions taken by Paramount under clauses 14.1 to 14.5.		
15. Security and Charge		
15.1 In consideration of Paramount agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).		
15.2 The Client indemnifies Paramount from and against all Paramount's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Paramount's rights under this clause.		
15.3 The Client irrevocably appoints Paramount and each director of Paramount as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.		
16. Client's Disclaimer		
16.1 The Client hereby disclaims any right to rescind, or cancel any contract with Paramount or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Paramount and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.		
17. Defects		
17.1 The Client shall inspect the Goods on delivery and shall within three (3) days of delivery (time being of the essence) notify Paramount of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Paramount an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Paramount has agreed in writing that the Client is entitled to reject, Paramount's liability is limited to either (at Paramount's discretion) replacing the Goods or repairing the Goods.		
18. Returns		
18.1 Returns will only be accepted provided that: (a) the Client has complied with the provisions of clause 17.1; and (b) Paramount has agreed in writing to accept the return of the Goods; and (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and (d) Paramount will not be liable for Goods which have not been stored or used in a proper manner; and		
(e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.		
18.2 Returned Goods may (at Paramount's sole discretion), incur restocking and handling fees.		
18.3 Non-stockist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.		
19. Warranty		
19.1 To the extent permitted by statute, no warranty is given by Paramount as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Paramount shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.		
20. Consumer Guarantees Act 1993		
20.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Paramount to the Client.		
21. Intellectual Property		
21.1 Where Paramount has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Paramount.		
21.2 The Client warrants that all designs, specifications or instructions given to Paramount will not cause Paramount to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Paramount against any action taken by a third party against Paramount in respect of any such infringement.		
21.3 The Client agrees that Paramount may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Paramount has created for the Client.		
22. Default and Consequences of Default		
22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Paramount's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.		
22.2 If the Client owes Paramount any money the Client shall indemnify Paramount from and against all costs and disbursements incurred by Paramount in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Paramount's collection agency costs, and bank dishonour fees).		
22.3 Further to any other rights or remedies Paramount may have under this contract, if a Client has made payment to Paramount by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Paramount under this clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.		
22.4 Without prejudice to any other remedies Paramount may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Paramount may suspend or terminate the supply of Goods to the Client. Paramount will not be liable to the Client for any loss or damage the Client suffers because Paramount has exercised its rights under this clause.		
22.5 Without prejudice to Paramount's other remedies at law Paramount shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Paramount shall, whether or not due for payment, become immediately payable if: (a) any money payable to Paramount becomes overdue, or in Paramount's opinion the Client will be unable to make a payment when it falls due; (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.		
23. Cancellation		
23.1 Paramount may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Paramount shall repay to the Client any money paid by the Client for the Goods. Paramount shall not be liable for any loss or damage whatsoever arising from such cancellation.		
23.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Paramount as a direct result of the cancellation (including, but not limited to, any loss of profits).		
23.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.		
24. Dispute Resolution		
24.1 All disputes and differences between the Client and Paramount touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.		
25. Privacy Act 1993		
25.1 The Client authorises Paramount or Paramount's agent to: (a) access, collect, retain and use any information about the Client; (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or (ii) for the purpose of marketing products and services to the Client. (b) disclose information about the Client, whether collected by Paramount from the Client directly or obtained by Paramount from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.		
25.2 Where the Client is an individual the authorities under clause 25.1 are authorities or consents for the purposes of the Privacy Act 1993.		
25.3 The Client shall have the right to request Paramount for a copy of the information about the Client retained by Paramount and the right to request Paramount to correct any incorrect information about the Client held by Paramount.		
26. Unpaid Seller's Rights		
26.1 Where the Client has left any item with Paramount for repair, modification, exchange or for Paramount to perform any other service in relation to the item and Paramount has not received or been tendered the whole of any moneys owing to it by the Client, Paramount shall have, until all moneys owing to Paramount are paid: (a) a lien on the item; and (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.		
26.2 The lien of Paramount shall continue despite the commencement of proceedings, or judgment for any moneys owing to Paramount having been obtained against the Client.		
27. General		
27.1 The failure by Paramount to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Paramount's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.		
27.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Tauranga Courts of New Zealand.		
27.3 Paramount shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Paramount of these terms and conditions (alternatively Paramount's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).		
27.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Paramount nor to withhold payment of any invoice because part of that invoice is in dispute.		
27.5 Paramounts may license or sub-contract all or any part of its rights and obligations without the Client's consent.		
27.6 The Client agrees that Paramount may amend these terms and conditions at any time. If Paramount makes a change to these terms and conditions, then that change will take effect from the date on which Paramount notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Paramount to provide Goods to the Client.		
27.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.		
27.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.		