

**FLETCHER BUILDING STEEL GROUP**  
**TERMS AND CONDITIONS OF SALE**

**Acceptance**

1. Any Goods supplied by Us to You will be supplied on these terms and conditions only, notwithstanding anything that may be stated to the contrary in Your inquiries or on Your orders. No variation or modification of these terms and conditions by You will be binding on Us unless accepted by Us in writing.

**The Goods and price**

2. Goods are offered subject to availability. Where Goods are not available, We have no obligation to supply You.
3. The price quoted is based on Our rates and charges in effect at the date of quotation. Any difference between those rates and charges, and Our rates and charges in effect at the time of delivery of the Goods, will be to Your account. All prices quoted are exclusive of any G.S.T. G.S.T. is payable under clause 7 unless otherwise stated by Us in writing.
4. No order of Goods, once accepted by Us, may be cancelled or varied by You except with Our written consent.
5. Freight and transit insurance are to Your account unless specified to the contrary by Us in writing.

**Payment**

6. Unless otherwise agreed in writing, the terms of payment are payment in full (including, without limitation, all G.S.T. and other value added tax as specified in clause 7) in cleared funds on the 20th day of the month following delivery of the Goods (including where Goods are delivered by instalments).
7. You will pay to Us all G.S.T. or other value added tax payable on the Goods supplied.
8. If You fail to make any payment to Us by the due date, You will be liable to pay to Us default interest thereon at a rate (the "default rate") equal to the higher of (a) 3% per annum above the Reserve Bank's 90-day bank bill rate; and (b) the highest prescribed rate of interest chargeable in accordance with section 87(3) of the Judicature Act 1908. The default rate will accrue and be calculated on a daily basis on all monies outstanding from the date that payment is due until the date payment is received in full by Us.
9. We may refuse to deliver Goods if there are any outstanding moneys or other obligations owing to Us or any Related Company by You or You have breached any of these terms and conditions.
10. You will make all payments due to Us, whether in respect of the price of the Goods or otherwise, in full without deductions of any nature (whether by way of set off, counterclaim or other equitable or lawful claim or otherwise). We may at any time require You to pay for Goods by bank cheque or post-dated cheque. Any payment received by Us (or any amount withheld by Us under clause 11) may be applied in reduction of any amount owing to Us or any Related Company, as determined by Us.
11. We may deduct or withhold any amount (whether by way of set off, counterclaim or other equitable or lawful claim or otherwise) from any money owing by Us or any Related Company to You on any account whatsoever.

**Delivery**

12. Unless otherwise agreed in writing, delivery will be deemed to be effected upon the transfer of possession of Goods to You, Your agent or Your representative or Your carrier at Our premises or, if We have agreed in writing with You to deliver, or to deliver and unload, Goods other than at Our premises, upon transfer of possession to You, Your agent or Your representative, or upon unloading, if applicable, of such Goods at the agreed premises. Delivery of Goods may be by instalments. Unless delivery is to an unoccupied site, You or Your authorised representative must sign Our copy of the delivery docket or packing slip when the Goods are delivered.
13. You will be responsible for providing adequate facilities for unloading and storage of Goods at Your or any other agreed premises unless otherwise agreed in writing. Where We agree to unload the Goods, You will pay Us any costs We incur as a result (plus G.S.T., if any).
14. If You do not accept delivery of the Goods or should We withhold delivery pending payment or adequate arrangement as to payment or unloading, delivery will be deemed to have been made when We are or were willing to deliver the Goods, and:
  - (a) (without limiting any other right We may have) We may charge in addition to the price of the Goods, reasonable storage and transportation charges; and
  - (b) You will nevertheless make any payments provided herein upon the basis that such delivery has been effected.

**Ownership and risk**

15. Ownership of the Goods supplied by Us will remain with Us and will not pass to You until all amounts owing by You to Us or any Related Company in respect of the Goods or otherwise have been paid for in full and all Your other obligations to Us or any Related Company in respect of the Goods or otherwise have been met. Until ownership of the Goods passes to You, You agree as follows:
  - (a) You hold the Goods on trust for Us as Our bailee.
  - (b) You will store the Goods at Your cost so that they can be readily identified as belonging to Us.
  - (c) You must keep full and complete records of the Goods and make such records available to Us upon Our reasonable request.
  - (d) You give Us the right to inspect the Goods or any part of them at all reasonable times.
  - (e) You must not do or allow to be done anything that might contribute to a deterioration in the value of the Goods or otherwise adversely affect Our rights or interest in the Goods under these terms and conditions.

- (f) You must return the Goods if requested to do so by Us following non-payment of any amount owing by You to Us or any Related Company or non-fulfilment of any of Your other obligations to Us or any Related Company, without limiting any other right We or they may have.
16. If the Goods have not been paid for in full by the due payment date or are at risk (as defined in PPSA), We or Our agent(s) may (in addition to Our other rights but subject to the Credit (Repossession) Act 1997) enter Your premises (or other premises to which You have access and where the Goods are stored or where We reasonably believe the Goods are stored) at any time, without notice, and search for and recover the Goods and may resell the Goods or retain the Goods for Our own benefit or the benefit of any Related Company, without incurring any liability to You or any person claiming through You. You may not revoke the permission granted in this subclause.
17. Where You provide material to Us to be processed, then We will have a general and particular lien in respect of those goods for all sums due at any time from You to Us or any Related Company. We may sell or dispose of such goods at Your expense and without liability to You and may apply the proceeds in or towards such sums.
18. Notwithstanding that ownership of any Goods may remain with Us, all risk in respect thereof will pass to You upon delivery. You will insure (and keep insured) the Goods for full replacement value against all risks of loss or damage in Your and Our name for Our respective interests. We may, at any time, request a copy of the policy of insurance and You will promptly provide the same to Us.

#### **General security interest**

19. To secure payment, first, of the purchase price for Goods until such amount is paid in full, and secondly, of all the other Secured Money, and to secure the performance of all other obligations owing by You to Us or any Related Company, You grant Us a security interest in all of Your personal property (as defined in the PPSA), which includes, without limitation, the Goods supplied to You, and a fixed charge over all of Your real property, wherever situated (such personal property and real property is, together, the "Secured Property").
20. You must not consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of any collateral subject to Our security interest, including, without limitation, the Goods (whether an accession or otherwise), which ranks in priority to Our rights as first ranking security holder.
21. An "Enforcement Event" occurs if:
- (a) You fail to pay, or in Our opinion You are likely to fail to pay, any amount of the Secured Money when due; or
  - (b) You breach, or in Our opinion You are likely to breach, any non-monetary obligations owing to Us or any Related Company; or
  - (c) You cease or threaten to cease business; or You are unable to pay any debts as they fall due or are declared insolvent or bankrupt; or You make an arrangement with creditors; or any step is made to dissolve You; or an encumbrancer takes possession of any Goods or other collateral; or a liquidator, manager, administrator, or receiver (or any similar person) is appointed to You or any of Your property; or any analogous event occurs; or
  - (d) Your ownership or effective control is transferred, or in Our opinion the nature of Your business is materially altered; or
  - (e) any guarantor breaches any obligations owing to Us or any Related Company.
- If an Enforcement Event occurs then (in addition to and without prejudice to any other remedies We may have):**
- (a) Each security interest created under these terms and conditions will become immediately enforceable; and
  - (b) All of the Secured Money will be due and payable immediately; and
  - (c) We may at any time appoint in writing one or more Receivers (jointly and severally) in respect of any Secured Property on terms which we consider to be necessary or expedient; and
  - (d) We or a Receiver may take possession of the Goods and any other Secured Property (including any Goods that have become an accession under the PPSA) and may dispose of them or retain them for Our own benefit or the benefit of any Related Company and for that purpose We may, subject to the Credit (Repossession) Act 1997, without notice, enter directly or by Our agents on any premises where we believe Goods may be stored, without in any way being liable to any person; and
  - (e) We may suspend all payment credit arrangements offered to You immediately, without notice, until the Enforcement Event is remedied to Our satisfaction; and
  - (f) We may cancel any outstanding order from You or all or any part of any contract or contracts with You which remain unperformed; and
  - (g) We may require any future orders from You to be paid in cash in full on placement of such order by You.
22. You acknowledge that You have received value as at the date of first delivery of Goods under these terms and conditions and that nothing in these terms and conditions is an agreement that a security interest created herein attaches at a later time than the time specified in section 40(1) of the PPSA, or an agreement to subordinate a security interest under these terms and conditions in favour of any person.
23. Each security interest created under these terms and conditions is a continuing security, notwithstanding any intermediate payments or settlements of accounts or anything else and is in addition to, and is not to be merged with, any other security or guarantee expressed or intended to be security for any Secured Money or any other obligations owing by You to Us or any Related Company.
24. Time is of the essence in respect of Your obligations under these terms and conditions. However, no security interest created under these terms and conditions is discharged, nor are Your obligations affected by any time, indulgence, waiver or consent at any time given to You or any other person; any amendment to, or the enforcement of or failure to enforce, these terms or conditions or any other agreement; the insolvency, bankruptcy, liquidation, administration, amalgamation, change in status or reorganisation of You or any other person; or anything else whatsoever.
25. We do not (and will not be deemed to) undertake any of Your obligations in respect of Your property by virtue of these terms and conditions.

26. We are not required to marshal, enforce or apply under any security interest, guarantee or other entitlement held by Us at any time or any money or property that We at any time hold or are entitled to receive.

#### **Your obligations and waivers**

27. You must not change Your name, address or contact details without providing Us with at least 30 days prior written notice.
28. You must immediately notify Us if You intend to, or become aware of any step to, appoint an administrator or liquidator.
29. You waive Your rights under the PPSA to receive a copy of any verification statement, financing statement or financing change statement and unconditionally and irrevocably agree that:
- (a) to the maximum extent permitted, You will have no rights under or by reference to sections 114(1)(a), 133 and 134 of the PPSA;
  - (b) You have none of the rights referred to in sections 107(2)(a), (c), (d), (e), (h) and (i) of the PPSA;
  - (c) where We have rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and, in particular, those rights will not be limited by section 109; and
  - (d) You will not consent to or enter into any agreement to which permits any supplier or other person to register a security interest in respect of the Goods (whether an accession or otherwise).
30. You must not:
- (a) give to Us a written demand, or allow any other person to give to Us a written demand, requiring Us to register a financing change statement; or
  - (b) lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered by Us under the PPSA.
31. You must not allow any other person to enter into or accept, and You must not enter into or accept, a financing change statement in relation to a financing statement registered by reference to such other person under the PPSA.

#### **Security agency**

32. From the date these terms and conditions take effect, We will hold the benefit of all security created hereunder for Our and Our Related Companies' benefit (and, in such capacity, We are the Security Agent). You acknowledge and agree that We may, at any time, appoint a Related Company to serve as the security agent to act on Our and Our Related Companies' behalf and to exercise Our and Our Related Companies' rights under these terms and conditions (including, without limitation, rights relating to the security created hereunder and under clause 19) and under any related or ancillary document).
33. Provided that You are presented with a certificate from a party purporting to be the security agent which confirms such appointment under clause 32 (which will be conclusive proof to You of such appointment), You will not be concerned to enquire whether any instructions have been given to any such security agent by Us and, as between You and any such security agent, all actions taken by such security agent under these terms and conditions and any related or ancillary document will be deemed to be authorised.

#### **Supporting guarantee**

34. You must procure that a guarantee in the form attached to these terms and conditions is executed and returned to Us as soon as possible, on the terms set out in the guarantee (including as to seeking or waiving independent legal advice).
35. You acknowledge and agree that, to the extent that any guarantee of any Secured Money or any other obligations owing by You to Us or any Related Company is in existence prior to the date that these terms and conditions come into effect, You will procure that such guarantee will remain in full force and effect in respect of such Secured Money or other obligations.

#### **Suitability of the Goods**

36. The Goods will be subject to the relevant standard tolerances of the industry as published by Us and available on request.
37. Subject to clause 39, it is Your 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 treatment or processing required by You. You are also responsible for ensuring that Our advice covering all aspects of correct selection, storage, handling, installation and maintenance of the Goods has been complied with.

#### **Conditions and warranties**

38. Subject to clause 39, all conditions, warranties, descriptions, representations, and statements as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a like nature or not) whether express or implied by law, trade or custom or otherwise are expressly excluded to the fullest extent permitted by law.
39. If You are a "consumer" under the Consumer Guarantees Act 1993 (CGA):
- (a) the CGA will not apply, and We do not undertake that facilities for repair and parts for the Goods (as applicable) will be available where You acquire or hold Yourself out as acquiring the Goods for the purposes of a business; and
  - (b) subject to clause 39(a), nothing in these terms and conditions affects any rights a consumer may have under the CGA.
40. No agent or representative of Ours is authorised to make any representations, statements, warranties, conditions or agreements not expressly set forth in these terms and conditions of sale and We are not in any way bound by any such unauthorised statements nor can any such statement be taken to form part of any contract with Us collateral to these terms and conditions.
41. You warrant that if You give Us any design or other instructions, neither You in so doing, nor We in receiving and/or following such instructions, will breach any intellectual property rights or other rights or interests of any person.
42. You will only use Our trademarks in accordance with the terms and conditions advised by Us from time to time.

## **On-selling Goods manufactured by Us**

43. If You on-sell Goods manufactured by Us, the following provisions apply.

- (a) You will not give any express guarantees or make any representations on behalf of Us, as manufacturer of the Goods, without Our written consent, except within the limits of any technical literature which may be agreed from time to time between Us and You.
- (b) You will, wherever appropriate, correctly advise Your customers as to the purposes to which the Goods should and should not be put in accordance with any technical literature produced by Us from time to time and best industry practice.
- (c) Any literature which You might supply to Your customers relating to the Goods will comply with the Consumer Guarantees Act 1993.
- (d) You will immediately notify Us in writing of any claim or demand that You might receive in respect of the Goods under the Consumer Guarantees Act 1993, and give Us all details of the claim or demand.
- (e) You will contract out of the Consumer Guarantees Act 1993 effectively and in writing whenever You agree to provide Goods manufactured by Us to Your own customer for the purpose of that customer's business, and notify Your customer of the effect of this clause and that We do not undertake that facilities for repair and parts for the Goods (as applicable) will be available.
- (f) You will effectively and in writing oblige each of Your own customers to likewise contract out of the Consumer Guarantees Act 1993 and notify customers whenever such a customer agrees to supply Goods manufactured by Us to one of its own customers for the purposes of that customer's business.

## **Indemnity from You**

44. You hereby indemnify and undertake to keep Us, Our officers, employees and agents and each Receiver (the "Indemnified Party") at all times fully and effectively indemnified against all losses, liabilities, penalties, damages, claims, demands, actions, costs, charges and expenses which the Indemnified Party (or any of them), may incur, or which may be made against the Indemnified Party (or any of them) as a result of or in relation to:

- (a) any act, omission, neglect or default by You or any subsequent purchasers of Goods manufactured by Us; or
- (b) any breach by You of any of Your obligations under these terms and conditions or any warranty given by You; or
- (c) anything done or omitted to be done by Us and/or the Receiver in the exercise of rights under these terms and conditions or conferred on Us or the Receiver by law.

## **Our Liability**

45. To the fullest extent permitted by law, We will not be liable for:

- (a) loss caused by any factor beyond Our control;
- (b) failure to deliver to You by any specified dates;
- (c) any damage to, or defectiveness or malformation in any part or parts of the finished article eventually supplied to You;
- (d) a percentage of the Goods to be treated becoming wastage or scrap;
- (e) You testing the Goods;
- (f) the loss of or damage to any of Your chattels left within Our possession or control (whether such loss or damage results from Our negligence or default or otherwise howsoever);
- (g) the loss of or damage to Goods while in transit (whether such loss or damage results from Our negligence or default or otherwise howsoever);
- (h) deterioration of Goods as a result of exposure to the elements, after delivery;
- (i) any act or omission by any subcontractor;
- (j) subject to clause 39, any advice, recommendation, information, assistance or service provided by Us in relation to the Goods, their use or application; or
- (k) loss of profits or consequential, indirect or special damage or loss of any kind whatsoever and howsoever arising.

46. Insofar as We may be liable notwithstanding clauses 38 and 45, Our total liability whether in tort (including negligence), contract or otherwise for any loss or damage or injury arising directly or indirectly from any defect in or non-compliance of any Goods or any other breach of Our obligations is, subject to clauses 39, 47 and 48, limited to, at Our option:

- (a) replacing, at Our premises, the relevant Goods; or
- (b) refunding the sale price of the relevant Goods; or
- (c) the actual loss or damage suffered by You.

47. No claim based on defective Goods will be allowed unless:

- (a) the claim is notified to Us within seven days of delivery to You; and
- (b) We are given a reasonable opportunity to investigate the claim. In respect of defective Goods not manufactured by Us, We will in no event be liable to pay to You any amount in excess of such amount (if any) as We shall have received from Our supplier in respect thereof.

48. Insofar as We may be liable notwithstanding clauses 38 and 45, Our liability for shortages in quantity and loss consequential to shortages in quantity is, subject to clause

39, limited to making up shortages. No claim for shortages in quantity will be allowed unless:

- (a) the claim is notified to Us within seven days of receipt of the Goods by You; and
- (b) We are given a reasonable opportunity to investigate the claim.

## **Dispute Resolution**

49. Any dispute arising between Us which has not been resolved within 14 days may be referred to mediation by either of Us. The mediator will be appointed by agreement between Us or, where We cannot agree within 14 days, by the chairperson or any other office holder of the New Zealand chapter of LEADR. The mediator will conduct the mediation in accordance with the guidelines agreed between Us or, if We cannot agree within 14 days following appointment of the mediator, the guidelines set by the mediator. The costs and expenses of the mediator will be shared by Us equally.

## **Assignment**

50. We may at any time assign or transfer to any other person (including without limitation to a Related Company, whether or not acting as a security agent or security trustee of the security created under these terms and conditions) all or any part of Our rights, remedies and obligations under these terms and conditions and any related or ancillary document without Your consent. Each of Our assignees and transferees will have the same rights and remedies against You as We have under these terms and conditions. You must not assign or transfer any of Your rights or obligations under these terms and conditions.

## **Further Assurances**

51. You must, at Our request and at Your cost, promptly execute and deliver to Us all security agreements and documents, and do anything else, which We consider appropriate to secure payment of any amount payable to Us or any Related Company or performance of any other obligation to Us or any Related Company or to perfect or register any security interest (including, without limitation, registering a mortgage in respect of any land which forms part of the Secured Property) or for any other purpose whatsoever (including (if an unlisted company) procuring personal guarantees from Your principal shareholders or if there are no principal shareholders then from all shareholders). You irrevocably appoint Us and each of Our duly authorised officers, severally, to be Your attorney to complete, execute and otherwise perfect all assignments, transfers, security interests and other agreements and documents and generally to do all other acts which You are obliged or ought to do under these terms and conditions or We consider may be necessary or expedient to secure the payment of any amount payable to Us or any Related Company and performance of and compliance with any other obligations to Us or any Related Company. You agree that We are entitled, at any time, to lodge a caveat over any real property comprised in the Secured Property, including prior to demanding execution and delivery of a mortgage over such real property, to protect Our and Our Related Companies' interests under these terms and conditions.

## **Privacy Act**

52. You agree that, from time to time, We may collect and use information We collect and hold for purposes relating to the application for credit, provision of credit, credit assessment and debt recovery (including collecting information from, and disclosing information to, Related Companies, credit reporting agencies, debt collection agencies, trade referees and other third parties), to register any security interest and to provide marketing materials to You. Information disclosed by Us to credit reporting agencies will be disclosed by Us on the basis that it will be held and used by such agencies to provide credit reporting services (including supplying the information to other customers who use their services). Under the Privacy Act, individuals have rights to access to, and correction of, their personal information. Personal information collected by Us will be held at 25 Beach Road, Otahuhu, Auckland. To request access to Your personal information email: [creditcontrol@fcsp.co.nz](mailto:creditcontrol@fcsp.co.nz).

53. You authorise Us to collect and use information from any person or entity for any of the above purposes, and such person or entity to disclose information to Us, and You also authorise Us to disclose information to any person or entity for any of the above purposes and such person or entity to collect and use information from Us.

## **General**

54. These terms and conditions will be governed by the law of New Zealand. You irrevocably agree to submit to the non-exclusive jurisdiction of the New Zealand courts.

55. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

56. The illegality, invalidity or unenforceability 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 another provision.

57. You will be liable to pay all Our costs and expenses (including legal costs calculated as between solicitor and own client) in enforcing these terms and conditions.

58. For the purposes of the Contracts (Privity) Act 1982, You acknowledge and accept that Your obligations under these terms and conditions will be enforceable by Us or any other person named in these terms and conditions, notwithstanding that We or they may not sign these terms and conditions.

59. These terms and conditions may be amended by Us at any time and from time to time by notice in writing to You. By continuing to order Goods from us after We have notified You of any amendments to these terms and conditions, You are deemed to have accepted such amendments.

60. Any notice or other communication to You may be served on You by delivery at your account address, any other address specified by You from time to time for such purpose or Your usual residential address (if an individual) or (otherwise) Your principal place of business or registered office.

## Defined terms

61. In these terms and conditions:

- (a) "You" or "Your" refers to the party identified in Our credit application documentation as the Customer or otherwise placing an order to purchase Goods from Us, and all of Your successors;
- (b) "Goods" means all mild steel, alloy steels, aluminium, copper, stainless steel, pre-painted steel, pre-painted aluminium, pre-painted stainless steel, welding and fastening products, pipe and fittings, processed flat rolled products and plate, all folded, ribbed or shaped products, underlays, fixings, claddings, natural lighting, coatings, galvanising, fittings and all other products supplied by Us to You (and includes services where appropriate) and in respect of each order of Goods placed by You, the Goods described in the invoice issued by Us in respect of such order;
- (c) "Us or "We" or "Our" refers to Fletcher Steel Limited and its successors and assigns and includes its business divisions Fletcher EasySteel, Pacific Coilcoaters, Pacific Steel, Dimond, CSP Galvanizing and Fletcher Reinforcing, and (as applicable) to any security agent or security trustee that We appoint from time to time in accordance with clause 32;
- (d) "Related Company" has the meaning given to it in the Companies Act 1993, and includes a "holding company" and a "subsidiary" of any body corporate as defined in the Companies Act 1993 and, when used in these terms and conditions, will mean each Related Company of Fletcher Steel Limited from time to time;
- (e) "G.S.T". means any amounts levied or charged pursuant to the Goods and Services Tax Act 1985;
- (f) "default rate" has the meaning given to it in clause 8 of these terms and conditions;
- (g) "PPSA" means the Personal Property Securities Act 1999;
- (h) "collateral" has the meaning given to it in the PPSA;
- (i) "security interest" has the meaning given to it in the PPSA;
- (j) "Secured Money" means all amounts from time to time due from You to Us or any Related Company including, without limitation, under these terms and conditions (including, for the purposes of sections 71 and 72 of the PPSA, future advances under or in connection with these terms and conditions or any related or ancillary documents);
- (k) "Secured Property" has the meaning given to it in clause 19 of these terms and conditions;
- (l) "Enforcement Event" has the meaning given to it in clause 21 of these terms and conditions;
- (m) "Receiver" means any person appointed as a receiver or receiver and manager under these terms and conditions or any collateral security;
- (n) references to any legislation include that legislation as amended, and any replacement of that legislation, from time to time.