



FORGE FASTENERS LIMITED (“the seller”) Terms and Conditions of Trade

1. Terms of Sale

- 1.1 The Seller contracts to sell and supply goods and services on these standard terms and conditions (“the terms”) only. By placing or confirming an order with the Seller, the Customer accepts the terms.
- 1.2 Anything to the contrary in the Customer’s enquiries, orders or confirmations will not apply.

2. Orders Irrevocable

- 2.1 The Customer may not cancel or vary an order once it has been placed or confirmed unless the Seller agrees verbally or in writing to the cancellation or variation.

3. Payment

- 3.1 The Customer will pay the agreed price which will be detailed on the invoice or statement issued by the Seller.
- 3.2 If credit is granted by the Seller to the Customer, payment is due on or before the date detailed in the Schedule (“the payment date”)
- 3.3 If the Seller at any time deems the credit of the Customer to be unsatisfactory, it may immediately terminate this contract (as defined in clause 9.1) or any credit arrangement and require the Customer to pay the price on delivery of the goods and services.
- 3.4 All costs and expenses of or incurred by the Seller as a result of termination and recommencement of any credit arrangement are immediately payable by the Customer.
- 3.5 The Seller will charge interest at the interest rate of 18% on:
 - (a) Any moneys which are overdue under the contract commencing on the date of delivery or supply of the goods and services until the date of actual payment.
 - (b) Any amount which exceeds the credit limit granted by the Seller to the Customer commencing from the date upon which the credit limit was exceeded until the date of actual payment.
- 3.6 When credit is granted by the Seller to the Customer, and if the goods and services are not paid for on or before the payment date, the Customer will forfeit any discounts granted by the Seller.
- 3.7 The Customer agrees to pay immediately all costs (including commission, debt collection agency costs and legal fees as between solicitor and client, and any other costs) incurred by the Seller or the Seller’s agents relating to the recovery of any amounts payable by the Customer to the Seller.
- 3.8 All payments by the Customer must be made in full and without any deduction or right of set off or counterclaim. The Customer agrees, however, that all moneys which the Seller may owe the Customer on any account whatsoever may, at the Seller’s option, be set off against payments due by the Customer to the Seller.
- 3.9 Unless otherwise stated all prices exclude GST, which, if payable, is payable by the Customer.

4. Delivery

- 4.1 Delivery of the goods is deemed to be made:
 - (a) When the Customer or the Customer’s agent is given possession of the goods at the Seller’s premises or elsewhere (loading is then at the Customer’s risk); or
 - (b) When the goods arrive at the Customer’s premises (unloading is then at the Customer’s risk); whichever is the earlier.
- 4.2 On delivery, the goods are at the Customer’s sole risk.
- 4.3 With effect from the time of delivery, the Customer will have in place all risks insurance to cover both its interest as bailee of the goods and the Seller’s interest as owner of the goods under clause 5.1.
- 4.4 The Seller may choose the carrier and the method of transport, unless otherwise agreed by the Seller in writing. The Seller may choose to deliver by instalments and may treat each delivery as a separate contract. Should the Seller fail to deliver or make defective delivery of one or more instalments, this will not entitle the Customer to repudiate the main contract
- 4.5 If the Seller believes that the Customer may not make any payment when due, then the Seller may suspend or cancel any delivery.
- 4.6 Any delivery date agreed by the Seller is approximate only, and no delay in delivery will entitle the Customer to cancel its order for the goods and services.

5. Retention of title

- 5.1 Title to ownership (both legal and equitable) in all goods

and services delivered or supplied by the Seller to the Customer does not pass (and the Customer is a bailee only in respect of those goods and services) until payment in full is made for all such goods and services and other goods and services supplied by the Seller to the Customer. Until property has passed, the Customer will store all goods and services in such a way that they are clearly identifiable as the property of the Seller.

- 5.2 Until the Customer has paid the Seller in full for all goods and services supplied, the Customer may not sell (unless such sale is in the ordinary course of the Customer’s business), dispose of or charge the goods and services and must hold or deal with the goods and services for and on behalf of the Seller. However, if the goods and services are sold, in the ordinary course of the Customer’s business, prior to property passing to the Customer, the proceeds of that sale are held by the Customer on trust for and on behalf of the Seller.

- 5.3 Prior to the Customer acquiring full property in the goods and services the Seller or the Seller’s agents may at any time enter upon any land, premises or property where it believes such goods and services may be to view and inspect them, and if the Customer has not paid for them in full retake possession of the goods and services. The Customer will indemnify the Seller on demand in respect of any costs or liabilities incurred by the Seller in exercising its rights under this clause.

6. Personal Property Securities Act 1999

- 6.1 The Customer acknowledges that the contract creates a security interest (“security interest”) (as that term is defined in the Personal Properties Securities Act 1999 (“PPSA”)) in the goods and services. The Customer will, if requested by the Seller, sign any documents (including any new agreements), provide all necessary information and do anything else required by the Seller to ensure that the security interest is a perfected security interest (as that term is defined in the PPSA).
- 6.2 The Customer will not enter into any agreement which permits any other person to register any security interest under the PPSA in respect of the goods and services without the Seller’s prior written consent.
- 6.3 If the goods and services are for the Customer’s business use, the Customer agrees, to the extent permitted under the PPSA, and unless the Seller agrees by notifying the Customer in writing, that the Customer will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation, the Customer will have no rights under sections 114(1)(a) and 116 (to receive notice of sale and statement of account), sections 121(2) and 122 (to receive any proposal or object to any proposal to retain the goods and services), sections 125 and 129 (relating to removal of accessions), and sections 132 and 133 (to redeem the goods and services or reinstate the contract).
- 6.4 The Customer waives its right under the PPSA to receive a copy of any verification statement or financing change statement (as those terms are defined in the PPSA).

7. No Warranty

- 7.1 Under no circumstances is the Seller liable for any claim, action, demand, suit, loss, legal fee or other cost or expense of any kind whether directly or indirectly arising from the use or inability to use any goods or services supplied by the Seller.
- 7.2 Where conditions, warranties or other rights for the benefit of the Customer are implied or given by the Consumer Guarantees Act 1993 or other laws and it is not lawful or possible to exclude them, then such conditions, warranties or other rights shall (but only to the extent required by law) apply, but save as aforesaid all such implied conditions, warranties and rights are hereby excluded.
- 7.3 To the extent that under any such laws the Seller may limit its liability for breach of implied conditions and warranties, the Seller’s liability for any breach of any such condition or warranty shall be so limited. Without limiting the generality of the foregoing, subject to the qualifications in the Consumer Guarantees Act 1993 or in other such laws, the Seller’s liability for any breach of any such implied condition or warranty shall be limited at the option of the Seller to either:
 - a) In the case of goods supplied to any one or more of the following (as the Seller may determine):

- i) The replacement of the goods or the supply of equivalent goods; or
- ii) The repair of the goods, or
- iii) The payment of the costs of replacing the goods or of acquiring or hiring equivalent goods; or
- iv) The payment of the costs of having the goods repaired; or
- v) The supply to the Customer of the parts needed to repair the goods.

- (b) In the case of services supplied, to one of the following (as the Seller may determine):

- (i) The supplying of the services again; or
- (ii) The payment of the costs of having the services supplied again.

- 7.4 Save as provided in clause 7.3 and notwithstanding any implication arising from any other clauses in this document, the Seller shall not be liable to the Customer or any person claiming under it in contract or in tort for, or in respect of, any direct, indirect or consequential loss, damage, expense or injury suffered by the Customer or any other person whatsoever, arising out of, in connection with or relating to the performance non-performance or any breach of this agreement (including by way of illustration and not in limitation, liability due to the negligence or wilful default of the Seller) or any matter relating to this agreement or any matter relating to this agreement or any error (whether negligent or not) in information supplied to the Customer before or after the date of this agreement in connection with its subject matter. “Consequential loss” shall include but not be limited to loss of profit use or goodwill (or similar financial loss), payment made or due to any other person and any loss or damage caused by delay in the performance of any obligation, together with any expenses incurred by the Customer in connection therewith, arising therefrom or incurred in mitigation or attempted mitigation of such loss or damage.

- 7.5 The Warranty provided is a limited warranty and does not apply to:

- (a) Conditions resulting from the improper use of the Goods or the operation of the Goods outside any specified environmental conditions.
- (b) Conditions resulting from causes external to Goods after delivery.
- (c) Conditions resulting from modifications to the Goods other than modifications notified and agreed to by the Seller.

8. Returns

- 8.1 The Seller may in its discretion accept goods returned in return for a credit and will not be bound to provide a cash refund, but only if the Customer return the goods to the Seller within 14 days of having accepted delivery of the goods. The Seller will charge a handling fee for goods returned and such a charge will be deducted from any money to which the Customer may be entitled.

9. General

- 9.1 These standard terms and conditions and the provisions in the Application for Credit Account (together the “contract”) are the full agreement between the Seller and the Customer.
- 9.2 The Seller may, and the Customer may not, vary or replace the contract and it will be a condition of the Seller continuing to supply goods and services to the Customer that the Customer agrees to sign any variation or replacement of this contract where required under the terms of this contract.
- 9.3 To be effective, any waiver of any or all of these terms and conditions by the Seller must be in writing.
- 9.4 The Customer may not assign all or any of its rights or obligations under the contract without the prior written consent of the Seller.
- 9.5 The Seller is not bound by any error or omission on any invoice, order form or other document or statement issued by the Seller.
- 9.6 The contract between the Seller and the Customer is governed by the laws of New Zealand.
- 9.7 The seller may amend these terms of trade at any time they see fit provided such an amendment will only take effect from the date such amended terms are provided to the customer.

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