



Terms & Conditions of Trade

1. Definitions
 - 1.1. "Associated Individual" means that person, or persons, who agree(s) to be liable for the debts of the Customer in accordance with clause 15.
 - 1.2. "Bailee" means a person or party to whom goods are delivered for a purpose, such as custody or repair, without transfer of ownership.
 - 1.3. "Customer" shall mean any person purchasing Products and/or Services from WENZL, or any person acting on behalf of and with the authority of the Customer.
 - 1.4. "Goods" shall mean Products supplied by WENZL to the Customer (and where the context so permits, shall include any supply of Services as defined in 1.6) and includes Goods described on any invoice, quotation, work authorisation, rental form or any other forms as provided by WENZL to the Customer.
 - 1.5. "Price" shall mean the price payable for the Goods as agreed between WENZL and the Customer in accordance with clause 3 below.
 - 1.6. "Services" shall mean all services supplied by WENZL to the Customer (and where the context so permits shall include any supply of Goods as defined above).
 - 1.7. "Terms" shall mean the Terms and Conditions of Trade defined here within.
 - 1.8. "WENZL" shall mean Welding Engineers NZ Ltd, or any employees or agents appointed by WENZL.
2. Acceptance.
 - 2.1. Any instructions received and accepted by WENZL from the customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by WENZL shall constitute a binding contract and acceptance of the terms and conditions contained herein.
3. Price & Payment.
 - 3.1. The Price shall be WENZL's quoted price which shall be binding upon WENZL provided that the Customer accepts the quotation within the time stated on the quotation, or 30 days if not stated (provision of a Purchase Order number shall constitute acceptance). If no quoted price is provided, then the price will be on WENZL's standard price list applying at the time of order.
 - 3.2. In lieu of cancelling any contract relating to the supply of Goods and/or Services, WENZL reserves the right to change the Price in the event of a variation to WENZL's quotation by the Customer; or in the event of a change in the cost of supply of the Goods which is beyond the control of WENZL between the date of acceptance of the quotation and/or contract and the supply of the Goods to the Customer. WENZL will notify the Customer if any such change is required (**Price Change Notice**). If the Customer does not accept the Price set out in the Price Change Notice, the Customer must notify WENZL in writing within 5 business days of receipt of the Price Change Notice of its objections. If WENZL does not agree to amend the change in Price, the Customer may either accept the amended Price or cancel the relevant Contract under clause 11.
 - 3.3. GST and other taxes and duties that may be applicable shall be added to the Price except where they are expressly included in the Price.
 - 3.4. At WENZL's discretion, payment shall be due (as applicable):
 - a) In full on supply of Goods and/or Services; or
 - b) On or before the 20th day of the month following the date of invoice; or
 - c) In instalments for approved customers only in special instances and in accordance with the payment schedule provided by WENZL, (together, "the due date").
 - 3.5. If full payment for the Goods and/or Services is not made by the due date, then without prejudice to any other rights or remedies available to WENZL, WENZL may:
 - a) immediately cancel or suspend the delivery of further Goods and/or Services;
 - b) charge interest on overdue monies in accordance with clause 14.1 of these Terms;
 - c) any discount offered to you will be deemed to be withdrawn, and you will be liable for the full invoice price.
 - 3.6. WENZL may accept and apply payments from you in respect of any indebtedness, and WENZL is not bound by any conditions or qualifications that the Customer may attach to any payment.
4. Delivery.
 - 4.1. The costs of delivery are in addition to the Price.
 - 4.2. Delivery of the Goods shall take place when:
 - a) The Customer takes possession of the Goods at WENZL's address; or
 - b) The Customer takes possession of the Goods at the Customer's nominated address; or
 - c) The Customer's nominated carrier or nominated third party takes possession of the Goods.
 - 4.3. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged, WENZL is entitled to charge a reasonable fee for redelivery.
 - 4.4. WENZL may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these Terms.
 - 4.5. All risks of delivery of the Goods lie with the Customer. WENZL shall not be liable for any loss or damage whatever due, or related to, non-delivery of the Goods promptly or at all (except where such loss or damage was directly caused by WENZL).
5. Risk.
 - 5.1. If WENZL retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
 - 5.2. The Customer shall be responsible for taking out adequate insurance cover in respect of the Goods regardless of whether the Goods are on credit account, loan or demonstration/trial.
 - 5.3. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, WENZL is entitled to receive all insurance proceeds payable for the Goods.
6. Title.
 - 6.1. Ownership of the Goods shall pass to the Customer when the Customer has paid WENZL all amounts owing for all Goods supplied by WENZL.
 - 6.2. Receipt by WENZL 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, and until then WENZL's ownership or rights in respect of all contracts between WENZL and the Customer shall remain.
 - 6.3. Until all payments due to WENZL by the Customer have been paid, WENZL has a security interest in all Goods.
 - 6.4. Until such time as ownership of the Goods shall pass from WENZL to the Customer;
 - a) Where the Customer:
 - a.1. is in material breach of the Terms, including any failure to make payment when due;
 - a.2. reasonably suspects that the Customer will materially breach the Terms; or
 - a.3. where such breach is able to be remedied, the Customer has not remedied that breach within 5 business days of notice by WENZL,WENZL may give notice in writing to the Customer to return the Goods to WENZL. Upon such notice being given, the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - b) If the Goods are converted into other products, the parties agree that WENZL will be a part-owner of the end products.
 - 6.5. The Customer remains a Bailee of the Goods until such time as WENZL has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for WENZL.
 - 6.6. If the Customer fails to return the Goods to WENZL, then WENZL or agents appointed by WENZL may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated as the invitee of the Customer and take possession of the Goods, and WENZL shall not be liable for any reasonable loss or damage suffered as a result of any action by WENZL under this clause.
7. Personal Properties Securities Act 1999 ("PPSA").
 - 7.1. The Customer acknowledges and agrees that:
 - a) These Terms constitute a security agreement for the purposes of the PPSA; and
 - b) A security interest is taken in any and all Goods supplied by WENZL to the Customer
 - 7.2. The Customer undertakes to:
 - a) Sign any further documents and/or provide any further information which WENZL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register; and
 - b) Not register a financing change statement or a change demand without prior written consent of WENZL; and
 - 7.3. The Customer and WENZL agree that if Goods are taken into possession by WENZL under clause 6.4 of these Terms, WENZL may sell all or any of the Goods without giving prior notice to the Customer (and to that end, nothing in s114(1)(a) of the PPSA shall apply to these Terms); and
 - 7.4. If WENZL acts, pursuant to s120 of the PPSA to take all or any of the Goods in satisfaction of the Obligations owed to WENZL by the Customer, the Customer waives its right to require WENZL to sell the Goods and agrees that notwithstanding s120(1) of the PPSA, the Customer shall remain liable to WENZL for the difference between the market value of the Goods at the time it is first able to be sold by WENZL free from all rights and interests of the Customer and other persons pursuant to s123(1) of the PPSA and the amount of the Obligations which are in default.
 - 7.5. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125-127, 129, 131 and 132 of the PPSA.
 - 7.6. WENZL and the Customer agree that nothing in sections 133 and 134 of the PPSA allowing the Customer to reinstate a security agreement shall apply to these Terms.
 - 7.7. Unless otherwise agreed to in writing by WENZL, the Customer waives the right to receive a verification statement in accordance with section 148 of the PPSA.
8. Customer's Disclaimer.

The Customer waives any right to sue for damages or to claim restitution arising out of any misrepresentation made by the Customer to WENZL and the Customer acknowledges to the extent permitted by law (including, without limitation, the Fair Trading Act 1986) that the Goods are bought relying solely upon the Customer's skill and judgement.
9. Defective Goods.

The Customer shall inspect the Goods on delivery and notify WENZL within three (3) days of delivery of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall give WENZL an opportunity to inspect the

- Goods within a reasonable time following delivery if the Customer believes the Goods to be defective in any way. If the Customer fails to comply with these provisions the Goods shall be presumed to be free of defect or damage. For Goods agreed to be defective, WENZL's liability is limited to either (at WENZL's discretion) replacing the Goods or repairing the Goods.
10. Returns
Returns may be accepted at the sole discretion of WENZL, provided that:
- The Customer has complied with clause 9; and
 - WENZL has agreed in writing to accept the return of the Goods; and
 - The Goods are returned at the Customer's cost within seven days (7) of the delivery date; and
 - WENZL will not be liable for Goods which have not been stored or used correctly; and
 - The Goods are returned in the original condition in which they were delivered, with all packaging material, brochures and instruction material in as new condition as much as is reasonably possible.
 - In the event of the Customer seeking to return goods ordered in error, this shall be at WENZL's discretion and all freight costs shall be met by the Customer.
 - For Goods ordered on indent, no returns, refunds or exchanges are accepted.
11. Cancellation.
11.1. Either party may cancel any contract to which these Terms apply or cancel delivery of Goods at any time before the Goods are dispatched by WENZL by giving written notice to the other party. On giving such notice WENZL shall repay to the Customer any sums paid in respect of the Price of the relevant Goods. Neither party is liable for any loss or damage whatever arising from such cancellation.
12. Warranty
12.1. The warranty shall be the current warranty supplied by the manufacturer of the Goods.
12.2. Goods must be returned to base where purchased at customer's expense.
12.3. In the case of second hand Goods, the Customer acknowledges full opportunity to inspect and accepts the said Goods with any and all faults as may exist. No warranty shall, or a written warranty limited to six (6) months may, be given by WENZL as to the quality or suitability for purpose and any implied warranty, statutory or other is expressly excluded. WENZL shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof, regardless.
13. Consumer Guarantees Act 1993 ("CGA").
13.1. If the CGA applies, the Terms shall be read subject to your rights under the CGA.
13.2. If the Customer is acquiring Goods or Services for the purposes of a trade or business, the Customer acknowledges that under section 43 of the CGA:
- the parties are in trade and agree to contract out of the provisions of the CGA;
 - WENZL recommends the Customer obtains legal advice in respect the Terms (and the parties agree that the Customer is not obliged to make any order under these Terms in order to allow the Customer a reasonable time to obtain such advice); and
 - WENZL and the Customer have negotiated the Price and these Terms to their mutual benefit.
14. Default and Consequence of Default.
14.1. Interest on overdue invoices may be charged from the date when payment becomes due, until date of payment at a rate of 2.5% per month, to accrue daily.
14.2. Without prejudice to any other remedies WENZL may have, if at any time the Customer is:
- in material breach of any obligation (including any obligation relating to payment),
 - reasonably suspects that the Customer will materially breach these Terms; or
 - where such breach is able to be remedied, the Customer has not remedied that breach within **[5]** business days of notice by WENZL, then
- WENZL may suspend or end the supply of Goods to the Customer and any of its obligations under these Terms. WENZL will not be liable to the Customer for any loss or damage the Customer suffers because WENZL has exercised its rights under this clause.
- 14.3. All amounts owing to WENZL shall, whether or not due for payment, become immediately payable in the event that:
- The Customer becomes insolvent, convenes a meeting with its creditors or proposes to enter into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - A receiver, manager, liquidator, or similar person is appointed in respect of the Customer or any asset of the Customer.
15. Assumption of Personal Liability
If the Customer is a company or a trust, the director(s) or trustee(s) signing in acceptance and agreement of these Terms (**Associated Individual**), in consideration for WENZL agreeing to supply Goods and grant credit to the Customer at their request, also sign in their personal capacity and jointly and severally undertake as principal debtors to WENZL, the payment of any and all monies owed by the Customer to WENZL and indemnify WENZL against non-payment by the Customer. Any personal liability assigned in this manner shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in these Terms. The signatories and Customer shall be jointly and severally liable under these Terms and for payment of all sums due hereunder.
16. Privacy Act 2020
16.1. The Customer and the Associated Individual/s (if separate to the Customer) authorises WENZL to:
- Collect, retain and use information about the Customer for the purpose of assessing the Customer's creditworthiness, account administration, payment and delivery processing, or marketing products or services to the Customer; and
 - Disclose information about the Customer, whether collected by WENZL from the Customer directly or obtained by another 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 Customer.
- 16.2. Where the Customer and/or the Associated Individual/s are an individual the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 2020.
- 16.3. The Customer and/or Associated Individual/s have the right to request from WENZL a copy of the information held and the right to request WENZL to correct any incorrect information about the Customer and/or Associated Individual/s held by WENZL.
- 16.4. WENZL undertakes to store and keep all information protected by such security safeguards as it is reasonable in the circumstances to take; against loss, or unauthorised access, use, modification or disclosure, or other misuse. Any third party agents used to develop and/or maintain security, be it physical or cyber, will be subject to WENZL's information security and privacy policy requirements, (available on request or on the WENZL Website).
17. Unpaid Goods Retained.
Where the Customer has left any item with WENZL for repair, modification, exchange or for WENZL to perform any other service in relation to the item and WENZL has not received payment in full, WENZL shall have;
- A lien on the item (which shall continue despite the commencement of proceedings, or judgement of the Price having been obtained);
 - The right to retain the item until full payment is received; or
 - The right to sell the item; and the right to retain all or part of the proceeds of the sale of the item in payment for the Price agreed and any interest due to WENZL and any costs associated with such sale.
18. General
18.1. If any provision of these Terms shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
18.2. The Customer must not assign, novate, or transfer these Terms or any contract to which they apply without WENZL's prior written consent. WENZL may assign these Terms and any contract to which they apply without the prior consent of the Customer provided this is without detriment to the Customer.
18.3. These Terms and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
18.4. WENZL shall be under no liability whatever to the Customer for any indirect loss and/or expense (including the loss of profit) suffered by the Customer arising from a breach by WENZL of these Terms.
18.5. In the event of any breach of this contract by WENZL the remedies of the Customer shall be limited to damages under which in no circumstances shall exceed the price of the Goods.
18.6. The Customer shall not be entitled to set off against or deduct from the Price any sums owed to the Customer by WENZL.
18.7. WENZL reserves the right to review these Terms at any time. If there is to be any change to these Terms, then that change shall take effect from the date on WENZL notifies the Customer of such change/s.
18.8. The provisions of the Part Subpart 3 of Part 1 (Contractual Remedies) of the Contract and Commercial Law Act 2017 ("CCLA") shall apply to this contract as if section 59(e) were omitted from the CCLA.
18.9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, storm, flood or other event beyond the reasonable control of either party.
18.10. The failure by WENZL to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect WENZL's right to subsequently enforce that provision.