

## 1. Definitions

- 1.1. "The Seller", "The Company", "The Supplier", "We", "FABTEK" shall refer to Fabtek Industries Ltd or any agents or employees thereof.
- 1.2. "The customer", "Buyer", "You", "Your" shall mean any person or persons, company or business entity to whom FABTEK sells or supplies, or proposes to sell or supply, Goods or Services.
- 1.3. The "Goods" and/or "Services" means any goods, products, and/or services supplied by FABTEK to the Customer.

## 2. Terms

These terms and conditions ["Terms"] apply to each contract to supply goods or services by FABTEK to the party purchasing the goods or services and supersede any previous terms and conditions agreed between the parties. By accepting a quote from FABTEK, the Buyer agrees to be bound by these Terms.

## 3. CREDIT REFEREES

If pursuing credit terms: Pursuant to the provisions of Privacy Act and its successors, the buyer authorizes any person or company to provide FABTEK with such information as required in response to the credit enquiries. The buyer further authorizes FABTEK to furnish any third party details of this application and any subsequent dealings that may result of this application being actioned.

## 4. PRICE

- 4.1. Prices noted on estimates and quotes are GST and freight exclusive unless stated otherwise.
- 4.2. The price shall be increased by:
  - (a) the amount of any GST and other taxes and duties which may be applicable; and
  - (b) Any modifications in design or specification of the goods or service requested by the customer that was not provided for in the original quote or estimate.
  - (c) If the job was quoted on the assumption that a digital file (DXF) would be supplied by the customer and the customer has not supplied a drawing in compliance with Section 14.
- 4.3. A contract is created and the Customer is bound to pay the price when FABTEK accepts the Customer's order in writing. Each accepted order shall constitute a separate contract. A quotation does not create a binding contract until the Customer places an order that is then accepted by FABTEK.
- 4.4. All quotes, estimates and pricing, unless otherwise specified, are valid for 30 days from the date of issue and may be subject to such further conditions as are expressly set out in the quote, estimate or pricing.

## 5. PRODUCT INFORMATION AND STATEMENTS

- 5.1. No warranty is given as to:
  - (a) The accuracy of any technical and other data given to the buyer in printed material relating to goods, unless the seller and the buyer otherwise agree in writing.
  - (b) The conformity of any delivered goods to any samples supplied.
  - (c) The design, functionality, fit or form of the product if being made to the buyer's specifications.
- 5.2. All drawings and technical documents delivered by one party to the other party shall remain the property of the first party and must not be used by the other party or reproduced or brought to the knowledge of third persons without the consent of the first party. Where the seller has made any goods to the specifications supplied by the buyer, the buyer shall indemnify the seller from any cost, claim, loss or expense arising as a result of those specifications infringing or being alleged to infringe any patent, copyright, registered design or other intellectual property right of any other person.
- 5.3. No other warranties either express or implied by law are made with respect to these products.
- 5.4. If the Consumer Guarantees Act applies, then any guarantee implied by it shall be part of this contract unless the goods or services are for business purposes in which case clause 6 shall apply.

## 6. LIABILITY

- 6.1. The seller shall not be liable for failure to deliver the goods by a specified date or for loss suffered by the buyer as a result of any event beyond the control of the seller.
- 6.2. The seller shall only be responsible to comply with the regulations, bylaws, codes and standards specified in the contract and shall be under no liability whatsoever for any failure to meet any other regulations, bylaws, codes and standards.
- 6.3. The seller may make suggestions to the buyer and may issue drawings to the buyer for approval. However the seller makes no representations as to being a design, structural or civil engineer or architect or other authority and it is the buyer's responsibility to ensure that the designs and goods are fit for purpose or are of acceptable quality in all respects and to seek independent advice and verification from suitably qualified professionals when appropriate.
- 6.4. Notwithstanding anything in these terms and conditions, any liability of the seller shall not exceed the price of the contract under which such liability has arisen.
- 6.5. Notwithstanding any other provision of these Terms, under no circumstances, shall FABTEK be liable to the Customer or any other person (whether in contract, tort, including negligence, statute or otherwise) for any:
  - (a) loss of profits;
  - (b) consequential loss or damage;
  - (c) indirect loss or damage; or
  - (d) special loss or damage of any kind; or
  - (e) legal or other costs

## 7. DELIVERY AND RISK

- 7.1. Delivery of the goods shall be made at the seller's premises unless otherwise agreed in writing. If the buyer fails to take delivery, the goods shall be deemed to have been delivered when the seller was willing to deliver them. In this event any cost to the seller for transport and/or storage shall be to the buyer's account.
- 7.2. Risk in the goods shall pass to the buyer on delivery. Fabtek are under no responsibility to insure goods at any stage nor are they under any other duty of care or bailment while the goods are awaiting collection by the buyer.
- 7.3. Unless agreed in writing by FABTEK, all goods left with the Company for more than seven (7) days after completion of processing shall attract a storage fee equal to 10% of the total invoice value each week.

## 8. PAYMENT

- 8.1. Payment for goods supplied and any freight or insurance charges and goods and services tax shall be made by the buyer no later than the 20th of the month following the date of invoice unless the seller has otherwise agreed in writing. Interest at the rate of 15% per annum shall be payable on all amounts overdue calculated as from the date when due and payable until the date of payment and the charging of interest shall be in addition to all other rights of the seller.
- 8.2. All collection and legal costs incurred in the recovery of outstanding monies will be payable by the buyer.

## 9. INSOLVENCY OF THE PURCHASER

If, before delivery, there arises reasonable grounds for belief that the buyer will not be able to fulfil its payment obligations to the seller on the required date, the seller shall have the right to demand security or payment in advance of delivery. If security to the reasonable satisfaction of the seller is not offered or, if payment in advance of delivery is not made without delay, the seller may cancel the order.

## 10. TITLE TO GOODS

- 10.1. Until the account is paid in full, the seller will retain ownership of any goods or services provided and shall be entitled to remove the said in the event that the account rendered for the same remains unpaid.
- 10.2. The Buyer grants to FABTEK a security interest in the goods as that term is defined under the Personal Property Securities Act 1999 ["PPSA"] and any

further goods supplied and any proceeds of such goods until all amounts required to be paid by FABTEK have been paid in full. The parties hereby contract out of Part 9 of PPSA so that the rights and obligations contained in Sections 114, 125, 129, 132, 133 and 134 of that Part do not apply between the parties, and the Buyer waives its rights under Section 121 and 131 and its right under Section 148 to receive any financing statement or financing change statement from FABTEK.

10.3. In the event that the Buyer is in default under these Terms or FABTEK considers the goods to be at risk the Buyer hereby irrevocably gives FABTEK, its officers, employees and agents licence without the necessity of notice to enter onto any premises owned or occupied by the Buyer to search for and take possession of the goods and remove them without being in any way liable to the Buyer or anyone claiming under the Buyer for doing so. If the goods are wholly or partially attached to or incorporated in any other goods FABTEK may disconnect or sever them in any way necessary to remove the goods.

10.4. Should the goods be merged into other goods then Fabtek shall have a general security created over the new goods so created for the moneys outstanding.

10.5. Should the goods be merged into land then an interest in that land shall be created in favour of Fabtek by way of a charge or mortgage over that property. Fabtek shall be entitled to call upon the buyer to execute a mortgage in favour of Fabtek over that land and Fabtek shall be entitled to register such mortgage and until such is registered maintain a caveat over the said land.

## 11. CANCELLATION AND RETURNS

11.1. Orders once placed and accepted can be cancelled only with FABTEK's prior written consent and upon terms that will save FABTEK from loss. Cancellation of items will not be accepted without full compensation being given to FABTEK for all expenses incurred after such orders are in production.

11.2. FABTEK may, at its discretion, and upon such terms as it determines, accept returns of goods.

11.3. No Goods may be returned without first obtaining written permission from FABTEK. Such permission is to be requested from the Sales Office where the Goods were obtained.

11.4. Claims of incorrect or defective Goods must be made in writing to the Sales Office where the Goods were obtained within ten days from receipt of the Goods.

## 12. Sub-Contracting

The Customer acknowledges that FABTEK may sub-contract all or any part of the works that FABTEK has been contracted to carry out on such terms as it deems fit and to which the Customer hereby agrees.

## 13. MATERIAL GRADE AND SPECIFICATION

13.1. FABTEK reserves the option to choose what material grade suits the Customer's order unless the Customer specifies in writing a particular material grade.

13.2. Customer supplied material must be within specification to fit our toolsets and machines.

13.3. Should a customer supply their own material we require a material certificate, we offer no guarantee and the job is processed completely at the customers risk on an "all care – no responsibility" basis.

## 14. CUSTOMER SUPPLIED DRAWINGS

14.1. If a quote has been prepared based off the customer supplying digital drawings, the following applies:

- a) All electronic drawing files (DXF, DWG, Solidworks etc) must be scaled 1:1, clean and ready for processing.
- b) All electronic drawing files must have a unique name, if a supplied file is the same name as one previously supplied by the Customer, we will deem it as being the same.
- c) A separate file is required for each profile.

## 15. LAW AND JURISDICTION

The contract shall in all respects be deemed to be a contract made under New Zealand law and the construction, validity and performance of the contract shall be governed by New Zealand law.