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Trading Terms and Conditions

1. Definitions and Interpretation

In these Conditions and elsewhere in the Contract, unless a contrary intention appears the following shall mean:

Anti-Bribery and Anti-Corruption Legislation includes any statute, law, code, regulation or similar instrument in connection with the prohibition of bribery and corruption (including by virtue of the place of domicile or operations of the Company and the Client) including but not limited to the Criminal Code Act 1995(Cth), the Crimes Act 1914(Cth), the Financial Management and Accountability Act 1997(Cth), the Commonwealth Authorities and Companies Act 1997(Cth), the Corporations Act 2001(Cth) and the Bribery Act 2010(UK).

Client means the entity to which the Company is providing the Services and/or Goods as detailed in the relevant purchase order.

Company means Unique Metal Works Pty Ltd (ABN 31 150 525 876) or any subsidiary of Unique Metal Works Pty Ltd as described in the Contract.

Completion Date means the date agreed and specified in the purchase order or otherwise as agreed in writing between the parties or any extension thereof agreed in writing between the parties, on which the Company must deliver the Goods and/or complete the Services.

Conditions mean these Trading Terms and Conditions.

Contract means the agreement between the Client and the Company evidenced by the Conditions, purchase order, and/or the Company Invoice, or incorporated by written reference into the Contract by the Company. The Conditions take precedence over all other documents and any other documents provided by the Client.

Contract Price means the total price submitted by the Company either as a lump sum fixed price, schedule of rates, cost plus or a combination of these as detailed in the Contract.

Force Majeure means act of God, act or omission of government, war, blockade, embargo, hostilities, fire, earthquake, flood, explosion, accident at sea, inclement weather conditions, industrial disputes (except where restricted to employees of the Company), sabotage or commotion, act or omission of the Client, or by any cause (whether similar or not to any of the above events) beyond the reasonable control of the Company.

Goods mean the goods, products, materials or equipment supplied by the Company in accordance with this Contract. Intellectual Property means any intellectual property whether protected by statute, at common law or in equity, including any patent, invention, copyright, or design right (whether or not registrable), in any design, specification, process, technique, software, know-how, trade secret, technical information, financial information, business method and confidential information.

Invoice means an invoice setting out the Services and/or Goods supplied to the Client by the Company and claiming payment for the provision of those Services and/or Goods.

PPSA means the Personal Property Securities Act 2009 (Cth)

Services means all the services the Company has agreed to perform for the Client under its offer and specified in the Contract.

Works means the scope of works being tendered for as detailed in the Contract, which is inclusive of the Goods and/or Services.

2. Validity Period


Our offer is open for acceptance for a period stated on the quote or thirty (30) days from the date of quote whichever is earlier, tender submission or such time as the parties agree in writing.

3. Deemed Acceptance

In the absence of written acknowledgement, the performance of any of the Works by the Company will be deemed acceptance of the Contract.

4. Price

Unless otherwise stated, the Contract Price quoted is net and exclusive of Goods and Services Tax (GST).

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5. Payment

Except as otherwise agreed by the Company in writing, the Client shall pay all invoiced amounts in Australian dollars, without right of set off, within thirty (30) days from the end of month of the Invoice which is sent by the Company to the Client.

If the Client fails to pay the Company the full amount stated in the Company Invoice in accordance with this clause, then the Company will charge interest on the amount unpaid by the Client at a rate of 2% over the Company's commercial bank overdraft rate.

If the Client fails to pay the Company in accordance with this clause, Company reserves the right to demand full payment of any Goods prior to the Works being commenced or to suspend the delivery of any Goods or Works.

Any expenses, costs or disbursements incurred by the Company in recovering any outstanding monies including debt collection agency fees or solicitor's costs charged on a full indemnity basis and will be paid by the Client on demand.

6. Limitation of Liability

Notwithstanding any other provision of this Contract and to the full extent permitted at law, the total liability of the Company to the Client arising out of or in connection with the Contract for all loss, damage, cost or expense suffered or incurred whether in contract or tort (including negligence), in equity, in restitution, by way of warranty or indemnity or under statute shall be limited to no more than fifty percent (50%) of the Contract Price.

7. Consequential Loss

Notwithstanding any other provision of the Contract and to the full extent permitted at law, neither party is liable for any indirect, special, contingent or consequential type losses or damages which includes but is not limited to loss of actual or anticipated profits, loss of opportunity, loss of goodwill or loss of revenue.

8. Proportionate Liability

Subject to clauses 6 and 7 above, the Company shall be proportionately liable to the extent that the Company caused or contributed to such claim, demand, proceeding, cost, expense, loss, liability or damage under the Contract.

9. Drawings and Design

The Client is responsible for providing the Company with its selected material, final drawings, plans, specifications and design in respect of the Goods.

The Company is wholly reliant on the accuracy, sufficiency and completeness of the information, documents, materials, drawings and specifications

("Information") provided to it by the Client. The Company takes no responsibility in relation to Information nor shall the Company be required to verify the Information prior to its use. The Client acknowledges and agrees that it has no claim whatsoever against the Company and forever releases the Company from any Claim, loss, damage or expense arising out of or in connection with the Company's use of the Information.

10. Delays

The Client shall reimburse the Company all reasonable costs including but not limited to overheads incurred by the Company for any delays except for delays caused by the Company itself.


If the Company does not deliver the Goods or complete the Services by the Completion Date the Company will pay to the Client as full and final remedy for delay, damages at the rate of 0.1% of the Contract Price per day to a maximum of 5% of the Contract Price in the aggregate. The Client agrees such damages are a genuine and reasonable pre-estimate of loss for delay arising out of the Contract

11. Delivery of Goods, Title and Risk

11.1 The Company will deliver the Goods by the Completion Date to the place specified in the Contract or agreed to in writing by the parties.

11.2 On the Client's receipt of the Goods, all risk relating to the Goods passes to the Client. However, if the Client provides any components to the Company for inclusion in the Goods the risk of those components remains with the Client at all times. The Company will use all reasonable care to provide suitable storage of the Client's components but will not be liable for any loss or damage.

11.3 It is acknowledged by the Client that the Company fulfils all of its obligations under the Contract once the Goods are delivered by the Company and received by the Client or collected by the Client, whichever is earlier.

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11.4 Title in the Goods remains with the Company until all sums due and owing by the Client to the Company are paid in full notwithstanding the delivery, receipt, collection or passing of risk to the Client.

11.5 Until title of the Goods passes, the Company reserves and retains the following rights in relation to the Goods until all accounts owed by the Client to the Company are fully paid:

- a) to enter the Client's premises, or the premises of any associated entity or agent of the Client where the Goods are located, without liability for trespass or any resulting damage and retake possession of the Goods; and
- b) to keep or resell the Goods repossessed under this clause.

12. Personal Properties Securities Act

12.1 In this clause 12 words and expressions which are not defined in these conditions but which have a defined meaning in the PPSA have the same meaning as in the PPSA.

12.2 The Client agrees and acknowledges that this document constitutes a security agreement which creates a security interest in favour of the Company for the purpose of the PPSA.

12.3 The Client acknowledges that the Company has a purchase money security interest in the Goods including, but not limited to, where the Client has not paid for the Goods in full prior to delivery.

12.4 The Client acknowledges that if the Company has rights and interest in proceeds derived from the Goods such rights and interests constitute a security interest in such proceeds.

12.5 The Company may register any security interest on the PPSA register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Goods, with such expiry dates as the Company determines in its absolute discretion). The Client must provide the Company with any information it requires for the purposes of giving effect to such registration.

12.6 For the purposes of section 157(3) of the PPSA, the Client irrevocably and unconditionally waives its right to receive any notice from the Company in connection with the registration of a financing statement or a financing change statement in respect of the Goods.

12.7 If section 95 or chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests then those provisions are excluded, to the extent possible.

12.8 The Client must take any steps (including providing information) the Company reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest.

12.9 Neither the Client nor the Company will disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.

12.10 Until the Company's security interest (whether perfected or not) is satisfied, the Client agrees not to cause or allow a security interest of higher priority to be created in the Goods. If the Client breaches this subclause, the Client shall indemnify the Company for any cost, expense, loss or damage suffered.


13. Warranty

The Company warrants that:

- a) the Goods will be of merchantable quality and be free from substantial defect in workmanship;
- b) any Goods manufactured or fabricated, Services performed or the Works will be performed to the standard set out in the Contract;
- c) the Company warrants the Goods for the period of 3 months following receipt of the Goods and only insofar as the defect is a result of faulty workmanship of the Company or the use of substandard materials by the Company. If the Client finds a defect with the Goods the Client must notify the Company in writing of the defect within seven (7) days of discovery of the defect and must take all reasonable precautions to prevent the use of the Goods;
- d) the Company will be responsible for the costs of actual rectification/replacement works only and any associated costs (including removal or transportation costs) shall be borne by the Client; and
- e) if the Company uses a subcontractor or supplier or other person to perform any work under the Contract (Other Person), any work, labour and services carried out by the Other Person shall only be warranted by the Company to the degree that the Other Person indemnifies the Company.

14. Defects Liability Period

The defects liability period will commence from the Completion Date or upon issue of the certificate of practical completion for the Works, whichever is earlier, and shall be for a period of three (3) months, unless otherwise stated in

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the Contract. Any additional warranty provided by a manufacturer for Goods which the Company has supplied will be passed on to the Client on agreement with the manufacturer.

During the defects liability period, the Company will make good or replace (as the case may be) defective Goods Services, excluding:

- (a) any interfacing between the Client's equipment, Site, plant or design (unless expressly included as part of Services under the Contract);
- (b) ordinary wear and tear; and
- (c) any damage which has been caused or contributed by the Client's negligence or acts or omissions.

15. Intellectual Property

The Company retains all intellectual property and ownership rights of such in any Intellectual Property and other information relating to the Works which is created or modified by the Company during the Contract.

The Company hereby grants to the Client a perpetual, irrevocable, non-exclusive, royalty free, transferable licence to use all Intellectual Property which is used or developed by the Company, for the purpose of or in connection with the Contract.

The Client acknowledges that the Company will not be responsible for any infringement of any intellectual property of the Client that the Client has in any components, material or additional documents and the Company will not be liable for any claim whatsoever due to Company's use of the Client's intellectual property.

The Client shall indemnify and hold harmless the Company against and from any claim alleging an infringement of all intellectual property rights, moral rights and ownership rights in any information provided by the Client to the Company.

16. Insurance

The Company shall procure and maintain insurances against risk or liability in connection with the Contract as follows:

- a) workers compensation in accordance with the applicable legislation;
- b) professional indemnity where relevant;
- c) product liability of not less than \$10 million per occurrence;
- d) public liability of not less than \$10 million per occurrence;

17. Confidentiality

The Client acknowledges and agrees that any information submitted by the Company in its offer which includes but is not limited to pricing, technical specifications and other information is commercial in confidence and submitted solely for evaluation by the Client. Such information must at all times remain confidential and shall not be disclosed to any third party without the Company's prior written consent.

If such information is disclosed to a third party with the Company's prior consent, the Client must ensure that as a condition precedent to the passing of such information that the third party accepts and acknowledges to be bound by confidentiality obligations.

18. Inconsistency

To the extent of any inconsistencies, these Conditions prevail over any other document.


19. Force Majeure

- a. If performance by the Company of any obligation under the Contract is prevented, restricted or delayed by Force Majeure then the Company shall be excused from and shall not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly, subject to the terms of clause 19b.
- b. If supply is delayed for more than four (4) months by Force Majeure and the parties have not agreed upon a revised basis for continuing the supply at the end of the delay, then either party may after that period and while the cause of non-performance still exists terminate the Contract by not less than 30 days' notice in writing to the other party.

20. Cancellation

Either party has the right to cancel this Contract because of any event beyond the reasonable control of either party which alters the ability of the cancelling party to fulfil the terms of this Contract.

If the Company cancels this Contract, the Client agrees and acknowledges that it will not prosecute any claim in law or in equity against the Company.

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The Client agrees if the Client cancels this Contract, it will pay to the Company all outstanding Company Invoices and for all Goods and/or Services provided to the Client up to the date of cancellation and the Client indemnifies the Company against any losses incurred by the Company as a result of the termination.

21. Dispute Resolution

If a difference or dispute between the parties arises in connection with the subject matter or interpretation of this Contract, including a dispute concerning a claim in tort, under statute, or on any other basis in law or equity available under the law governing the Contract ('Dispute'), either party may by hand or registered post give the other party written notice of dispute identifying and providing details of the dispute and entitled Dispute Notice ('Dispute Notice'). Within seven (7) days of receipt of Dispute Notice representatives of the parties having authority to bind the parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty one (21) days of the receipt of Dispute Notice, the General Manager of each of the parties shall confer for the same purpose as the parties' representatives. All aspects of such conference(s) shall be privileged.

Neither party may institute legal proceedings in respect of any Dispute unless a Dispute Notice in respect thereof has first been given and then only after a period of twenty eight (28) days from receipt of such Dispute Notice has elapsed.

22. General

- a. The Contract is governed by the law of Western Australia.
- b. Any waiver partly or whole of the terms of the Contract will be valid only if in writing and signed by the Company.
- c. Any provision of the Contract that is prohibited or unenforceable, such unenforceability shall not invalidate the remaining provisions of the Contract nor affect the validity or enforceability of that provision.
- d. If additional terms and/or conditions are attached to, incorporated into or accompany the Client's order, those terms and/or conditions are not accepted by the Company and do not form part of the Contract unless expressly accepted in writing or signed by an authorised representative of the Company.

23. Anti-Bribery and Corruption

- a. The Company is committed to operating in a manner consistent with the laws of the jurisdiction in which it operates, including laws relating to anti-bribery and anti-corruption.
- b. The Client represents and warrants it complies with Anti-Bribery and Anti-Corruption Legislation and that it has and maintains reasonable and effective anti-bribery and anti-corruption policies and procedures, such policies and procedures to be made available to the Company for inspection on demand.
- c. The Client represents and warrants it has not and will not breach any Anti-Bribery and Anti-Corruption Legislation in connection with the Contract.
- d. If the Client becomes aware of any breach or suspects a breach of Anti-Bribery and Anti-Corruption Legislation in connection with the Contract it must immediately notify the Company in writing and provide reasonable details of such breach or suspected breach and provide reasonable access to information, books and records relevant to such breach.
- e. If the Company, acting reasonably, believes the Client has breached Anti-Bribery and Anti-Corruption Legislation in connection with the Contract, the Company must give the Client written notice of such. If the Client, within 30 days of that written notice, fails to show there is no reasonable basis to conclude a breach has occurred, the Company may terminate the Contract without further notice to the Client.