

GENERAL TERMS AND CONDITIONS

All quotations and orders are subject to the following general terms and conditions of sale (**Terms**), unless otherwise expressly agreed in writing between Powersurge Metalworks and the Purchaser. (**the Parties**)

1. Definitions

- 1.1 "We", "Our" or "Us" means Powersurge Metalworks Limited, a New Zealand Company having its registered office at 171 Hobson Street, Auckland, New Zealand
- 1.2 "You", "Your" or "Purchaser" means the person, company or other relevant legal entity with whom we have contracted for the supply and sale of Goods and/or Services
- 1.3 "Goods" means the equipment material, product and/or chattel supplied and sold by Us on the quotation
- 1.4 "Services" means installation and fitting of Goods as indicated on the quotation
- 1.5 "GST" means Goods and Services Tax payable under the Goods and Services Tax Act 1985.
- 1.6 "Intellectual Property Rights" means all rights in and to all technology, techniques (both patented and non-patented), know-how, confidential information, patents, copyright, designs, trade names, inventions, discoveries, and know-how, rights in relation to designs, rights in relation to trade marks, business names and domain names including all applications for any such rights as may exist elsewhere in the world.
- 1.7 "Contract" means these Terms together with any and every quotation.
- 1.8 "PPSA" means Personal Property Securities Act 1999 as amended or substituted from time to time. Unless the context otherwise requires, words and phrases shall have the meanings given to them in or by virtue of the PPSA.
- 1.9 "After-acquired property" means 'at risk', 'default', 'inventory', 'lease', 'perfected', 'proceeds', 'purchase money security', 'interest', 'rights', 'security interest' and 'sell' have the respective meanings given to them under , or in the context of, the PPSA.
- 1.10 "Price" means the Price payable (plus any Goods or Services tax [GST] where applicable) for the Works agreed between Us and You in accordance with Clause 8 below.

2. Acceptance

- 2.1 You are taken to have exclusively accepted and be immediately bound, jointly and severally, by these terms and conditions when You place an order or accept delivery of any Goods and/or Services.
- 2.2 The price to be paid for the Goods and/or Services is set out in the quotation. GST, freight, freight

Insurance and any other taxes and duties applicable to the Goods sold or Services provided under a Contract shall be payable by You and will be added to the price quoted

- 2.3 Any cost we provide in a Quote for other cost items over which we have no control are estimates only based on the current retail rates provided to us by the Supplier. Any increase in their costs will be payable by you and incorporated in the invoices.

3. Variations

- 3.1 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistencies with any other documents or agreement between the Parties.
- 3.2 No variation of price shall be effective unless agreed in writing between the Parties. Clerical errors in quotation and orders are subject to correction. All price lists are subject to change without notice.
- 3.3 Any variation to this Quote must be agreed to in writing by the Parties prior to variation works proceedings and/or the supply of service.
- 3.4 In the event that the Parties are unable to agree to such variations within a reasonable period of time, We will be entitled to invoice you for any variation works carried out and/or services provided at a rate equivalent to Our standard charge rates for the same or similar Goods and/or Services.
- 3.5 It is your sole responsibility to obtain and provide any licenses, access, approvals or permits necessary for performance of Services under the Contract

4. Electronic Transactions Act 2002

- 4.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Sec 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any regulations referred to in that Act

5. Change in Control

- 5.1 You shall give Us not less than fourteen (14) days prior written notice of any proposed change of ownership of your and/or any other change in the Your details (including but not limited to, changes in the your name, address, contact phone or fax

number/s, or business practice). You shall be liable for any loss incurred Us as a result of your failure to comply with this clause.

6. Specification and Drawings

- 6.1 Any description of the Goods is given by way of identification only and the use of such a description does not constitute a sale by description.
- 6.2 You acknowledge that all specifications, drawings, dimensions, weights, descriptions, illustrations or data provided by Us are estimates only and they shall not be part of the Contract. We make no representation or give any warranties relating to the description or quality of the Goods.
- 6.3 You are taken to have exclusively accepted and be immediately bound, jointly and severally by any drawings and/or designs provided by Us once the drawings and/or designs are signed by the Parties.
- 6.4 You are taken to have exclusively accepted and be immediately bound, jointly and severally by any drawings and/or designs provided by You once the drawings and/or designs are signed by the Parties.
- 6.5 Provided We have supplied the Goods matching the plans, specifications, measurements and quantities, We shall not be liable for the end product being deemed as being unsatisfactory to You.
- 6.6 We shall be entitled to rely on the accuracy of any plans, specification and other information provided by You. You acknowledge and agree that in the event any information provided by You is inaccurate, We shall not be liable for any loss, damages or costs however resulting from these inaccurate plans, specifications or other information.
- 6.7 In the event You give us information relating to measurements and quantities of Goods required in completing any Services, it is Your responsibility to verify the accuracy of the measurement and quantities, before an order is placed. We shall not be liable for any loss, damages or costs however resulting from Your failure to comply with this clause.

7. Time And Date For Supply

- 7.1 We will use reasonable endeavors to meet any delivery or completion date quoted but such time or date of delivery is a bona fide estimate only and while every reasonable effort will be made by us to complete the services or tender delivery on or before the estimate date, We do not guarantee that delivery and/or completion will take place on such estimated delivery date. Failure to complete and/or deliver by the stated delivery and/or completion date does not entitle you to subsequently refuse to take delivery or to render Us liable to You or any loss or damages.
- 7.2 We reserve the right to make partial deliveries of any Goods and/or Services and to invoice such

deliveries separately. Failure on our part to deliver one or more instalments shall not entitle you to repudiate the main contract.

8. Payment

- 8.1 Payments must be received by Us not later than thirty (30) Days from the date of invoice, unless otherwise indicated on the quotation. This is an essential term.
 - a. We will require a deposit payment of 50% of the quoted price to be paid upon acceptance of these terms and conditions. The supply of services and/or goods will not commence until We are in receipt of this payment
 - b. A further payment of 40% will be due upon completion of the services.
 - c. The final payment of 10% will be due upon delivery and/or installation.
- 8.2 For all invoices that are not paid by the due date, we reserve the right to:
 - a. Charge interest on any amount unpaid from 30 Days from the date that the invoice is issued at 15% per annum on a daily basis.
 - b. Suspend Services and/or withhold delivery of any Goods not yet delivered.
 - c. Withhold further delivery of Goods until the outstanding amount has been paid. (solicitor costs)
- 8.3 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking or by any other method as agreed between the Parties
- 8.4 You shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to You by the Us nor to withhold payment of any invoice because part of that invoice is in dispute.

9. Shipment and Delivery

- 9.1 Our responsibility ceases with the delivery of the Goods in good order to the transportation carrier. Once the goods are loaded to the transportation carrier, they become your responsibility. Delivery is not guaranteed at or to Your premises. You must make any claims for shortage or damage in transit against the transportation carrier. In the absence of definite shipping instructions, we reserve the right to ship all Goods to the premises of any public carrier which we deem satisfactory.
- 9.2 You shall keep the Goods insured against damage, loss and deterioration. You shall confirm the existence of such insurance if We require it.
- 9.3 Because trucks may be mobilized or loaded prior to the day of delivery and charges may start accruing well in advance of the scheduled delivery time, changes to delivery requirements which are made on short notice may at our discretion be treated as a variation and be recoverable from you.
- 9.4 Delivery will be deemed to have been made in the event of Your refusal to accept or take delivery.
- 9.5 We will not be liable for any loss, cost or damage arising from a failure to deliver on time.

10. Rejections

- 10.1 Claims for incorrect or defective Goods or incomplete delivery must be made in writing within ten (10) days from receipt of the Goods. You must give Us an opportunity to inspect and verify any claim. No Goods may be returned without first obtaining our written permission.

11. Warranty

- 11.1 Goods that We have manufactured are guaranteed against defects in material and workmanship for the period of 12 months after delivery, No guarantee is made against corrosion, erosion, chemical attack, incorrect installation or improper use. No warranty is given for normal wear and tear

- 11.2 The warranty under clause 11.1 does not apply to Goods manufactured by others. To the extent permissible by law, this warranty is only applicable for repairs and replacement of Goods within New Zealand and does not extend to cover labor for installation.

- 11.3 Where Goods include other manufacturer's products, any warranty which may be given by Us only applies to the extent of the benefit We receive of that manufacturer's warranty.

- 11.4 You acknowledge that We have no control over the quality of steel We receive from the mill. We will make every reasonable effort to provide the best steel available to Us however there is a possibility that the Goods may still exhibit imperfections such as (among others):

- a. Scratches;
- b. Marks;
- c. Bubbling
- d. Streaks;
- e. Surface rust;
- f. Pitting; and
- g. Inconsistency in colour

You agree that such imperfections do not constitute a product defect and We shall not be liable for any loss or damage suffered by You as a result of such imperfections. You further acknowledge and agree that if You have chosen an oiled and clear waxed finish, We cannot control or hide any of these imperfections.

- 11.5 You acknowledge that the Goods supplied may (among others):

- a. expand, contract or distort as a result of exposure to heat, cold weather; and
- b. mark or stain if exposed to certain substances; and
- c. be damaged or disfigured by impact or scratching

and that these shall not be deemed to be a defect in the Goods.

- 11.6 You further acknowledge that the Goods supplied may exhibit variations in shade, color, texture, surface and finish, and may fade or change color over time due to:

- a. The use of natural materials in the manufacturing process;

- b. Normal manufacturing tolerances and processes

We give no guarantee (expressed or implied) that color samples will match the goods supplied where applicable. We will make every effort to minimize such variations but will not be liable in any way whatsoever where such variations occur. You agree that such variations do not constitute a product defect and We shall not be liable for any loss or damage suffered by You as a result of such variations.

- 11.7 All claims made under warranty must be made in writing before the warranty period expires or within seven (7) days of the defect becoming apparent whichever is earlier. You must give Us a reasonable opportunity to inspect and verify any claim.

- 11.8 To the extent permitted by law and except as provided in these Terms, all other warranties, guarantees, conditions, terms, representation and undertaking, whether express or implied are hereby expressly negated and excluded,

- 11.9 We have no knowledge of the use or purpose for which You are purchasing the Goods and/or services. We make no representation or give any warranty in respect of fitness for a particular purpose or merchantability.

- 11.10 All intellectual Property Rights associated with the supply of Goods and/or services remain Our sole property. This includes any Intellectual Property Rights that We create during the course of supplying the Goods and/or Services to you.

- 11.11 You warrant that all designs, specifications or instructions given to Us will not cause Us to infringe any patent, registered design or trademark in the execution of Your order and You agree to indemnify Us against any action taken by a third party against Us in respect of such infringement.

12. Liability

- 12.1 Neither party may bring a claim for negligent or innocent misrepresentation.

- 12.2 Our liability to You arising in connection with the supply or use of the Goods and/or Services, including defective Goods whether under common law, equity or statute and whether direct or indirect is limited (to the extent permitted by law and not otherwise expressly provided for herein) at our absolute option to the cost of replacing or repairing the Goods or to credit You with the price the Goods were purchased.

- 12.3 We will not be liable, under any circumstances, to you or to any other person or entity in contract, tort (including negligence) or restitution, or for breach of a statutory duty or misrepresentation or otherwise for any loss of profit, loss of business, business interruption, work stoppage, depletion of goodwill or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use of service, indirect or pure economic loss, costs, damages, charges or expenses arising out of or in connection with this contract.

- 12.4 Any remedy shall only be available to you if the Goods have been stored, maintained, installed and or operated by You without damage or misuse and strictly in the manner prescribed by Us in accordance with all applicable laws and regulations and have not been repaired or altered without Our express approval.
- 12.5 We are not liable for any loss, damage or injury caused by Your servants, agents, contractors, customers, visitors, tenants, trespassers or other persons whomsoever. You are required to indemnify Us against any claim by any of the foregoing persons in respect of any loss, damage, or injury arising as aforesaid.
- 12.6 We shall not be required to fulfil obligations under a warranty for so long as you are in default of any outstanding payment
- 12.7 Where legislation implies any condition or warranty, and that legislation prohibits Us from excluding or modifying the application of, or Our liability under, any such condition or warranty, that condition or warranty will be deemed included. In such case, our liability shall be limited to the repair or replacement of defective Goods.

13. Cancellation

- 13.1 Without prejudice to any other remedies We may have, if any time You are in breach of any obligation (including those relating to payment) under these terms and conditions, We may suspend or terminate the supply of Goods and/or Services to You. We will not be liable to You for any loss or damage You suffer because We have exercised Our right under this Clause.
- 13.2 We may cancel any contract to which these terms and conditions apply or cancel delivery of the services and/or Goods at any time before the services has commenced by giving written notice to You, On giving such notice, We shall repay you any sums paid in respect of the Price, less any amount owing by You to Us for the goods and/or services already performed. We shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.3 In the event that You cancels the delivery of services and/or Goods, You shall be liable for any and all loss incurred (whether direct or indirect) by Us as a direct result of cancellation (including but not limited to , any loss of profits)
- 13.4 Cancellation of orders for products made to Your specification or for non-stocklist items will definitely not be accepted once production has commenced or an order has been placed

14. Security Interest

- 14.1 To the extent that the Contract involves the supply of Goods within New Zealand, the provisions of paragraph 14 to 16 of these Terms shall apply
- 14.2 You grant us a security interest in each and every part of the Goods as security for payment of that part and of each other part or parts of the Goods and for any amounts that You may owe Us from time to time, and for the performance by You of all

Your obligations to Us from time to time ('Your indebtedness and obligations')

- 14.3 For the purposes of section 36(1)(b) of the PPSA , and to ensure maximum benefit and protection for Us by virtue of section 36(a)(b)(ii) of the PPSA, You confirm and agree that You grant to Us, as security of Your indebtedness and obligations, a security interest in all of Your present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ('excepted property') in or to which You have rights and which have not been supplied by Us to You, other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by Us to You.
- 14.4 We authorise You to sell or lease, in the ordinary course of Your business, any Goods that are comprised in Your inventory.
- 14.5 You agree to do anything that We reasonably require to ensure that We have a perfected security interest in all the Goods and a purchase money security interest in each part of the Goods to the extent of the purchase price for that part.
- 14.6 You undertake to:
- a. Promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which We may reasonably require to:
 - i. Register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;
 - ii. Register any other document required to be registered by the PPSA; or
 - iii. Correct a defect in a statement referred to in clause 13.6 (a) (i) & (ii)
 - b. Indemnify, and upon demand reimburse Us for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Security Register established by the PPSA or releasing any Goods charged thereby
 - c. Not register a financing charge statement in respect of a security interest without Our prior written consent
 - d. Not register, or permit to be registered, a financing statement or financing charge statement in relation to the Goods in favour of a third party without Our prior written consent ; and
 - e. Immediately advise Us of any material changes in Your business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

14.7 We may allocate amounts received from You in any manner we determine, including in any manner required to preserve any purchase money security interest We have in any goods.

15. Contracting Out of The PPSA

15.1 You agree that if We do not have priority over all other secured parties in respect of any part of the Goods, then the Parties will, for the purposes of section 109(1) of the PPSA be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that Section but specifically on the basis that, as between them and only to the extent of that part of the Goods and the operation and application of the PPSA, that section 109(a) (but amended only by the deletion of words 'with priority over all other secured parties') is reinstated and contracted back into and nothing in sections 114(1)(a), 113 and 134 will apply to this Contract.

15.2 You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing charge statement relating to the security interest under these Terms; and

15.3 You waive your rights under sections 116, 117(1) (c), 120(2), 121, 125, 129, 131 and 132 of the PPSA.

16. Property in Goods.

16.1 Property in Goods shall be retained by Us until and shall only pass to You when We have received payment in full for all Goods supplied to you on any account whatsoever. Should payment for the Goods be made by You by cheque, bill of exchange or note, ownership of the Goods shall not pass to You and You shall remain liable for payment, until the cheque, bill of exchange or note has been honoured

16.2 It is further agreed that:

- a. Until ownership of the Materials passes to the You in accordance with Clause 16.1 that You are only a Bailee of the Materials and unless the Materials have become fixtures must return the Materials to Us on request.
- b. You hold the benefit of Your insurance of the Materials on trust for Us and must pay to the Us the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- c. The production of these terms and conditions by Us shall be sufficient evidence of the Our right to receive the insurance proceeds direct from the Insurer without the need of any person dealing with Us to make further enquires.
- d. You must not sell, dispose or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If You sell, dispose or part with possession of the Goods then You must hold the proceeds of any such act on trust for Us and must pay or deliver the proceeds to Us on demand.

e. You should not convert or process the Goods or intermix them with other goods but if You does so, then You holds the resulting product on trust for the Our benefit and must sell, dispose of or return the resulting products to Us as we so direct;

f. You irrevocable authorise Us to enter the premises where We believes the Goods are kept and recover possession of the Goods at any time without notice and without prejudice to any of our other rights and remedies to repossess any Goods not paid for in full .

g. We may recover possession of any Goods in transit whether or not delivery has occurred.

h. You shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in in the Goods while they remain Our property.

17. Consumers Guarantees Act 1993

17.1 Nothing in these Terms is intended to have the effect of contracting out of the Consumers Guarantees Act 1993 ('The Act') except to the extent permitted by The Act, and all provisions of this Contract shall be read as modified to the extent necessary to give effect to this intention. You agree that if You are purchasing the Goods for the purposes of a business, The Act shall not apply.

17.2 You shall not give or make any undertaking, assertion or representation in relation to the Goods We supply without Our prior approval in writing. You shall indemnify us against any liability or cost incurred by Us as a result of any breach of this provision.

18. Governing Laws

18.1 This agreement is exclusively governed by New Zealand Law. The Parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Contract.

19. Service of Notice

19.1 Any written notice given under this contract shall be deemed to be given and received:

- a. By handing notice to the other party, in person;
- b. By leaving it at the address of the other party as stated in the contract, on receipt of confirmation by the other party
- c. By sending it by registered post to the address of the other party as stated in this contract
- d. If sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- e. If sent by email to the other party's current email address.

19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the

time when by the ordinary course of post, the notice would have been delivered.

20. Dispute Resolution

- 20.1 All dispute and differences between the Parties touching and concerning this Agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each parties) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with the provisions of the Arbitration Act 1996

21. General

- 21.1 No amendment to this Contract will be effective unless it is in writing and signed by the Parties,
- 21.2 A delay, neglect, forbearance by a party in enforcing any provisions of the Contract against the other will not waive or limit any right of that party. No provision of the Contract will be considered waived by a party unless that party waives the provision in writing.
- 21.3 The parties will not treat a waiver by a party of any breach as a waiver of any continuing or re-occurring breach, unless the Parties have expressly agreed to do so in writing.
- 21.4 If any part of this Contract is held to be invalid, unenforceable or illegal for any reason, this Contract will be deemed to be amended by the addition or deletion of working necessary to remove the invalid, unenforceable or illegal part, but otherwise to retain the provisions of this Contract to the maximum extent permissible under applicable law.
- 21.5 This Contract contains the whole of the contract and understanding between the Parties in respect of the matters covered by it and supersedes all prior representation, promises, implications, agreements, statements, and understandings between the Parties in respect of these matters, whether verbal or in writing.