

## Ramage Sheet Metals - Terms & Conditions of Trade

### 1. Definition

- 1.1. **"RSM"** means Ramage Sheet Metals Limited, its successors and assigns or any person acting on behalf of and with the authority of Ramage Sheet Metals Limited.
- 1.2. "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3. "Goods" means all Goods or Services supplied by RSM to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4. "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between RSM and the Customer in accordance with clause 5 below.

### 2. Acceptance

- 2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2. These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and RSM.

### 3. Electronic Transactions Act 2002

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

### 4. Change in Control

- 4.1. The Customer shall give RSM not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by RSM as a result of the Customer's failure to comply with this clause.

### 5. Price and Payment

- 5.1. At RSM's sole discretion the Price shall be either:
  - (a) As indicated on any invoice provided by RSM to the Customer; or
  - (b) The Price as at the date of delivery of the Goods according to RSM's current price list; or
  - (c) RSM's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2. RSM reserves the right to change the Price;
  - (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable designs or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, prerequisite work by any third party not being completed, change of design, disassembling of Goods that require power coating, etc) which are only discovered on commencement of the Services; or
  - (d) in the even of increases to RSM in the cost of labour or Goods (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond RSM's control.
- 5.3. Variations will be charged for on the basis of RSM's quotation, and will be detailed in writing, and shown as variations on RSM's invoice. The Customer shall be required to respond to any variation submitted by RSM within ten (10) working days. Failure

to do so will entitle RSM to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

- 5.4. An urgency fee of fifteen (15%) percent of the Price will be charged for Goods that require earlier delivery date than the one specified on the Quote.
- 5.5. At RSM's sole discretion a non-refundable deposit of fifty (50%) percent of the Price may be required.
- 5.6. Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by RSM, which may be;
  - (a) On delivery of the Goods;
  - (b) Before delivery of the Goods;
  - (c) By way of instalments/progress payments in accordance with RSM's payment schedule;
  - (d) For certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (e) The date specified on any invoice or other form as being the date for payment.
- 5.7. Payment may be made by cash, electronic/on-line banking, PayPal or by any other method as agreed to between the customer and RSM.
- 5.8. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by RSM nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9. Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to RSM an amount equal to any GST RSM must pay for any supply by RSM under this or any other agreement for the sale of Goods. The customer must pay GST, without deduction or set off any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## **6. Delivery of Goods**

- 6.1. Subject to clause 6.2 it is RSM's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2. The Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that RSM claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond RSM's control, including but not limited to any failure by the Customer to;
  - (a) Make a selection; or
  - (b) Have the site ready for the Services; or
  - (c) Notify RSM that the site is ready; or
  - (d) Confirm order in writing.
- 6.3. At RSM's sole discretion the cost of delivery is in addition to the Price.
- 6.4. RSM may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5. Any time specified by RSM for delivery of the Goods is an estimate only and RSM will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that RSM is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then RSM shall be entitled to charge a reasonable free for redelivery and/or storage.

## **7. Risk**

- 7.1. If RSM retains ownership of the Goods under clause 12 then;
  - (a) Where RSM is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods on

or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either;

- (i) The Customer or the Customer's nominated carrier takes possession of the Goods at RSM's address; or
  - (ii) The Goods are delivered by RSM or RSM's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
- (b) where RSM is to both supply and install Goods, then MM shall maintain a contract Services insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Customer.
- 7.2. Notwithstanding the provisions of clause 7.1 if the Customer specifically requests RSM to leave Goods outside RSM's premises for collection or to deliver the Goods to an unattended location then such Goods shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Customer's expense.
- 7.3. Any advice, recommendation, information, assistance or service provided by RSM in relation to Goods supplied is given in good faith, is based on RSM's own knowledge and experience and shall be accepted without liability on the part of RSM and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods.

## **8. Powder Coating Clauses**

- 8.1. The Client acknowledges that Products supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. RSM will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 8.2. The Client acknowledges that where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not have deemed to be a defect in the goods.
- 8.3. The Client acknowledges that finishes supplied may;
- (a) Fade or change colour over time; and
  - (b) Expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (c) Mark or stain if exposed to certain substances; and
  - (d) Be damaged or disfigured by impact or scratching.

## **9. Dimensions, Plans and Specifications**

- 9.1. All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless RSM and the Customer agree otherwise in writing.
- 9.2. RSM shall be entitled to reply on the accuracy of any plans, specifications and other information provided by the Customer.
- 9.3. If the giving of an estimate or quotation for the supply of Goods involves RSM estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of RSM's estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.
- 9.4. Should the Customer require any changes to RSM's estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

## **10. Access**

- 10.1. The Customer shall ensure that RSM has clear and free access to the work site at all times to enable them to undertake the Services. RSM shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways,

driveways and concreted or paved or grassed areas) unless due to the negligence of RSM.

## **11. Compliance with Laws**

11.1. The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## **12. Title**

- 12.1. RSM and the Customer agree that ownership of the Goods shall not pass until;
- (a) The Customer has paid RSM all amounts owing to RSM; and
  - (b) The Customer has met all of its other obligations to RSM.
- 12.2. Receipt by RSM 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.
- 12.3. It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 12.1;
- (a) the Customer is only a bailee of the Goods and must return the Goods to RSM on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for RSM and must pay to RSM the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for RSM and must pay or deliver the proceeds to RSM on demand.
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the customer does so then the Customer holds the resulting product on trust for the benefit of RSM and must sell, dispose of or return the resulting product to RSM as it so directs.
  - (e) the Customer irrevocably authorises RSM to enter any premises where RSM believes the Goods are kept and recover possession of the Goods.
  - (f) RSM may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of RSM.
  - (h) RSM may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

## **13. Personal Property Securities Act 1999 ("PPSA")**

- 13.1. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that;
- (a) These terms and conditions constitute a security agreement for the purpose of the PPSA; and
  - (b) A security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to RSM for Services that have previously been supplied and that will be supplied in the future by RSM to the Customer.
- 13.2. The Customer undertakes to;
- (a) Sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which RSM may reasonably require to register a financing statement for financing change statement on the Personal Property Securities Register;
  - (b) Indemnify, and upon demand reimburse, RSM for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;

- (c) Not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of RSM; and
  - (d) Immediately advise RSM of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.3. RSM and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4. The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5. Unless otherwise agreed to in writing by RSM, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6. The Customer shall unconditionally ratify any actions taken by RSM under clauses 13.1 to 13.5

#### **14. Security and Charge**

- 14.1. In consideration of RSM agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2. The Customer indemnifies RSM from and against all RSM;s costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising RSM;s rights under this clause.
- 14.3. The Customer irrevocably appoints RSM and each director of RSM as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.

#### **15. Customer's Disclaimer**

- 15.1. The Customer hereby disclaims any right to rescind, or cancel any contract with RSM or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by RSM and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgement.

#### **16. Defects**

- 16.1. The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify RSM of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford RSM an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which RSM has agreed in writing that the Customer is entitled to reject, RSM's liability is limited to either (at RSM's discretion) replacing the Goods or repairing the Goods.

- 16.2. Goods will not be accepted for return other than in accordance with 16.1 above, and provided that;

(a) RSM has agreed in writing to accept the return of the Goods; and

(b) -----

#### **23. Unpaid Seller's Rights**

- 23.1. Where the Customer has left any item with RSM for repair, modification, exchange or for RSM to perform any other service in relation to the item and RSM has not received or been tendered the whole of any monies owing to it by the Customer, RSM shall have, until all monies owing to RSM are paid;

(a) A lien on the item; and

(b) The right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

23.2. The lien of RSM shall continue despite the commencement of proceedings, or judgement for any monies owing to RSM having been obtained against the Customer.

#### **24. Service of Notices**

24.1. Any written notice given under this contract shall be deemed to have been given and received;

- (a) By handing the notice to the other party, in person;
- (b) By leaving it at the address of the other party as stated in this contract;
- (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 last known email address.

24.2. 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.

#### **25. General**

25.1. The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

25.2. These terms and conditions 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 Hastings, New Zealand.

25.3. RSM shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by RSM of these terms and conditions (alternatively RSM's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

25.4. Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.

25.5. The Customer agrees that RSM may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for RSM to provide Goods to the Customer.

25.6. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire flood, storm or other event beyond the reasonable control of either party.

25.7. Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.