

1. TERMS AND CONDITIONS OF TRADE

- 1.1 These Terms and Conditions of Trade (**Terms**) apply to any Contract for the provision of Services, and/or for the supply of Goods, from the Company to the Customer, unless otherwise agreed in writing between the Company and the Customer.
- 1.2 By entering into a Contract, the Customer accepts these Terms and agrees to the application of these Terms to the provision of Services and/or supply of Goods by the Company to the Customer pursuant to that Contract.
- 1.3 The Company may vary, update or replace these Terms from time to time by publishing such varied, updated or replaced Terms on its website – www.torks.co.nz
- 1.4 All varied, updated or replaced Terms published by the Company will take effect from the date of publication, and will apply to all Contracts entered into between the Company and the Customer from that date.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In these Terms and in any Contract to which these Terms apply, unless the context requires otherwise:

Contract means any contract or arrangement under which the Company provides Services and/or supplies Goods to the Customer, comprising these Terms and any Quotation, or as otherwise formed in accordance with clause 3 of these Terms;

Company means Torks Tool & Die Making Co Limited, trading as Torks Precision Engineering, with company number 136853 at Christchurch and includes its successors or assigns and all of its subsidiaries, whether partly or wholly owned;

Company Insurance means the insurance policies taken out by or on behalf of the Company including any liability insurance and insurance in respect of any damage to the Customer Property and/or Serviced Property while stored at the Company premises;

Customer means any customer of the Company or any person acting on behalf of and with the authority of the Customer, as the recipient of Services provided and/or Goods supplied by the Company;

Customer Property means, where applicable, any personal property of the Customer in respect of which the Company is to perform Services on pursuant to a Contract;

Consumer Law means the Consumer Guarantees Act 1993 and the Fair Trading Act 1986, and all related regulations and codes of practice;

Deposit means any refundable or non-refundable deposit payable by the Customer to Company (if so required by the Company) as provided in a Quotation or Contract;

Force Majeure Event means any event beyond the reasonable control of the party claiming relief, excluding:

- (a) any event which that party could have avoided or overcome by exercising a reasonable standard of care at a reasonable cost;
- (b) a lack of funds for any reason; and
- (c) a strike or other labour dispute involving that party or its Personnel;

Goods means any goods sold or to be sold by the Company to the Customer under a Contract, including but not limited to precision parts and/or assemblies;

GST means New Zealand goods and services tax, payable in accordance with the New Zealand Goods and Services Tax Act 1985;

Order means any written or oral request from the Customer to the Company for the provision of Services and/or the supply of Goods under a Contract, which is subject to acceptance by the Company;

Personnel means, in respect of any entity, any director, officer, employee, or contractor of that entity;

Price means the price for the Services provided and/or Goods supplied pursuant to a Contract, as specified in the Quotation or as otherwise agreed between the Company and the Customer;

Quotation means a quotation from the Company to the Customer, setting out the particulars and Price for the provision of Services, and/or the supply of Goods, forming part of the Contract established under clause 3.

Serviced Property means any property in respect of which the Company has performed Services pursuant to a Contract, including but not limited to any personal property of the Customer;

Services means any services provided by the Company to the Customer under a Contract, including but not limited to repairs and maintenance, precision engineering, design, and CNC machining; and

Working Day means any day other than a Saturday, Sunday or a public holiday observed in Christchurch and Auckland, New Zealand.

3. FORMATION OF CONTRACT

- 3.1 **Formation:** A Contract will be formed where the Customer places an Order for the purchase of Services and/or Goods from Company, which is accepted by the Company in consideration for the payment of the applicable Price (plus GST, if applicable). The Company may accept an Order by giving written acceptance to the Customer or by commencing the provision of the Services or sourcing of the Goods.

- 3.2 **Quotation:** An Order may be placed by the Customer upon acceptance of a Quotation provided by the Company to the Customer.

- 3.3 **Deposit:** Where a Deposit is required by the Company, the Customer must pay the Deposit to the Company in full by the date required. The Company may (but is not obliged to) commence work under a Contract prior to receiving any Deposit.

- 3.4 **Acceptance of Terms:** Any Order received by the Company from the Customer will, upon acceptance of that Order by the Company, constitute acceptance by the Customer of these Terms.

- 3.5 **Deemed Inclusion:** These Terms are deemed to be included in any Contract without modification, unless otherwise agreed in writing between the Company and the Customer.

- 3.6 **Right to Refuse:** The Company reserves the right to refuse any Order (including any order placed under clause 3.2), the provision of any Services, or the supply of any Goods, for any reason.

4. **PROVISION OF GOODS & SERVICES**

- 4.1 **Provision of Goods and Services:** The Company will provide the Goods and Services agreed with the Customer under the applicable Contract, in accordance with these Terms, and in consideration for the payment of the Price.
- 4.2 **Compliance with Legislation:** In providing the Goods and Services to the Customer, the Company will comply with, and will procure that its Personnel comply with, all relevant laws applying to the provision of the Goods and Services.
- 4.3 **Storage and Insurance:** When in performance of the Services the Company is in possession of Customer Property, the Company will take reasonable steps to seek to securely store the Customer Property at the Company's premises. The Company will record the condition of the Customer Property prior to any Services being provided, and again once the Services are complete. The Customer Property will be covered under the Company Insurance policies while stored at the Company's premises. Details of the relevant Company Insurance policy will be provided upon request. The Company's liability for any loss or damage to Customer Property is set out in clause 4.6.
- 4.4 **Unforeseen Issues:** The Company will inform the Customer in a timely manner of any unforeseen circumstances that may arise during the provision of Goods or Services, including but not limited to:
- 4.4.1 Customer Property is damaged or a has a technicality that was not observed by the Company at the time the Contract was formed; or
- 4.4.2 an unforeseen stock issue has arisen, there are issues with supply chains or third-party suppliers, or there are courier delays.
- 4.5 **Delay:** The Company will not be liable in any way to the Customer in respect of any costs incurred or any extensions time due to any unforeseen circumstances including but not limited to the matters provided at clause 4.4 above.
- 4.6 **Customer Property Damage:** Where the Customer Property is damaged or lost by the Company while in the Company's custody and control:
- 4.6.1 subject to clause 4.6.2, the Company will not be liable to the Customer for loss or damage to the Customer Property except to the extent the Company is able to recover for such loss under its Company Insurance, and in which case the Company's liability to the Customer will be limited to the amount actually recovered under such Company Insurance in relation to the Customer Property; and
- 4.6.2 if the damage or loss is caused by the Company's gross negligence or wilful default, the Company will be liable to the Customer for any direct loss or damage to the Customer Property and at its sole option will repair or replace the Customer Property free of charge, or make a payment to the Customer for the value of that Customer Property or part of Customer Property which is damaged.

- 4.7 **Communication:** The Company will endeavour to keep the Customer as up to date as reasonably possible with the status of the provision of Goods and Services.
- 4.8 **Customer to Disclose:** Before the Contract is formed, the Customer must inform the Company of any issues with the Customer Property which may affect the provision of Goods or Services by the Company, including but not limited to any damage or defects or the not being fit for purpose.
- 4.9 **Customer Liable for Damage:** The Customer will be liable to the Company for any damage that is caused to the Company or its property as a result of not being informed of any issues with the Customer Property in accordance with clause 4.8
- 4.10 **Collection:** The Customer is solely responsible for delivery of property to the Company that is to be serviced and for collection of Goods and any Serviced Property from the premises of the Company, unless otherwise agreed in writing.

5. **CANCELLATION**

- 5.1 **Cancellation by the Company:** The Company may, at any time before the completion of a Contract, cancel the Contract by providing the Customer with written notice of such cancellation.
- 5.2 **Reimbursement:** If the Company cancels a Contract in accordance with clause 5.1, the Company shall repay any amounts paid by the Customer to the Company in respect of that Contract.
- 5.3 **Exclusion of Liability:** The Company will not be liable for any loss or damage whatsoever arising from any cancellation in accordance with this clause 5.
- 5.4 **Cancellation by Customer:** The Customer may not cancel the Contract except with the prior written consent of the Company, which consent will not be unreasonably withheld where there is a valid reason for cancellation.
- 5.5 **Liability for Loss:** Where the Customer cancels any Contract with the Company in accordance with clause 5.4, the Customer shall be liable for any and all damages, losses and costs incurred by the Company caused by such cancellation, such liability to be capped at the Price of the Services and/or Goods under the relevant Contract.
- 5.6 **Rescheduling:** If, due to unforeseen circumstances, either party needs to reschedule the date for the provision of Goods or Services, they must contact the other party as soon as possible. Any rescheduled dates will be at the Company's discretion and subject to availability, and failing agreement, the Contract may be cancelled by the Company as above.

6. **PRICE**

- 6.1 **Price:** Unless otherwise agreed between the Company and the Customer, the Price of Services and/or Goods will be the current price charged by the Company in respect of those Services and/or Goods at the date the relevant Contract was formed.
- 6.2 **Other Costs:** Notwithstanding clause 6.1, the Company may charge the Customer for any other fees or expenses in relation to the provision of Services and/or the supply of Goods, including but not limited to the cost of packaging and carriage, or delay and/or increased costs due to unforeseen circumstances, unless otherwise expressly provided in the relevant Contract.
- 6.3 **Taxes:** Unless otherwise agreed between the Company and the Customer, the Price in respect of Services and/or

Goods is exclusive of GST. GST (if any) will be payable by the Customer under a Contract, in addition to the Price.

securely store those Goods and keep those Goods insured for full replacement value.

7. INVOICING AND PAYMENT

- 7.1 **GST invoices:** The Company will ensure that each invoice issued under a Contract is a valid tax invoice complying with the requirements of the Goods and Services Tax Act 1985.
- 7.2 **Payment:** Unless otherwise agreed between the Company and the Customer under a Contract, the Customer will pay each invoice issued by the Company on the 20th day of the month following the date of the invoice.
- 7.3 **Deposit:** The Company may, in providing a Quotation to the Customer, require that the Customer pay to the Company a Deposit on refundable or non-refundable terms.
- 7.4 **Interest and Remedies:** Without prejudice to the rights of the Company to recover any payment or exercise any remedy in respect of a payment not made by its due date, the Company may:
- 7.4.1 charge interest, from the due date of the payment, on the amount outstanding at a rate of 12% per annum until payment is received from the Customer;
 - 7.4.2 demand payment of the amount outstanding before continuing to perform any Services, and/or supply and Goods, under the relevant Contract;
 - 7.4.3 appoint a debt collector, at the Customer's expense, to recover the outstanding amount (including interest);
 - 7.4.4 cancel any Contract between the Company and the Customer; and
 - 7.4.5 exercise any remedy available to the Company as a secured party under the Personal Property Securities Act 1999 (**PPSA**).
- 7.5 **Costs:** The Customer will be responsible for all costs incurred by the Company in recovering any monies owing by the Customer to the Company in accordance with clause 7.4.
- 7.6 **No Set Off:** The Customer is not entitled to any right to set-off or offset any amount owing or allegedly owing by the Company in relation to any payment owing by the Customer to the Company.

8. TITLE AND RISK

- 8.1 **Transfer:** Unless otherwise agreed by the Company and the Customer:
- 8.1.1 Risk in any Goods supplied to the Customer under any Contract will pass from the Company to the Customer upon delivery of those Goods to the Customer (including by way of collection from Company premises by the Customer).
 - 8.1.2 Title to any Goods supplied to the Customer under any Contract will remain with the Company, and only pass from the Company to the Customer upon payment from the Customer to the Company of the Price (and any other amounts outstanding) under the Contract.
- 8.2 **Security:** Until such time as title in any Goods transfers from the Company to the Customer, the Customer will

9. SECURITY

- 9.1 **Security Interest:** Each Contract entered into between the Company and the Customer constitutes a security interest in any Goods supplied under that Contract for the purposes of the PPSA (as amended or replaced from time to time) as security for payment by the Customer of the Price (together with any other amounts owing, including future amounts) under the Contract.
- 9.2 **Registration of Security Interest:** The Company can register or perfect the security interest recognised under clause 9.1 in any means possible in the jurisdiction of the Customer (and any other jurisdiction the Company deems necessary or desirable) to ensure that the Company has an enforceable security interest against the Customer in the Goods and all amounts due under the Contract, including any future amounts.
- 9.3 **Further Acts:** The Customer agrees to promptly execute and deliver to the Company all assignments, transfers and other agreements and documents and do anything else which the Company may deem appropriate to ensure that the Company's security interest is enforceable, perfected and otherwise effective, or give any notification in connection with the security interest to obtain the priority required by the Company and enable the Company to exercise its related rights, or register (and renew registration for) a financing statement for a security interest in favour of the Company.
- 9.4 **Costs:** Everything the Customer is required to do or the Company is permitted to do under clause 9.3 above is at the Customer's expense. The Customer agrees to pay or reimburse the Company for any or all of those costs.
- 9.5 **Application of PPSA:** To the extent that Part 9 of the PPSA applies:
- 9.5.1 the Customer agrees that the provisions of sections 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Customers benefit, or place any obligations on the Company in the Customer's favour, will not apply; and where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
 - 9.5.2 without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Company.

10. DEFECTS AND RETURNS

- 10.1 **Defect Notice:** If the Customer becomes aware of any defect in the provision of the Services and/or faults in the Goods within 30 days following delivery to the Customer (including by way of collection from Company premises by the Customer), the Customer must immediately notify the Company of such defect or fault and must immediately cease using the Goods and/or Services provided until repairs are completed.
- 10.2 **Inspection:** Where the Customer provides the Company with a notice in accordance with clause 10.1, the Company will be afforded a reasonable opportunity to inspect any allegedly faulty Goods, or assess any Services alleged to have been provided improperly.

- 10.3 **Return of Goods:** For the purposes of the Company in its inspection and assessment under clause 10.2, the Company may require that any allegedly faulty Goods or Serviced Property be returned to the Company for inspection, provided that no Goods or Serviced Property may be returned to the Company without the prior written approval of the Company.
- 10.4 **Offsite Visit:** If the Goods or Serviced Property are unable to be returned to the Company for inspection in accordance with clause 10.3 (including if they are located outside of wider Canterbury or wider Auckland), the Company or a person authorised by the Company may visit the Customer at an agreed location to assess the Serviced Property if they are satisfied that a repair or replacement is likely to be necessary. A call out fee may be charged by the Company to the Customer if a repair is deemed to be due to Customer fault, including the matters provided at clause 11.3 below.
- 10.5 **Obligations of Customer:** The Customer must comply with any reasonable request of the Company in assessing any notification provided by the Customer under clause 10.1, including but not limited to the provision of a description of the circumstances relating to the alleged defect in the Services and/or the Goods.
- 10.6 **Remedies:** Where the Company has reasonably determined that Services have been improperly performed, or that Goods are faulty within 30 days following delivery to the Customer (including by way of collection from Company premises by the Customer), the Company will, at its sole option and subject to clause 11:
- 10.6.1 in respect of Services, re-perform those Services for the Customer free of charge, or refund the Customer for the Price of those Services; and/or
- 10.6.2 in respect of Goods, repair or replace those Goods free of charge, or refund the Customer for the Price of those Goods,
- and failure by the Customer to cause the repairs to be carried out by the Company or its authorised agent or any breach of these Terms, may make the Customer liable for further consequential damages and related costs.
- 10.7 **Customer's Responsibilities:** The Goods and/or Serviced Property must be operated strictly in accordance with any instructions given by the Company, including any maintenance guidelines.
- 10.8 **Parts:** The Customer acknowledges that some Goods (and related spare or replacement parts) are sourced from overseas, and the Company is not liable for any loss or costs incurred to the extent they arise from any delay in acquiring replacement parts due to shipping times.

11. WARRANTIES AND LIABILITY

- 11.1 **Warranties:** The Customer may be entitled to warranties under Consumer Law if it is acquiring Goods and/or Services for personal or domestic use, and may receive a product warranty from the Company or supplier of any Goods. Except to the extent required by law (including Consumer Law, as applicable) and as otherwise provided in these Terms or any warranty document provided to the Customer by the Company, the Company provides no warranties to the Customer in respect of Services provided and/or Goods supplied.
- 11.2 **Third Party Suppliers:** Where the Company supplies Goods that have been sourced from third party suppliers (**Suppliers**), the Company's liability to the Customer for any warranties in relation to those Goods is limited to the

liability it is able to successfully claim under as against the Supplier. If the Supplier provides warranties directly to the Customer, then the Customer must make any warranty claims directly to the Supplier. The Company will provide reasonable assistance to progress any warranty claims against Suppliers.

- 11.3 **Exclusion of Liability:** To the fullest extent permitted by law, the Company will not be liable to the Customer in any way in respect of any damage, loss, cost, or liability incurred by the Customer due directly or indirectly to:
- 11.3.1 any breach of these Terms;
- 11.3.2 any alteration or modification of Goods or Serviced Property by the Customer or any third party in ways not approved by the Company or the original manufacturer;
- 11.3.3 any failure of Goods or Serviced Property of the Customer or any third party to perform to the function for which they were intended to perform where the design of the Goods or Serviced Property was carried out to the Customer's specifications;
- 11.3.4 any operation of Goods or Serviced Property that is not undertaken strictly in accordance with instructions given by the Company;
- 11.3.5 any wilful damage or any unusual use, operation, servicing or handling of Goods or Serviced Property;
- 11.3.6 depreciation or consequential damage caused by continuing to use Goods or Serviced Property after a fault has occurred;
- 11.3.7 in respect of Goods or Serviced Property which are supplied to the Company by a third party supplier, a fault or defect occurs outside the third party supplier's warranty or the third party supplier considers any warranty provided is void;
- 11.3.8 any normal wear and tear of Goods or Serviced Property; and
- 11.3.9 any factors not reasonably foreseen or that are outside the control of the Company.

11.4 **Exclusion for Consequential Loss:** In no circumstances will the Company be liable to the Customer for any indirect, special, exemplary or consequential loss of any kind, including loss of profits, storage expenses, service interruptions, or loss of goodwill.

11.5 **Liability Limited to Price:** Except as provided in clause 4.6, the maximum aggregate liability of the Company to the Customer will in any case be limited to the Price of the Services provided and/or Goods supplied pursuant to the relevant Contract.

12. INDEMNITY

- 12.1 To the fullest extent permitted by law, the Customer will indemnify the Company against all costs, claims, demands, expenses, losses and liabilities of whatsoever nature, which the Company may sustain, pay or incur as a result of or in connection with any breach of these Terms or the Contract by the Customer, unless such cost, claim, demand, expense or liability is directly and solely attributable to the negligence of the Company or the negligence of Personnel of the Company.

13. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 13.1 Any confidential information received by the Company from the Customer shall be used solely for the supply of Goods and/or Services provided under a Contract.
- 13.2 The Customer warrants not to use any of the Company's intellectual property or confidential information other than with the written consent of the Company.

14. PRIVACY

- 14.1 The Customer agrees that the Company may collect, hold, use and disclose personal information in respect of the Customer, its directors, shareholders, staff or clients, for the purpose of enforcing its rights and carrying out its obligations under these Terms in accordance with the Company's privacy policy available at [www.torks.co.nz].
- 14.2 The Company may also collect, hold, use and disclose personal information for the purpose of keeping the Customer up to date with its services (i.e. marketing), any purpose advised to the Customer at the time of collection, or as otherwise permitted under the Privacy Act 2020. Where the Customer provides information relating to any individual, the Customer will ensure it has all relevant consents required for such purposes.
- 14.3 Where personal information is held by the Company, the individual shall have the right to request access to, and correction of, such personal information.

15. FORCE MAJEURE

- 15.1 Non-performance by either party of any of its obligations under a Contract will be excused, without liability, during the time and to the extent that performance of the obligation is delayed or prevented, wholly or substantially, by a Force Majeure Event, provided that the party claiming relief takes all reasonable steps to remedy, abate or mitigate the effects of the Force Majeure Event. However nothing in this clause can be relied upon to excuse or delay any obligation to pay the Price to the Company.

16. DISPUTE RESOLUTION

- 16.1 **Notice:** If a dispute, disagreement, question, difference or claim arises between the parties in connection with a Contract, or in relation to any question regarding its existence, breach, termination or validity (**Dispute**), either party may give the other written notice requiring that the Dispute be determined in accordance with this clause 16 (**Dispute Notice**).
- 16.2 **Negotiation:** The parties will negotiate in good faith for a period of 10 Working Days from the issue of the Dispute Notice towards resolution of the Dispute.
- 16.3 **Escalation:** At the expiration of 10 Working Days from the date of the Dispute Notice, unless the Dispute has otherwise been resolved or settled, either party may take any action relating to the Dispute as it sees fit, including in a Court of competent jurisdiction.
- 16.4 **Urgent relief:** Nothing in these Terms or any Contract will prevent either party seeking any order or relief by way of injunction or declaration or other equitable or statutory

remedy against the other party where such party reasonably believes such order or relief is necessary for the urgent protection of its rights or property.

17. GENERAL

- 17.1 **Consumer Guarantees Act:** The parties agree that where the performance of Services and/or the supply of Goods under a Contract is a supply for business purposes and in trade, then the provisions of the Consumer Guarantees Act 1993 do not apply.
- 17.2 **Notices:** Any notice or other communication to be given under any Contract may be in writing and delivered by hand, registered mail or email to the relevant party at the last known address of that party.
- 17.3 **Waiver:** No term or condition of any Contract or these Terms will be deemed to have been waived in part or in full and no delay, breach or default will be deemed to have been excused in part or in full, unless the waiver or excuse is in writing and signed by the Company or the Customer (as applicable).
- 17.4 **No assignment:** The Customer may not directly or indirectly assign, transfer or otherwise dispose of any of its rights or obligations under a Contract, except with the prior written consent of the Company. The Company may assign and/or transfer its rights under a Contract to any person it reasonably considers can carry out the terms of the Contract, without obtaining Customer consent.
- 17.5 **Subcontracting by the Company:** The Company may subcontract any part of a Contract, provided that the Company ensures that each subcontractor complies with all relevant terms of the relevant Contract.
- 17.6 **Entire agreement:** Each Contract is the entire understanding between the Company and the Customer, and supersedes all previous agreements and understandings between the Company and the Customer relating to the subject matter of that Contract.
- 17.7 **Contract variations:** A Contract may only be modified or amended by agreement between the Company and the Customer in writing.
- 17.8 **No agency:** Nothing in any Contract will be deemed to constitute either party as the agent, partner or joint venturer of the other. The Company, in providing Services and/or supplying Goods to the Customer under a Contract, is acting as an independent contractor.
- 17.9 **Enforceability:** If any part of these Terms or any Contract is held to be unenforceable, the part concerned will be deleted or modified to the minimum possible extent necessary to enable these Terms or that Contract to remain enforceable.
- 17.10 **Enforcement Costs:** The Customer will pay all costs and expenses (including legal fees) incurred the Company in exercising any of its rights under these Terms or any Contract.
- 17.11 **Governing law:** Each Contract will be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand court.