

Terms of Trade

for Black Steel Mobile Limited

1. DEFINITIONS

- 1.1 "Black Steel Mobile" shall mean Black Steel Mobile Ltd, or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of or with the authority of the customer, or any person purchasing goods or services from Black Steel Mobile Ltd.
- 1.3 "Goods" shall mean all goods supplied by Black Steel Mobile Ltd to the customer, including, but without limitation, structural steel beams and welded components.
- 1.4 "Services" shall mean all services provided by Black Steel Mobile Ltd to the customer and shall include without limitation the provision of all steel work, installation, all charges for labour and work, hire charges, insurance charges, all costs and charges associated with a change to the original order or quote, or any fee or charge whatsoever associated with the supply of services by Black Steel Mobile Ltd to the customer.
- 1.5 "Price" shall mean the cost of the goods or services as agreed between Black Steel Mobile Ltd and the customer subject to clause 4 of this contract.
- 1.6 "PPSA" refers to the Personal Property Securities Act 1999.
- 1.7 "Financing statement", "financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled" and all related terms have the meanings given them by the PPSA.
- 1.8 "Residential construction contract", "payment claim", "progress payment" and all related terms have the meanings given them by the Construction Contracts Act 2002.

2. RETENTION OF TITLE

- 2.1 Ownership of, or title in, the goods shall not pass to the customer until the customer has paid to Black Steel Mobile Ltd the invoiced price for all goods in the customer's

possession at time of payment, provided also that if the goods become fixtures then that shall not extinguish or diminish the obligation of the customer to pay Black Steel Mobile Ltd.

- 2.2 The customer agrees with Black Steel Mobile Ltd that they shall treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security and any unsecured creditors despite the fact of the goods having become fixtures at any time before payment has been made for them.

3. PERSONAL PROPERTY SECURITIES ACT

- 3.1 In consideration of Black Steel Mobile Ltd supplying the goods to the customer, at the request of the customer, the customer, by signing these Terms of Trade:

3.1.1 Grants to Black Steel Mobile Ltd a purchase money security interest ("PMSI") as defined by the PPSA in the goods; and

3.1.2 Agrees that any of the goods or proceeds of sale of the goods coming into existence after the date of these Terms of Trade will come into existence subject to the PMSI granted herein and the terms of these Terms of Trade without the need for any further action or agreement by any party; and

3.1.3 Acknowledges that the customer has received valuable consideration from Black Steel Mobile Ltd and agrees that it is sufficient; and

3.1.4 Agrees that the PMSI has attached to all goods supplied now or in the future to the customer and that the attachment of the PMSI has in no way been deferred or postponed from the date recorded herein.

- 3.2 Black Steel Mobile Ltd reserves the right to register a financing statement in respect of any goods supplied by Black Steel Mobile Ltd to the customer pursuant to these Terms of Trade and in respect of which credit has been extended by Black Steel Mobile Ltd to the customer. The costs of registering a financing statement or a financing change statement shall be paid

by the customer and may, where applicable, be debited against the customer's credit account with Black Steel Mobile Ltd.

3.3 The customer waives their right to receive a copy of the verification statement confirming registration of a financing statement, or a financing change statement relating to the security interest under these Terms of Trade.

3.4 The customer shall promptly, on request by Black Steel Mobile Ltd, execute all documents and do anything else reasonably required by Black Steel Mobile Ltd to ensure that the PMSI created by these Terms of Trade constitutes a perfected security interest over all goods supplied.

3.5 The customer shall not agree to allow any person to register a financing statement over any of the goods supplied by Black Steel Mobile Ltd without the prior written consent of Black Steel Mobile Ltd and will immediately notify Black Steel Mobile Ltd if the customer becomes aware of any person taking steps to register a financing statement in relation to such goods.

3.6 The customer shall not allow the goods to become accessions or commingled with other goods unless Black Steel Mobile Ltd has first perfected any security interest that Black Steel Mobile Ltd has in relation to the goods.

3.7 If Black Steel Mobile Ltd perfects any security interest that Black Steel Mobile Ltd has in relation to the goods, the customer shall not do anything that results in Black Steel Mobile Ltd having less than the security or priority granted by the PPSA that Black Steel Mobile Ltd assumed at the time of that perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage under the Land Transfer Act 1952.

3.8 The customer irrevocably grants to Black Steel Mobile Ltd the right to enter upon the customer's property or premises, without notice, and without being in any way liable to the customer or to any third party, if Black Steel Mobile Ltd has cause to exercise any of Black Steel Mobile Ltd's rights under section 109 of the PPSA, and the customer shall indemnify Black Steel Mobile Ltd from any claims made by any third party as a result of such exercise.

3.9 Black Steel Mobile Ltd and the customer agree that nothing in sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA will apply to these Terms of Trade, or the security interest under these Terms of Trade.

4. PRICE

4.1 Where no price is stated in writing or agreed to orally the goods or services shall be deemed to be sold at the current price applying at the date on which the invoice for the goods or services is issued to the customer.

4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the goods or services that is beyond the control of Black Steel Mobile Ltd between the date of the contract and delivery of the goods or providing of the services.

5. PAYMENT

5.1 Payment for goods or services shall be made in full on or before the 20th day of the month following either the month in which the invoice is issued or the month in which the goods are delivered, whichever is the earlier ("the due date").

5.2 Without limiting the application of clause 5.1, if Black Steel Mobile Ltd decides to issue a payment claim pursuant to the Construction Contracts Act 2002 then the progress payment set out in the payment claim shall become due and payable as set out in the said Act being 20 working days after the payment claim is served on the customer.

5.3 Interest may be charged on any amount owing after the due date at the rate of 3% per month or part month.

5.4 Any expenses, disbursements and legal costs incurred by Black Steel Mobile Ltd in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.

5.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6. CONSTRUCTION CONTRACTS ACT 2002

- 6.1 The parties acknowledge that all provisions of the Construction Contracts Act 2002 shall apply to this contract except where inconsistent with this contract.
- 6.2 The parties further acknowledge that all provisions of the said Act, including those sections listed in section 10 of the said Act, shall apply to this contract even if it is a residential construction contract as that term is defined by the said Act.

7. AGREEMENT TO MORTGAGE

- 7.1 For better securing the price of the goods or services supplied pursuant to these Terms of Trade, Black Steel Mobile Ltd shall have the right to mortgage or charge the property of the customer to which the goods and services are being supplied, or any other property owned by the customer.
- 7.2 The terms of such a mortgage shall incorporate such covenants and conditions as are included in Memorandum of Mortgage 1995/4004, or the most current Auckland District Law Society all obligations Memorandum, which Memorandum(s) is registered at the various land registries of Land Information New Zealand.
- 7.3 The customer hereby irrevocably nominates and appoints Black Steel Mobile Ltd to be the attorney of the customer for the purposes of giving and executing in favour of Black Steel Mobile Limited a registrable Memorandum of Mortgage as described in this clause 7.
- 7.4 For the purposes of this clause "property" means real property.

8. QUOTATION

- 8.1 Where a quotation is given by Black Steel Mobile Ltd for goods or services:
 - 8.1.1 The quotation shall be valid for one month from the date of issue; and
 - 8.1.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
- 8.2 Where goods or services are required in addition to the quotation the customer agrees to pay for the additional cost of goods or services.

9. RISK

- 9.1 The goods remain at Black Steel Mobile Ltd's risk until the delivery to the customer, but when title passes to the customer pursuant to clause 3 of this contract the goods are at the customer's risk whether delivery has been made or not.
- 9.2 Delivery of goods shall be deemed complete when Black Steel Mobile Ltd gives possession of the goods for delivery to the customer, or possession of the goods is given to a common carrier, or other bailee for the purposes of transmission to the customer.
- 9.3 The time agreed for delivery shall not be an essential term of this contract unless the customer gives written notice to Black Steel Mobile Ltd making time of the essence.
- 9.4 Where Black Steel Mobile Ltd delivers goods or provides services to the customer by installments and Black Steel Mobile Ltd fails to deliver or supply one or more installments the customer shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.
- 9.5 Notwithstanding clause 9.4 above, the customer shall not be entitled to claim compensation, or take any legal action in regard to a failure to supply, unless and until Black Steel Mobile Ltd has received written notice of such a failure and has been given 10 working days to remedy that failure.

10. AGENCY

- 10.1 The customer authorises Black Steel Mobile Ltd to contract either as principal or agent for the provision of goods or services that are the subject-matter of this contract.
- 10.2 Where Black Steel Mobile Ltd enters into a contract of the type referred to in clause 10.1 it shall be read with and form part of this agreement and the customer agrees to pay any amounts due under that contract.

11. RETURN OF GOODS

- 11.1 The customer shall be deemed to have accepted the goods unless the customer notifies Black Steel Mobile Ltd otherwise within 10 working days of delivery of the goods to the customer.

11.2 No goods will be accepted for return by Black Steel Mobile Ltd without prior approval.

12. LIMITATION OF LIABILITY

12.1 Except as otherwise provided by statute Black Steel Mobile Ltd shall not be liable for:

12.1.1 Any loss or damage of any kind whatsoever whether suffered or incurred by the customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by Black Steel Mobile Ltd to the customer and without limiting the generality of the foregoing of this clause Black Steel Mobile Ltd shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and

12.1.2 Except as provided in this contract Black Steel Mobile Ltd shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods or services provided by Black Steel Mobile Ltd to the customer; and

12.1.3 The customer shall indemnify Black Steel Mobile Ltd against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Black Steel Mobile Ltd or otherwise, brought by any person in connection with any matter, act, omission, or error by Black Steel Mobile Ltd its agents or employees in connection with the goods and services.

13. CONSUMER GUARANTEES ACT

13.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the customer acquires goods and services from Black Steel Mobile Ltd for the purposes of a business in terms of section 2 and 43 of that Act.

14. WARRANTY

14.1 No representation, condition, warranty or promise expressed or implied by law or otherwise applies to goods or services except where goods are supplied or

services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.

14.2 Black Steel Mobile Ltd does not provide any warranty that the goods are fit and suitable for the purpose for which they are required by the customer and shall not be liable if they are not.

14.3 Without limiting the generality of clause 13.1 hereto new parts are warranted free from defective workmanship and material for a period of one year from delivery provided that such parts are correctly installed by a qualified person and subject to normal use and service however no warranty shall exceed that given by the manufacturer to the customer at the time of purchase.

15. CANCELLATION

15.1 Black Steel Mobile Ltd shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods or services to the customer if the customer fails to pay any money owing after the due date, or if the customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967, or if liquidation proceedings are commenced in relation to the customer, or if the customer shall otherwise become bankrupt or insolvent, or if any other event occurs which evidences a lack of credit worthiness or solvency on the part of the customer.

15.2 Any cancellation or suspension under clause 15.1 of this agreement shall not affect Black Steel Mobile Ltd's claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the customer's obligations to Black Steel Mobile Ltd under this contract.

16. COLLECTION AND USE OF INFORMATION

16.1 The customer authorises Black Steel Mobile Ltd to collect, retain and use any information about the customer for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by Black Steel Mobile Ltd to any other party.

16.2 The customer authorises Black Steel Mobile Ltd to disclose any information obtained to any person for the purpose set out in clause 16.1.

16.3 Where the customer is a natural person the authorities under clauses 16.1 and 16.2 are authorities or consents for the purposes of the Privacy Act 1993.

17. **MISCELLANEOUS**

17.1 The customer shall not assign all or any of its rights or obligations under this contract without the written consent of Black Steel Mobile Ltd.

17.2 Black Steel Mobile Ltd shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

17.3 Failure by Black Steel Mobile Ltd to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Black Steel Mobile Ltd has under this contract.

17.4 The law of New Zealand shall apply to this contract except to the extent expressly negated or varied by this contract.

17.5 Where the terms of this contract are at variance with the order or instruction from the customer, this contract shall prevail.

17.6 Any dispute shall be determined in accordance with the provisions of the Arbitration Act 1996.

17.7 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.8 Failure to meet credit worthiness will constitute reason for cancellation of contract by Black Steel Mobile Ltd without incurring any costs.

Company: _____

Print Name (Supplier): _____

Address: _____

Phone: _____

Fax: _____

Signature: _____

Date: _____