

**FORGED FABRICATIONS TERMS OF TRADE & CREDIT**

**1. Definitions**

**In these Terms:**

"Account" means the trade credit account established in the name of the Customer by Forged Fabrications.

"Application" means the Credit Account Application attached to these Terms.

"Credit Limit" means the dollar amount of credit to be made available to the Customer by Forged Fabrications under the Account.

"Credit Term" means the term determined by Forged Fabrications over which the Account will remain open.

"Customer" means the customer named in the Application and where the Customer comprises two or more persons, means those persons jointly and severally.

"Force Majeure" means any event outside the reasonable control of Forged Fabrications and includes, without limitation, fires or other casualties or accidents, power outages, acts of God, strikes and lockouts, severe weather conditions, delay in supply or materials or unavailability of materials, war or other violence, or the introduction of any law, order, regulation, demand or requirement of any governmental agency.

"Goods" means goods provided and/or manufactured by Forged Fabrications.

"Guarantor" means the guarantor(s) named in the Application attached to these Terms.

"Order" means an agreement between Forged Fabrications and the Customer for Forged Fabrications to supply Goods and/or Services to the Customer and, for the avoidance of doubt, includes where the Customer has accepted a Quote in writing.

"PPSA" means the Personal Property Securities Act 1999.

"Quote" means a written offer from Forged Fabrications to the Customer to supply Goods and/or Services for a specified price subject to the terms and conditions of such offer.

"Services" means any services performed by Forged Fabrications.

"Forged Fabrications" means Forged Fabrications Limited together with any subsidiary of Forged Fabrications Limited from time to time.

"Terms" means these standard terms of trade & credit, as varied by Forged Fabrications from time to time.

**2. Orders, Pricing, Quotes and Estimates**

2.1. These Terms apply to all Goods or Services supplied by Forged Fabrications. By making an Order the Customer acknowledges that it is aware of the contents of, and agrees to be bound by, these Terms.

2.2. The price of Goods and Services is as specified in Forged Fabrications price list (which is subject to change without notice), or in an Order or Quote, as applicable.

2.3. Unless otherwise stated, prices are exclusive of GST and are ex Forged Fabrications yard or manufacturing plant.

2.4. Forged Fabrications may decline or cancel, in whole or in part, any Order in its sole discretion.

2.5. A Quote may be withdrawn or varied by Forged Fabrications before it has been accepted in writing by the Customer.

2.6. All Quotes are based on rates and charges in effect at the date of the relevant Quote. Any increase in rates or charges, (including without limitation sub-contracted labour, materials and fuel) shall result in an equivalent increase in the quoted price.

2.7. An estimate as to price or quantity is not binding on Forged Fabrications.

2.8. Where a Quote includes an estimate of quantities and the actual quantity supplied is materially different from that estimated, Forged Fabrications reserves the right to revise the Quoted price.

2.9. Where the Customer purchases Goods with a credit card and at the time of payment the quantity of the Goods to be sold is an estimate, then the Customer agrees that Forged Fabrications may hold the Customer's credit card details on file until the quantity of Goods sold is determined and at that time process a debit or credit to the Customer's credit card to reflect the actual purchase price of the Goods sold.

**3. Use of Account**

3.1. Forged Fabrications shall determine the Credit Limit and Credit Term for the Account and will notify the Customer of such. The Customer shall not at any time allow the balance of its Account to exceed the Credit Limit.

3.2. Forged Fabrications may in its sole discretion, at any time and without reason or notice to the Customer and/or any Guarantor, and without prejudice to any other right it has in law or equity:

- (a) elect whether to grant credit to the Customer; and
- (b) increase or decrease the Customer's Credit Limit or the Credit Term.

If credit is terminated, then all monies owed by the Customer to Forged Fabrications will become immediately due and payable.

3.3. Goods may be charged to the Account in person or by email. Where the Application states that order numbers are not required, Forged Fabrications may require the person charging such Goods to give their name.

3.4. The Customer shall be liable for all indebtedness arising from any use of the Account by any person who purports to be an employee, agent or representative of the Customer.

3.5. Forged Fabrications reserves the right to set off any balance owing by Forged Fabrications to the Customer against their outstanding debtor balance.

**4. Payments, Discounts and Rebates**

4.1. Except where Goods or Services are charged to an Account, payment is due on the date(s) determined by Forged Fabrications, which may be:

- (a) on the placing of an Order; or
- (b) before delivery of the Goods or performance of the Services (as applicable).

If no such payment is made, Forged Fabrications shall not be obliged to deliver the Goods or perform the Services.

4.2. All Goods and Services charged to the Account and any interest due on the Account shall be paid in full no later than 7 days after date of the relevant invoice.

4.3. Forged Fabrications shall be entitled to charge interest at 15% per annum on all overdue amounts from the date payment was due until the date of actual payment.

4.4. All payments must be made by way of cash, cheque, electronic/on-line banking, credit card or bank transfer, free of any deductions, set off counterclaim or condition of any kind. Payment of any amount due occurs only when cleared funds are deposited into Forged Fabrications bank account.

4.5. Payments received by Forged Fabrications shall be applied first in payment of interest and any costs incurred in debt recovery and then in reduction of principal.

4.6. Payments received without remittance advice will be applied first to the oldest balance owing by the Customer.

4.7. Forged Fabrications may withhold any credit due to the Customer and apply that credit against any amount owing under the Account.

4.8. If the Customer disputes any item charged to the Account, it must notify Forged Fabrications immediately, and pay the undisputed portion of the Account balance by the due date for payment.

4.9. Where the Customer receives a volume based discount on Goods and the Customer fails to purchase the total volume of such Goods, Forged Fabrications reserves the right to withdraw such discount.

**5. Default**

5.1. If the Customer breaches any of these Terms and fails to remedy that breach within 7 days after receiving notice to remedy from Forged Fabrications, Forged Fabrications may (without prejudicing its other rights or remedies) forthwith suspend or terminate the Account without notice to the Customer.

5.2. All amounts owing in respect of the Account shall become immediately due and payable to Forged Fabrications without the need for notice if:

- (a) Forged Fabrications suspends or terminates the Account in accordance with clause 5.1 above;
- (b) any information contained in the Application proves to have been false or misleading when made;
- (c) the Customer enters into a composition with its creditors, becomes insolvent within the meaning of the Insolvency Act 1967, or fails to satisfy the solvency test within the meaning of the Companies Act 1993, is declared bankrupt, goes into liquidation or a receiver, or a receiver and manager, or statutory receiver is appointed in respect of it or if any event analogous in nature has occurred under the laws of any relevant jurisdiction; or
- (d) the Customer ceases, or threatens to cease, to carry on any material part of its business.

**6. Security for Payment**

6.1. The Customer grants to Forged Fabrications a security interest in the Goods and in any proceeds arising from the sale of the Goods to secure the obligations of the Customer to pay the purchase price for the Goods, and any other obligations by the Customer to Forged Fabrications under these Terms (together the "Obligations") as and when the same become due.

6.2. The Customer grants to Forged Fabrications a lien over any of the Customer's equipment upon which Services are performed in order to secure the obligations of the Customer to pay for such Services and any other Obligations as and when the same become due.

6.3. The Customer agrees that if the Customer is in breach of any of its Obligations:

- (a) the Customer will, upon receiving a written request from Forged Fabrications and at its own cost and expense, promptly deliver all or any of the Goods to Forged Fabrications at such place as Forged Fabrications directs;

- (b) Forged Fabrications may (and the Customer grants Forged Fabrications a licence to), at any time without giving notice either itself or through an authorised agent, enter into any place where the Goods are located and remove the Goods, if the Customer fails to deliver the Goods as required under this clause;
- (c) Forged Fabrications may sell all or any of the Goods without giving prior notice of the sale to the Customer (and to that end, nothing in s114(1)(a) of the PPSA shall apply to these Terms); and
- (d) if Forged Fabrications proposes, pursuant to s120 of the PPSA to take all or any of the Goods in satisfaction of the Obligations, the Customer waives its right to require Forged Fabrications to sell the Goods and agrees that notwithstanding s120(1) of the PPSA, the Customer shall remain liable to Forged Fabrications for the difference between the market value of the Goods at the time it is first able to be sold by Forged Fabrications free from all rights and interests of the Customer and other persons pursuant to s123(1) of the PPSA and the amount of the Obligations which are in default.
- 6.4. The Customer:
- (a) agrees that nothing in s117(1)(c) of the PPSA will apply to these Terms, and
- (b) waives (to the extent applicable) the Customer's right under the PPSA:
- (i) to receive a verification statement pursuant to s 148 and a statement of account under s 116;
  - (ii) to recover a surplus under s119;
  - (iii) to receive notice of Forged Fabrications proposal to retain collateral under s120(2) and to object to that proposal under s121;
  - (iv) not to have Goods damaged when Forged Fabrications removes an accession under s125 and not to be reimbursed for any such damage under s126;
  - (v) to refuse permission to refuse an accession under s127;
  - (vi) to receive notice of the removal of an accession under s129;
  - (vii) to apply to the Court for an order concerning the removal of an accession under s131;
  - (viii) to redeem collateral under s132;
  - (ix) to reinstate a security agreement under s133 and 134; and
  - (x) shall immediately notify Forged Fabrications of any change in the Customer's name, address or contact person details, to enable Forged Fabrications to register a financing change statement if required. In the absence of such notification, the address held by Forged Fabrications is deemed to be the Customer's current address for such purpose.
7. Account Closure
- 7.1. The Customer may close the Account at any time by giving written notice to that effect to Forged Fabrications, and paying off any outstanding Account balance.
- 7.2. Forged Fabrications may close the Account by giving notice to the Customer. The Customer must pay any outstanding amount balance by 7 days after completion date of closure of the Account (unless the Customer is in default of these Terms, in which case the outstanding Account balance is payable immediately).
8. Indemnity
- 8.1. The Customer shall indemnify Forged Fabrications against all claims, penalties, costs, expenses, damages and liability, including legal fees, and debt recovery costs arising out of or connected with or resulting from a breach by the Customer of these Terms.
9. Assignment
- 9.1. Forged Fabrications may at any time assign, transfer or sub-contract any of its rights and obligations under these Terms (including the right to receive payment) to any other person.
- 9.2. The Customer may not assign or transfer any of its rights or obligations in respect of the Account.
- 9.3. A change of control in respect of the Customer shall be deemed to constitute an assignment for the purposes of clause 9.2. A "change of control" means any direct or indirect change in control or management of the Customer, or a direct or indirect change in the legal or beneficial ownership of the Customer, or a change in the legal form of the Customer, whether by a single event or a series of related events.
10. Waiver
- 10.1. Forged Fabrications failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Forged Fabrications right to exercise or enforce such right or any other right in the future.
11. Privacy Act
- 11.1. Forged Fabrications may not be able to process this application unless all the information requested is provided.
- 11.2. The Customer authorises Forged Fabrications to collect and/or provide information relating to the Customer to credit reference agencies referees and other bodies as Forged Fabrications considers necessary for the purposes of credit assessment and debt collection in relation to the Customer's Account and for marketing purposes.
- 11.3. Any personal information may be held by Forged Fabrications for as long as the Customer continues as a customer of Forged Fabrications or to owe on the Account.
- 11.4. The Customer has the right to access and correct any personal information held by Forged Fabrications.
- 11.5. The Customer is obliged to update the Customer's contact details if such details change.
12. Consumer Guarantees Act 1993
- 12.1. Where Goods or Services are supplied to the Customer for the purposes of a business, then, to the maximum extent permitted by law, the Customer agrees that:
- (a) the provisions of the Consumer Guarantees Act 1993 do not apply to the Goods or Services; and
  - (b) sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply to the obligations of the parties under these Terms.
- 12.2. Where the Customer purchases Goods for re-supply, the Customer's terms of trade must contain an equivalent provision to clause 12.1.
13. Warranties
- 13.1. To the maximum extent permitted by law, all statutory, express or implied warranties by Forged Fabrications including, without limitation, the implied warranties of merchantability and fitness for any particular purpose are expressly excluded, and Forged Fabrications gives no warranty in respect of Goods manufactured by others.
- 13.2. Colour and texture variations may occur in Goods and from samples due to:
- (c) the use of natural materials in the manufacturing process;
  - (d) normal manufacturing tolerances and processes; or
  - (e) weather.
- The Customer agrees that such variations do not constitute a product defect and Forged Fabrications shall not be liable for any loss or damage suffered by the Customer as a result of such variations.
- 13.3. Quotes are prepared in accordance with information provided to Forged Fabrications by the Customer and Forged Fabrications will not be liable nor will it be bound by the Quote where:
- (a) such information is inaccurate or any information is omitted; and/or
  - (b) the Customer makes any variations which result in the work being different from that quoted for.
14. Limitation of liability
- 14.1. The liability of Forged Fabrications in respect of all claims for loss, damage or injury arising from breach of any of Forged Fabrications obligations under this agreement or from any act or omission of Forged Fabrications is limited, in each case, to the lesser of:
- (a) replacement or repair of the affected Goods, or re-supply of the Services;
  - (b) payment of the actual cost of replacing or repairing the affected Goods, or re-supplying the Services; and
  - (c) the price of the affected Goods or Services.
- 14.2. Forged Fabrications shall not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of or in connection with the supply of Goods or Services by Forged Fabrications, except as set out in clause 14.1.
- 14.3. No action arising out of the supply of Goods or Services by Forged Fabrications, regardless of form, may be brought more than six months after the Customer becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the action.
15. Intellectual Property
- 15.1. The Customer acknowledges that all intellectual property rights in the Goods or arising out of the performance of the Services are and shall remain the property of Forged Fabrications.
- 15.2. The Customer warrants that any design or drawing provided by it does not infringe any intellectual property rights of any other person.
16. Delivery
- 16.1. Delivery of Goods shall be deemed to occur at the point specified in an Order or Quote, or if nothing is so specified.
- 16.2. Risk in the Goods passes to the Customer at the time of delivery under clause 16.1.

- 16.3. Full legal and equitable ownership of, and title to, the Goods passes to the Customer at the time of delivery or at the time at which the Customer makes full payment to Forged Fabrications under the relevant Order, whichever occurs later. Forged Fabrications retains full ownership of and title to all Goods until that time.
- 16.4. Forged Fabrications may deliver Goods by instalments. If the Customer fails to pay for an instalment on the due date Forged Fabrications may suspend deliveries of the other instalments.
- 16.5. The Customer shall pay all freight and cartage charges including any additional costs or expenses incurred by Forged Fabrications in delivering the Goods to the address requested by the Customer (including charges for waiting time, unloading equipment, labour or delivery outside of normal business hours).
- 16.6. Where Forged Fabrications is to deliver the Goods, the Customer must:
- (a) ensure Forged Fabrications has reasonable all-weather access to the site, to enable Forged Fabrications to deliver the Goods safely;
  - (b) obtain all necessary resource and other consents from the relevant local authority and inform Forged Fabrications of all matters relating to such consents;
  - (c) locate, mark and advise Forged Fabrications of all gas pipes, water pipes, sewerage lines, drainage lines, telephone cabling and other utilities that are on, or near, or adjacent to the delivery point, and of any actual or possible subsidence, slip, erosion, flooding or any other thing that might constitute a hazard on the land where Goods are to be delivered; and
  - (d) indemnify Forged Fabrications against any costs, claims and damages incurred in the delivery of the Goods including any cleaning, repairing damage to the site or delivery equipment. Returning the delivery vehicle to the road and making good any damage to the road or footpath, provided Forged Fabrications has acted with reasonable care and skill.
- 16.7. The Customer assumes all liability for damages to footpaths, kerbs, drains or other property for any deliveries beyond the kerb line and is responsible for any salvage charges incurred in returning the vehicle to the roadway. The Customer is responsible for the removal of any mud, clay etc from the delivery truck wheels and for the removal of mud, clay etc tracked on or footpaths, roads etc by the trucks.
- 16.8. The Customer must make any claims for a shortfall in the Goods delivered within 48 hours of delivery of such Goods by Forged Fabrications, and must state the date of delivery of the Goods and the delivery docket number.
18. Cancellations
- 18.1. The Customer is not entitled to cancel an Order without the written agreement of Forged Fabrications where:
- (a) manufacture of made to order Goods has commenced; and/or
  - (b) such Order comprises goods manufactured by a third party.
- 18.2. In the case of made-to-order Goods:
- (a) Forged Fabrications may require the Customer to make a full upfront payment for the Goods or to pay a substantial deposit before Forged Fabrications commences manufacture of the Goods, and the Customer is liable to pay for the full amount of Goods ordered, whether or not the Customer takes delivery of all such Goods; and
  - (b) the Customer shall pay all costs associated with any additional production runs where the Customer requires more Goods than those first ordered.
19. Taxes
- 19.1. Unless otherwise stated, all prices are exclusive of goods and services tax.
20. Hours
- 20.1. Unless otherwise agreed between the parties, Forged Fabrications will supply the Goods and/or perform the Services during normal working hours.
- 20.2. Any costs attributable to Forged Fabrications being required by the Customer to work outside such hours shall be payable by the Customer.
21. Force Majeure
- 21.1. No claim or liability will arise against Forged Fabrications under these Terms or any Order or Quote, if and to the extent that Forged Fabrications failure or omission to carry out or observe any provisions of these Terms or any Order or Quote arises by reason of Force Majeure.
22. Variation of terms
- 22.1. Forged Fabrications may, in its sole discretion, vary these Terms from time to time.
- 22.2. The latest version of these Terms can be found at [www.Forged Fabrications.co.nz](http://www.ForgedFabrications.co.nz).
23. Miscellaneous
- 23.1. Forged Fabrications failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Forged Fabrications right to exercise or enforce such right or any other right in the future.
- 23.2. Any provision of these Terms that is held to be invalid or unenforceable for any reason shall be severed from, and shall not affect the remaining provisions of, these Terms.