

# SIMCRAFT PRODUCTS GENERAL TERMS AND CONDITIONS OF SALE

## 1 INTERPRETATIONS

### 1.1 Definitions and Interpretations

“**Documents**” means the documents forming the agreement between Supplier and Purchaser

“**Drawings**” means any drawings issued by Supplier to Purchaser detailing the Goods to be supplied pursuant to the agreement in the Document

“**Goods**” means all Goods, equipment, materials, articles, or any other parts to be provided to the Purchaser by the Supplier under the Documents and includes, all services including design, manufacture, inspection, testing, quality assurance and control, packing and delivery as required hereunder.

“**Order Acknowledgment**” means the acknowledgement issued to Purchaser by Supplier confirming Suppliers agreement to carry out the purchase order subject to the drawings.

“**Parties**” means Supplier and Purchaser

“**Purchaser**” means the person buying the Goods as specified in the Purchase Order

“**Purchase Order**” means the purchase order issued by the Purchaser to the Supplier for the Goods.

“**Supplier**” means Simcraft Products.

“**Variation**” means any change or addition to the scope of work to be carried out pursuant to the Documents

“**Variation Order**” means a written order on agreed terms for a Variation

“**Warranty Period**” means the period commencing on the date of final supply of the Goods and lasting for a period of twelve (12) months, unless otherwise stated by Supplier.

### 1.2 Purchaser to Inform Itself

The Purchaser shall be deemed to have carefully examined all documents furnished by the Supplier and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the supply of the Goods.

### 1.3 Order of Precedence

Unless otherwise stated, the order of precedence of the following documents constituting the contract between the parties shall be: i) Drawings; ii) Quotation; iii) Order Acknowledgment; iv) Special Terms and Conditions (if any); v) these General Terms and Conditions; vi) Specification(s); vii) Purchase Order and in the event of any inconsistency between documents they shall be interpreted in that order.

### 1.4 Use of Documentation – Intellectual Property

The Documents shall not be copied or used for any other purchase than the supply of the Goods, without the prior written approval of the Supplier and the Purchaser acknowledges Supplier’s ownership of intellectual property in all Drawings and Goods.

### 1.5 Confidentiality

Any information provided by the Supplier to the Purchaser that is noted as confidential shall not be disclosed to any third party without the prior written consent of the Supplier.

### 1.6 Waiver

No failure or delay on the part of the Supplier in exercising any of its rights under the documents shall be construed as constituting a waiver of any such rights.

### **1.7 Subcontracting and Assignment**

The Supplier may subcontract or assign all or any part of the work to be done for the Purchaser without the prior written approval of the Purchaser. The Purchaser acknowledges and agrees that some component parts of various items sold to Purchaser by the Supplier are bought by Supplier from its sub-suppliers.

### **1.8 Communications**

Any notice or other communication required between the Parties shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from the Purchaser shall be confirmed in writing to the Supplier within a reasonable time and Supplier shall be under no obligation to act or rely upon any verbal communication.

### **1.9 Entire Agreement**

The Documents constitute the entire agreement between the Purchaser and the Supplier. The Parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth in the Documents. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the agreement between the Parties unless specifically incorporated in the Documents.

## **2 CONTRACTING PROCESS**

2.1 When requested by Purchaser the Supplier will issue a Quotation for work to be carried out and products supplied for the Purchaser.

2.2 The Purchaser may communicate to Supplier its intention to purchase the Goods by issuing a Purchase Order to Supplier which Supplier shall regard as an offer by the Purchaser to purchase Goods.

2.3 The Supplier may respond to a Purchase Order by issuing an Order Acknowledgement form and shall where appropriate prepare and send to Purchaser drawings of the Goods to be purchased.

2.4 Where no drawings are required the contract between the parties shall come into existence when the Supplier's Order Acknowledgment is communicated to the Purchaser and a delivery date for the Goods is agreed.

2.5 Where the Supplier sends drawings to the Purchaser the contract between the Parties shall come into existence when the Purchaser approves the Drawings as accurately representing the scope of work to be done and a delivery date for the Goods is agreed.

2.6 Where the Purchaser receives drawings from the Supplier and approves the Drawings but with any amendment or change to the scope of work in the drawings then the Supplier will communicate to the Purchaser its willingness to carry out the changed scope of work and any change necessitated to the price or any other term or condition by the Purchaser's variation. The contract between the Parties shall then come into existence when the Purchaser agrees the changed price or other term by the issue of a new purchase order.

## **3 PERFORMANCE AND QUALITY**

3.1 The Goods shall meet the agreed specifications. If no specifications are agreed the Goods shall meet the standards specified in the Purchase Order and failing that shall meet Suppliers general specifications. Other statements in brochures or the like or verbally shall be applicable only if referred to in the Purchase Order.

3.2 Supplier gives a warranty against defects in Goods for a 12 month period from the date of delivery in the terms of the 'Warranty' document which is supplied with Goods and in Annexure 1 to these terms and conditions. Goods shall only be regarded as defective if they do not meet the specifications or other standards referred to in

clause 3.1. Simcraft is not liable for any function, quality or property of the Goods other than expressly stated in the Documents. To the extent permitted by law any terms implied by statute or otherwise relating to quality or fitness for purpose are hereby excluded.

3.3 Supplier's warranty of goods is conditional upon the terms of Annexure 1 and maintenance in accordance with Supplier's "Guide to looking after Stainless Steel Products" (Supplier's Guide) supplied with Goods and/or displayed on Supplier's website [www.simcraftproducts.com.au](http://www.simcraftproducts.com.au). and may be voided by inappropriate treatment. If the Purchaser becomes aware of any defect in the Goods it shall give immediate notice to Supplier and where the defect could not reasonably have been detected on supply of the Goods such notice shall be given in writing within one week of the Purchaser becoming aware of the defect. Any notification more than one year after delivery of the Goods by Supplier shall be void and have no effect.

3.4 Notification to Supplier under this clause shall contain Purchaser's name and address, Purchaser's order number and date, a description of the Goods and the alleged defect, and confirmation that the Goods have been used and maintained in accordance with the Supplier's Guide.

3.5

3.5.1 Supplier is notified within the time herein specified of defective Goods.

3.5.2 The notification contains the information specified in clause 3.4; and.

3.5.3 The Goods are defective;

3.5.4 Supplier shall promptly and at its own expense rectify the defect or deliver new Goods in replacement of the defective Goods which will be delivered to Supplier in exchange.

3.5.5 Supplier will at its discretion instead of remedying or replacing Goods have the right to credit the Purchaser with the value of the defective Goods or the sum by which such value is diminished by the defect. Any such repaired or replaced Goods shall be the subject of a further full warranty period. Apart from the express terms of these General Terms and Conditions Supplier shall not be liable for any other direct or indirect loss, costs or damaged consequential or in any way arising from any defect in the Goods.

#### **4 DELIVERY AND TITLE**

4.1 Unless otherwise agreed delivery of the Goods occurs at Supplier's premises upon collection by Purchaser or its agent.

4.2 Delivery will be at the date agreed between the Parties as specified in the Documents or otherwise in writing and if no agreement then in accordance with Suppliers capacity planning.

4.3 The Purchaser will take delivery of the Goods promptly upon notification (which may be electronic or by telephone) from Supplier that the Goods are complete and ready for despatch. Supplier may divide and deliver the Goods in lots.

4.4 Until the Purchaser has paid in full for the Goods they remain the property of Supplier and Supplier retains the right to recover any Goods in the Purchaser's possession or control and the Purchaser hereby gives Supplier the right to enter any land or building where the Goods are stored to collect them.

#### **5 VARIATIONS**

5.1 The Purchaser may request the Supplier to vary the work under the Documents and the Supplier will use all reasonable endeavours to meet the Purchaser's request and agree with the Purchaser the effect of the variation on delivery dates and the price for such variation. If agreement cannot be reached the Supplier may in its discretion decline to carry out the variation.

5.2 Where a variation is agreed the Supplier may request Purchaser to issue a Variation Order on the agreed terms or may itself do so. Supplier shall be under no obligation to carry out any work on any variation without a written variation order from Purchaser accepted by Supplier.

5.3 For variation after manufacture to the original purchase order, the supplier will charge the supplier the full amount for non standard items and at their discretion a restocking fee of 20% for standard price book items.

## **6 TERMINATION**

6.1 The Purchaser may terminate the agreement in whole or in part if the Supplier shall become insolvent, go into liquidation, have a receiver appointed or enter into any arrangement, assignment or composition with creditors.

6.2 The Supplier may terminate the Purchase Order if:

6.2.1 the Purchaser shall become insolvent, go into liquidation, have a receiver appointed or enter into any arrangement, assignment or composition with creditors; or

6.2.2 the Purchaser fails to make payment of any sum due under the Purchase Order to the Supplier and continues such failure for a period of 7 days after receiving a notice from the Supplier setting out the sum due and calling for it to be paid.

6.3 A restocking fee will apply on termination

## **7. APPLICABLE LAW**

Unless otherwise specified, the Purchase Order shall be governed and construed in accordance with Western Australian law and the Purchaser and the Supplier shall submit to the jurisdiction of the courts of Western Australia.