

TERMS OF SUPPLY FOR GOODS & SERVICES

Mgalv - Galvanizing

“Company” means Meneghello Galvanizing Pty Ltd (ABN 30 325 522 619) and its successors and assigns;

Msteel - Engineering

“Company” means Meneghello Steel Pty Ltd (ABN 99 095 877 188) and its successors and assigns;

Mbolts - Bolts

“Company” means Meneghello Bolts Pty Ltd (ABN 72 619 609 611) and its successors and assigns;

1. Prevailing Terms, No Exclusivity and Definitions

1.1 If the Supplier has issued or will issue any document containing the Supplier’s terms and conditions for the supply of Goods or Services, then in the event of any inconsistency between the Supplier’s document and these Terms of Supply, then these Terms of Supply shall prevail.

1.2 The Supplier acknowledges and agrees that:

- (a) the Company has made no representations as to the quantity of Goods or Services that it will order from the Supplier during any particular period of time; and
- (b) issuing these Terms of Supply does not prevent the Company from purchasing the same or similar products to the Goods or Services from any other supplier.

1.3 In these Terms of Supply unless the contrary intention appears:

“Claim” means any claim, demand, right, action or proceeding whether in contract, tort, equity, statute or under any other law or any expense, cost, damage or loss (whether direct or consequential) of any nature;

“Delivery Point” means the point or points of delivery for the Goods specified in the Purchase Order;

“Goods” means the goods to be provided by the Supplier to the Company as described in the Purchase Order and in the quantities and to the Delivery Point specified in the Purchase Order;

“GST” has the same meaning as in the A New Tax System (Goods and Services) Tax Act 1999, any associated regulations and associated legislation;

“Price” means the price specified in the Purchase Order;

“Purchase Order” means any purchase order issued by the Company to the Supplier requesting the supply of Goods or Services;

“Services” means the services to be provided by the Supplier to the Company as described in the Purchase Order;

“Tax Invoice” has the same meaning as in the A New Tax System (Goods and Services) Tax Act 1999, any associated regulations and associated legislation; and

“Terms of Supply” means this document and includes any other terms specified in the Purchase Order.

2. Provision of Goods or Services

2.1 Upon receipt of any Purchase Order, the Supplier shall deliver the Goods or Services to the Company in accordance with these Terms of Supply and the Purchase Order.

2.2 The parties agree that time is of the essence in the delivery of the Goods or the performance of the Services and that the Supplier must deliver the Goods or provide the Services by any due date specified in the Purchase Order.

2.3 The Company may at all reasonable times:

- (a) inspect, examine and witness tests on the Goods; and
- (b) carry out site inspections of the Supplier’s premises.

2.4 In delivering the Goods to the Company, the Supplier warrants that:

- (a) the Goods match the description of the goods and the quantities specified in the Purchase Order;
- (b) if the Supplier gave the Company a sample of the Goods prior to the Company issuing a Purchase Order then the Goods correspond to the sample;
- (c) the Goods comply with any relevant standard of Standards Australia Limited and any other standards specified in the Purchase Order;
- (d) the Goods are fit for the purpose for which goods of the same kind are commonly supplied and for any other purpose described in the Purchase Order;
- (e) where applicable, the Goods are new and of merchantable quality; and
- (f) the Supplier has the full benefit of any manufacturer’s warranties that may be applicable to the Goods.

2.5 The Supplier shall:

- (a) suitably pack the Goods to avoid damage during loading, transit, delivery, unloading or storage having regard to the transport and climatic conditions through which the Goods will pass during transport;
- (b) include with the Goods copies of all technical materials relevant to the Goods;

- (c) pack and transport the Goods in accordance with applicable regulations and industry codes;
 - (d) clearly mark all packages of the Goods for delivery and ensure that all relevant delivery documents accompany the Goods to the Delivery Point; and
 - (e) assist the Company in obtaining documents and other information required for the resolution of any transport dispute.
- 2.6 In delivering the Goods to the Company the Supplier shall:
- (a) not interfere with The Company's activities;
 - (b) ensure that any of the Supplier's employees, agents or contractors who enter the Company's premises deliver the Goods in a safe manner;
 - (c) use its best endeavours to minimize nuisance or disturbance to any person occupying the Company's premises; and
 - (d) comply with all directions given by the Company relating to its premises.
- 2.7 If the Goods do not meet the requirements specified in the Purchase Order the Company may at its discretion reject the Goods or require the Supplier to repair the Goods at no additional cost to the Company.
- 2.8 The Supplier acknowledges and agrees that the signing on behalf of the Company of any delivery receipt prior to the Goods being inspected does not constitute acceptance of the Goods by the Company.
- 2.9 In providing the Services, the Supplier acknowledges that the Company is relying on its expertise and the Supplier undertakes that it shall provide the Services to the Company at all times with the same standard of care, skill, competence, speed, integrity and diligence exercised by competent persons in the performance of the same or similar Services.
- 2.10 If any Services performed by the Supplier are considered by the Company in its absolute discretion to be defective or not carried out in accordance with these Terms of Supply or the Purchase Order, then the Supplier shall expeditiously re-perform such Services as and when directed by Company at the Supplier's sole cost and expense.
- 2.11 If the Supplier becomes aware of any matter that will change the scope of Services or which may change the time for delivering the Goods or providing the Services then the Supplier shall immediately provide written notice to the Company of the particulars of any such change.
- 2.12 The Supplier shall employ or engage only those persons who are skilled and experienced in their respective professions to provide the Services.
- 2.13 Without prejudice to any right of action or other remedy which the Company may have been entitled to, if for any reason the Supplier fails to perform its obligations and deliver the Services under these Terms of Trade the Company may appoint any other consultant, person or entity to carry out such unperformed Services.

- 2.14 In performing the Services the Supplier shall at all times be an independent contractor and shall not act as an agent or employee or hold itself out as an agent or employee of the Company. The Supplier or its employees, consultants or agents shall not be entitled to workers' compensation, sick leave benefits or to any other insurance protection of any type which the Company may hold from time to time or any other benefit which would ordinarily accrue to an employee of the Company.

3. Variations

- 3.1 The Company may at any time direct a variation to the Services or the quantity or quality of the Goods ("Variation"). The Variation may involve increases in or additions to, reductions in or omissions from the Services. No Variation shall invalidate the Purchase Order or these Terms of Supply.
- 3.2 If the Variation requires the Supplier to supply:
- (a) more or less Goods or Goods of a greater or lesser quality;
 - (b) additional services or if services are to be reduced or omitted,
- any variation to the Price shall be agreed between the parties.

4. Invoicing and Payment

- 4.1 The Supplier shall deliver the Goods or Services for the Price and acknowledges that such Price includes:
- (a) the cost of all labour, plant, equipment, tools, appliances or other property and items used by the Supplier in producing and delivering the Goods or in performing the Services;
 - (b) all costs, expenses, disbursements, fees and charges incurred by the Supplier in performing its obligations under these Terms of Supply including all charges for packaging, packing, insurance and delivery of the Goods;
 - (c) the cost of any miscellaneous services of a kind which are commonly provided with the Goods or the Services; and
 - (d) the Supplier's profit, attendance, preliminaries, supervision, on-site and off-site overheads in connection with the production and delivery of the Goods or with the performance of the Services.
- 4.2 The Company shall pay the Supplier the whole or any portion of the Price within 30 days of the end of the month following the date of receipt of the Supplier's Tax Invoice.
- 4.3 The Supplier shall ensure that any Tax Invoice issued to the Company:
- (a) is emailed to: accounts@meneghello.com
 - (b) clearly identifies the date, Purchase Order number and the items, quantities and Price of Goods or Services supplied; and
 - (c) complies with Australian Tax Office requirements.

5. Confidentiality

- 5.1 The Supplier warrants that it and its employees and contractors shall keep secret and confidential and shall not disclose to any third party any information acquired in producing or delivering the Goods or Services to the Company without the Company's prior written consent.
- 5.2 The Supplier shall not use or attempt to use any information referred to in clause 5.1 in any manner which may injure or cause loss either directly or indirectly to the Company or its business or may be likely to do so or for its own benefit except for the purpose of producing and delivering the Goods or Services to the Company.
- 5.3 The Supplier shall ensure that its employees and contractors are aware of the confidentiality obligations contained in this clause 5.
- 5.4 The provisions of this clause 5 shall continue to apply after delivery of the Goods or Services without limit in time.

6. Liability and Indemnity

- 6.1 The Supplier shall indemnify the Company for any expense, damage or loss (whether direct or consequential) of any nature whatsoever which may be suffered or incurred by the Company by reason of the Supplier's failure to deliver the Goods or to perform the Services in accordance with these Terms of Supply or for any other breach of these Terms of Supply on the part of the Supplier.
- 6.2 The Supplier shall release and indemnify the Company and its officers, employees and contractors from and against any Claim or Claims brought against the Company arising out of or as a consequence of these Terms of Supply, the production or delivery of the Goods, the provision of the Services or for any act or omission of the Supplier, its employees or contractors.
- 6.3 The Supplier shall indemnify the Company and its officers, agents, employees and contractors against any Claim or Claims that are made by or on behalf of any third party for any loss or damage (including property damage and injury or death) arising from or in connection with the Goods or Services except to the extent that such loss or damage was caused by the negligent act or omission of the Company or its officers, agents, employees and contractors.

7. Insurance

- 7.1 The Supplier of Goods shall effect and maintain the following policies:
- (a) insurance which covers the Goods for not less than the replacement value of the Goods, which insurance must be maintained up until the Goods are accepted by the Company at the Delivery Point; and
 - (b) any other insurances required by law or reasonably required by the Company.
- 7.2 The Supplier of Services shall effect and maintain the following policies:
- (a) Professional Indemnity Insurance for an amount of \$5,000,000 in respect of each claim and to cover any liability of the Supplier or the

Company arising out of a lack of skill, care and diligence in the performance or non-performance of the Services by the Supplier and the Supplier shall continue to maintain such insurance cover for a period of 7 years after its performance of the Services; and

- (b) any other insurances required by law or reasonably required by the Company.

- 7.3 If requested at any time the Supplier shall provide a certificate of currency to the Company for insurances held by the Supplier.

8. Title and Risk in Goods

- 8.1 The Company shall:

- (a) not have title to any Goods; and
- (b) shall not bear risk in any Goods

until it takes delivery of those Goods at the Delivery Point.

- 8.2 The Supplier warrants that:

- (a) it has complete ownership of the Goods free of any liens, charges and encumbrances and provides the Goods to the Company on this basis; and
- (b) the Company shall be entitled to clear title, complete and quiet possession of the Goods.

- 8.3 The Supplier shall not reserve or retain title or place any charges or any security interest against the Goods.

9. Goods and Services Tax

- 9.1 The parties agree that the Price may be expressed as being either inclusive or exclusive of GST.
- 9.2 Subject to clause 9.1, any GST payable on any supply of Goods or Services made in accordance with this Agreement, shall be paid by the Company to the Supplier.
- 9.3 The obligation to pay GST under clause 9.2 only applies if the Supplier has given the Company a Tax Invoice for the supply of Goods or Services which details the relevant amount in respect of which GST is payable and the amount of that GST.

10. Ethical Trade and no Modern Slavery

- 10.1 By agreeing to accept the Company's Purchase Order and to supply Goods or Services in accordance with these Terms of Supply, the Supplier acknowledges and agrees that the Supplier:
- (a) supports ethical trade;
 - (b) does not use any form of modern slavery in its business; and
 - (c) will take immediate action to end the use of modern slavery if ever such slavery is found in the Supplier's business.

- 10.2 The Supplier acknowledges and agrees that if the Company is of the reasonable opinion that the Supplier does not support ethical trade and/or is using modern slavery in its business, then the Company may reject any Goods or Services supplied to it under these Terms of Supply and may terminate any current supply arrangements or revoke any Purchase Orders issued to the Supplier by the Company.

11. Miscellaneous

- 11.1 Time shall be of the essence of these Terms of Supply in all respects and no extension or variation thereof shall operate as a waiver of this provision.
- 11.2 These Terms of Supply and the Purchase Order constitute the entire agreement between the parties and contain all of the representations, warranties, covenants and agreements of such parties .
- 11.3 Any notice demand or other communication required to be given or made under these Terms of Supply shall be in writing and shall be delivered personally or sent by prepaid registered mail to each of the parties at their respective addresses. Any notice or other communication sent by mail shall be deemed to have been received by the party to whom it was sent on the third day following posting.
- 11.4 These Terms of Supply may be amended or varied only by agreement in writing signed by the parties.
- 11.5 No waiver of any provision of these Terms of Supply by any of the parties shall be effective unless it is in writing and then such waiver shall be effective only in the specific instance and for the purpose for which it was given.
- 11.6 If any of the terms and provisions of these Terms of Supply are determined to be invalid or unenforceable by any court such determination and consequential severance (if any) shall not invalidate the rest of these Terms of Supply or the Purchase Order.
- 11.7 These Terms of Supply are governed by and construed in accordance with the laws of Western Australia.