

# Terms of Sale

## Euro Corporation Limited trading as Summit Steel & Wire™ and Tornado Industries™ Limited

These Terms of Sale ("terms") apply to all products and services we supply in New Zealand.

### 1. DEFINITIONS

"**agreement**" means these terms, our quotation and any scope of works clarifications.  
 "**ECL**", "**we**", "**us**" and "**our**" means Euro Corporation Limited trading as the division of Summit Steel & Wire™, and Tornado Industries Limited.  
 "**goods**" means steel reinforcing, mesh, nail products, wire fencing or other steel products we supply under this agreement.  
 "**PPSR**" means the Personal Property Securities Register.  
 "**quotation**" means the price, specific terms and details on our quotation form.  
 "**site**" means the site or sites where the goods are to be delivered or works performed.  
 "**variation**" means an increase, decrease, change in type, rate or quantity of the goods or works required by you or your client.  
 "**works**" means the work and all services that ECL is engaged to provide under this agreement.  
 "**you**" and "**your**" means the person or entity engaging us to supply goods or works.

### 2. APPLICATION

- 2.1. Where there is no prior signed agreement, any instructions received by ECL to supply goods or carry out works constitutes acceptance of these terms.
- 2.2. This agreement shall apply to any future supply of goods or works for you unless otherwise agreed in writing. Where there is a separate signed agreement for supply and/or works, these terms shall still apply, unless there is a conflict or inconsistency, in which case the separate signed agreement shall prevail.
- 2.3. You are required to submit a completed Customer Credit Account Application for our approval before we commence works or supply goods.
- 2.4. These terms will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent).
- 2.5. We may agree to a head contract provided you notify us at the time of tender of any important terms applicable to our works. Notwithstanding anything to the contrary in the subcontract or head contract, we shall have the same rights and remedies you have vis a vis the client.
- 2.6. These terms may be updated from time to time and you can find the latest version at [www.summitsteel.co.nz](http://www.summitsteel.co.nz).

### 3. PRICE

- 3.1. Our prices are set out in our Product Price List which will be updated from time to time. You may request an updated Product Price List at any time.
- 3.2. In cases where we provide a quotation, the prices in such quotation will be valid for 30 days or as otherwise stated in the quotation.

### 4. CLARIFICATIONS

- 4.1. These clarifications are in addition to any specific terms we have notified to you.
- 4.2. Our Product Price List is based on reinforcing steel bar Grade 300E and Grade 500E (MA), or as otherwise specified.
- 4.3. We are not responsible for:
  - a) anything outside our control that affects or disrupts the supply of goods or performance of works.
  - b) costs associated with design or steel grade change.

### 5. DELIVERY

- 5.1. You are responsible for arranging adequate access for delivery trucks and all unloading, lifting and hoisting facilities on site. This includes movement of goods from the truck drop-off point to safe and suitable lay down areas or the workplace.
- 5.2. Lifting equipment can be supplied on request for unloading at the site and will be an additional charge.
- 5.3. We will not accept a claim for loss, damage or defects if the carrier docket has been signed as receiving the goods in good order and condition.
- 5.4. If you receive damaged goods or a shortage, you must notify ECL Customer Services promptly and no later than 3 days after delivery.
- 5.5. Delivery dates and times are estimates only and we accept no responsibility for delay in delivery howsoever caused.

### 6. PAYMENT

- 6.1. Payment is due in full without set-off on or before the 20th of the month following the date of our invoice or payment claim.
- 6.2. If payment of the invoiced amount is not made in full, ECL will be entitled to charge interest at the rate of 2% per month and you must indemnify ECL for all costs in recovering the outstanding amount.
- 6.3. You agree that no retentions will be withheld. ECL reserves the right to increase the price if retentions are required.
- 6.4. If you do not have a recent trading history with us, you may be asked to provide a 50% deposit in advance of work and a director's personal guarantee.
- 6.5. Contra charges will not be accepted unless advised in writing and agreed by us. We must be given a reasonable opportunity to rectify the cause of the charge.

### 7. CANCELLATIONS

- 7.1. Any cancellation of ordered goods or works for the purpose of having them carried out by another party will be a deemed breach of these terms and you will be liable for loss of profit and costs.

### 8. RETURN OF GOODS

- 8.1. You are not entitled to return goods except as provided in this clause.
- 8.2. For defective goods which you are entitled to reject, our sole remedy is to repair or replace the goods, or refund the price, provided that:
  - a) you notify us within 3 days of delivery that the goods are defective;
  - b) we are given a reasonable opportunity to investigate your claim;
  - c) the goods have not been tampered with or modified without our approval; and
  - d) they have been stored and used in a proper manner.
- 8.3. ECL may (in its discretion) accept goods for credit but this will incur a handling or restocking fee.
- 8.4. If we accept returned goods under clause 8.3, it is your responsibility to arrange and pay any freight charges.

### 9. PROPERTY AND RISK

- 9.1. Title in the goods passes to you when you have paid in full. Until then, you shall be bailee of the goods.
- 9.2. ECL authorises you, in the ordinary course of your business, to use the goods or sell them for full consideration. If you use or resell the goods before ownership has passed to you, the proceeds shall be held by you in trust until you have paid in full.
- 9.3. Where the goods are mixed with other property so as to be part of any new goods, title to these new goods shall be deemed to be assigned to ECL as security for the full amount owed.
- 9.4. If you are in default under the agreement or in our reasonable opinion the payment of any amount is at risk, then you give irrevocable authority to ECL to enter any site where the goods are located to remove the goods without prior notice. You will indemnify us against any action, claim or costs arising out of any act lawfully done by us in exercising our rights under this clause.
- 9.5. Risk of loss, damage or deterioration of the goods passes to you on delivery.

### 10. SECURITY

- 10.1. Without limiting anything else in the agreement, you agree that:
  - a) This agreement create a security interest in favour of ECL in all goods we supply to you now and in the future and such security interest shall remain until you have paid in full.
  - b) We may register a financing statement on the PPSR and you will not impede the lodgement in any way or grant any other security interest or any lien over goods that we have a security interest in.
  - c) Nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the Personal Property Securities Act 1999 will apply to this agreement, or the security under this agreement.
  - d) The waivers in clause 16.2 of ECL's Customer Credit Account Application are incorporated into these terms and agreed by you.

- e) At our request, you shall promptly sign any documents and do anything else required by us to ensure our security interest constitutes a first ranking perfected security interest in the goods.
- f) You will give us 14 days' prior notice of any proposed change in your company or trading name, address or contact details.

## 11. LIABILITY

- 11.1. We are not liable for any defects where you do not notify us within the times required by this agreement or where you or your client do not provide us with a reasonable opportunity to remedy the defects.
- 11.2. Notwithstanding any other provision of the agreement or requirement of the client and to the maximum extent permitted by law, whether arising in contract, tort (including negligence), under indemnity, warranty or otherwise, the maximum aggregate liability of ECL for any loss, damage or claim arising out of or in connection with the goods, works or the agreement shall be limited to the total price you have paid for the respective goods or works.
- 11.3. ECL excludes any liability for:
  - a) loss of income or profits, loss of opportunity, loss of production or use, business interruption, or any indirect, special or consequential loss arising in connection with, or as a result of, the supply or non-supply of the goods or works;
  - b) liquidated damages or any compensation for delay;
  - c) any statement or recommendation, negligence, advice, supervision or assistance given by ECL, its employees, agents, transport operators or representatives whether oral or written;
  - d) loss or damage relating to suitability of the goods or fitness for any particular purpose unless such purpose is known and agreed by us;
  - e) deterioration of goods due to exposure to the elements after delivery.
- 11.4. If ECL is liable for loss or damage, our liability is reduced proportionately to the extent we have directly contributed to the loss, liability or cost.
- 11.5. The works and goods are provided for business purposes and all warranties, conditions and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 are hereby excluded.
- 11.6. You agree to indemnify ECL against all actions, claims, proceedings, costs, losses and damages however caused or arising which ECL may sustain, incur or pay in connection with supplying the goods or works to you which do not arise from a default or negligence by ECL under the agreement.

## 12. INTELLECTUAL PROPERTY

- 12.1. Ownership of all intellectual property rights in drawings, plans, designs, specifications, statements of work, presentations, emails, data or any other material prepared by ECL and used in the supply of the goods or works (however recorded or stored) is the exclusive property of ECL.
- 12.2. You warrant that we can rely on all documents and designs provided by you and in so doing shall indemnify us against any breach of a third party intellectual property right.

## 13. SUSPENSION

- 13.1. Where you are in default of payment, ECL may suspend supply of any goods or works on notice until the amount in the invoice or payment claim is paid in full.

This clause does not affect the suspension provisions in the Construction Contracts Act 2002 which remain applicable.

## 14. TERMINATION

- 14.1. ECL may terminate this agreement or any purchase order immediately on notice to you if in our reasonable opinion you have committed a material breach of the agreement, including but not limited to repeated failure to pay your account on time. We will not be liable to you for repudiation, indemnity, compensation or any other costs or damages whatsoever.
- 14.2. The agreement may be terminated immediately by notice in writing by either party where the other party commits an act of insolvency, including receivership, liquidation, voluntary administration, statutory management, scheme or arrangement with creditors.
- 14.3. Termination shall be without prejudice to any obligations or rights of either party which have accrued prior to termination.

## 15. DISPUTE RESOLUTION

- 15.1. Where the parties are in dispute over any matter concerned or connected with the goods or works, including any amount payable, the parties shall endeavour to negotiate in good faith to resolve the dispute.
- 15.2. Where the dispute has not been resolved within two weeks of the first communication evidencing the dispute, the parties may pursue any dispute resolution procedure by agreement, or if there is no agreement, by adjudication or arbitration which will be final and binding.

## 16. FORCE MAJEURE

- 16.1. Either party may cancel the agreement by notice in writing if the performance of the agreement is interrupted by circumstances beyond the reasonable control of that party which persists for at least 30 days and is not able to be overcome despite reasonable efforts, or without materially increasing the cost or materially decreasing the benefit to the party to perform the agreement.
- 16.2. In the event of termination under this clause, ECL shall be entitled to recover any costs reasonably incurred before termination.

## 17. GENERAL

- 17.1. You shall not assign the agreement without our prior written consent.
- 17.2. Failure by ECL to enforce any of the terms and conditions contained in the agreement shall not be deemed to be a waiver of any of the rights or obligations we have under the agreement.
- 17.3. If any provision of the agreement shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.4. The agreement constitutes the entire understanding and agreement of the parties relating to the matters dealt within and supersedes and extinguishes all prior agreements, statements, representations and understandings whether verbal or written given by or made between the parties relating to the matters dealt with in the agreement.
- 17.5. The agreement is governed by New Zealand law and subject to the exclusive jurisdiction of the courts of New Zealand.
- 17.6. You agree to keep all confidential and proprietary information provided or disclosed confidential and must ensure that your employees, agents and contractors assume the same obligations.