

TERMS AND CONDITIONS



GMP Metal Pty Ltd (ACN 162 605 638)

Address: 10 Williams Circuit

Pooraka SA 5095

Ph 08 8262 6411

Email: sales@gmpmetal.com.au

www.gmpmetal.com.au

These Terms and Conditions apply to any order placed by a Customer for any Goods and/or Services provided by the Contractor.

For the purposes of this Agreement:

“**Agreement**” shall mean these Terms and Conditions together with the Quotation and/or Credit Application;

“**Australian Consumer Law**” means the Australian Consumer Law set out in Schedule 2 of the *Competition & Consumer Act 2010* (Cth) as amended from time to time;

“**Australian Standards**” means the documents based on the Building Code of Australia and written by Standards Australia that set out specifications, procedures and guidelines to ensure that Australian products, services and systems are safe, reliable and consistent, as amended from time to time;

“**Business Day**” means a day on which the banks are open for general banking business in South Australia except Saturday, Sunday and public or statutory holidays;

“**Commencement Date**” means the date that fabrication of the Goods and/or Services are to be commenced on;

“**Contractor**” means GMP Metal Pty Ltd (ACN 162 605 638) and any representatives acting on its behalf;

“**Customer**” means any business entity or individual named in the Quotation and/or the paperwork accompanying the Quotation acceptance;

“**Ductwork Standard**” means the relevant standards in the Australian Standards applying to Ductwork for air-handling systems in buildings, “AS 4254.2-2012 Ductwork for air-handling systems in buildings Rigid duct”, or any other Australian Standard that may apply in the future, as may be amended from time to time;

“**Goods**” means any and all products as specifically described in the Contractors Quotation;

“**GST**” means Goods and Services Tax payable under the GST Act;

“**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“**Intellectual Property**” means know-how, systems, manuals, trade secrets, copyright, trademarks, eligible layouts and patents;

“**Insulation Standard**” means the relevant standards in the Air Conditioning and Mechanical Contractors' Association of Australia's Standard Method B for fitting internal insulation, as may be amended from time to time;

“**Invoice**” means the invoice for payment provided by the Contractor to the Customer for the Works in whole or in part;

“**Services**” means the fabrication of any products as described in the Quotation, Invoice and other paperwork supplied to the Customer by the Contractor;

“**Special Order Goods**” means any and all goods that are to be special ordered and/or custom made as specifically described in the Quotation;

“**Quotation**” means any quote for the Goods and/or Services provided to the Customer by the Contractor from time to time; and

“**Works**” means any and all provision of Goods and/or Services by the Contractor to the Customer.

1. QUOTATION

1.1. The Contractor shall specify in the Quotation the Goods and Services required to carry out the Customer's instructions and outline an estimate of the Contractor's charge for the performance of such Services and the cost of the Goods.

1.2. The Contractor need not supply or provide the Goods and/or Services until the Customer accepts the Agreement and provides a purchase order to the Contractor.

1.3. Unless otherwise stated, Quotation prices will remain current for thirty (30) days from the date of the Quotation.

1.4. Unless otherwise stated, the price for the Goods and Services is GST exclusive.

1.5. The price specified in the Quotation may be subject to change by the Contractor notifying the Customer of the same.

2. PRICE

The price payable by the Customer to the Contractor for the Goods and/or Services is the price specified in the Quotation, which is based on manufacturing during normal working hours, and which Quotation price can be changed/varied in accordance with the terms of this Agreement.

3. ACCEPTANCE

3.1. The following shall be deemed acceptance by the Customer of the Agreement :

3.1.1. a written acceptance, whether by post, email correspondence, fax or other means which state that the Customer accepts the Quotation;

3.1.2. the Customer verbally instructing the Contractor to commence the Works; or

3.1.3. the issue of a purchase order from the Customer to the Contractor whether by post, email correspondence, fax or other means.

3.2. If the Customer accepts the Quotation in accordance with clause 3.1 then the Contractor will still require

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the Customer to provide a purchase order to the Contractor.

4. PAYMENT

4.1. For Credit Application Customers:

4.1.1. All commercial Customers who are provided with a Credit Application must fill out and sign the Credit Application and wait for it to be approved before the Contractor will begin the Works.

4.1.2. For commercial Customers who have provided a Credit Application and been approved for a trade account, payment in full will be required thirty (30) days from the end of month from the date of the Invoice.

4.1.3. The Contractor will impose a credit limit for an approved trade account. If a commercial Customer with a trade account exceed their credit limit amount then:

4.1.3.1. The total amount of the trade account must be paid in full.

4.1.3.2. If payment is not made by the Customer in accordance with clause 4.1.3.1, the Contractor may elect to not release and/or deliver the Goods and/or Services to the Customer in the Contractor's sole discretion.

4.2. For Customers with no Credit Application:

4.2.1. The balance payable for the Goods and/or Services is to be paid on or before delivery of the Goods and/or Services to the Customer.

4.3. The price for Special Order Goods must be paid in full by the Customer before the Works are commenced by the Contractor.

4.4. The provisions of the *Building and Construction Industry Security of Payment Act 2009* (SA) may apply, at the Contractor's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services.

4.5. If the Customer fails to make any payment for the Goods and/or Services when payment falls due, then the Customer may, without prejudice to any other right or remedy of the Contractor:

4.5.1. Be charged interest at a rate of 2% per month cumulative which is to be calculated on a day to day basis on any monies owed to the Contractor. The parties agree that such amounts are not a penalty but a true measure of the damages incurred by the Contractor. Payments received from the Customer will be credited first against any account keeping fees and interest, and all such fees shall be payable by the Customer on demand from the Contractor;

4.5.2. Be charged an administrative fee of \$25.00 AUD for each time the Contractor has to follow up with the Customer for late payment;

4.5.3. Pay the Contractor for any costs, expenses or losses incurred by the Contractor as a result of the Customer's failure to pay the Contractor all sums outstanding as owed by the Customer to the

Contractor including but not limited to dishonoured cheque fees, debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis; and

4.5.4. Stop the Works until such time as the Customer makes payment for any outstanding amounts in full. If the Contractor stops Works as a result of the Customer's failure to make payment to the Contractor then the Contractor will not be liable to the Customer for any costs, expenses or losses incurred by the Customer as a result of the Contractor stopping Works.

5. VARIATIONS

5.1. Any oral and/or written variations sought by the Customer relating to Works in progress and/or to be undertaken by the Contractor ("**Variation**") are subject to approval by the Contractor.

5.2. The Contractor will be entitled to vary any Quotation provided to the Customer if:

5.2.1. the Customer requires a Variation, orally or in writing, which is accepted by the Contractor; or

5.2.2. the Customer provides incomplete or inaccurate information to the Contractor in order for it to complete the Works

in which case the Customer will be liable to pay any and all additional costs as a result of the Variation or providing incomplete or inaccurate information.

6. CANCELLATION

6.1. The Contractor:

6.1.1. May cancel its obligations to supply the Goods and/or Services under the Agreement by giving written notice to the Customer, at any time before the Works are commenced; or

6.1.2. May, if the Customer has breached the Agreement and the Contractor has given the Customer written notice of the breach provide them seven (7) days to remedy the breach and the Customer has failed to remedy the breach within this timeframe, cancel its obligation to supply the Goods and/or Services remaining under the Agreement by giving written notice to the Customer; and

6.1.3. May immediately cancel the Agreement if the Customer:

6.1.3.1. is declared bankrupt; or

6.1.3.2. has a receiver, agent or manager appointed for all or substantially all of the property of the Customer; or

6.1.3.3. enters into an arrangement or composition with its creditors; or

6.1.3.4. becomes insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth).

6.1.4. Shall not be liable for any loss or damage from the cancellation of the Agreement under this clause.

6.2. The Customer:

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- 6.2.1. May cancel its obligations under the Agreement by giving written notice to the Contractor, at any time before the Works are commenced; and
 - 6.2.2. May immediately cancel the Agreement if the Contractor:
 - 6.2.2.1. is declared bankrupt; or
 - 6.2.2.2. has a receiver, agent or manager appointed for all or substantially all of the property of the Contractor; or
 - 6.2.2.3. enters into an arrangement or composition with its creditors; or
 - 6.2.2.4. becomes insolvent within the meaning of section 95A of the *Corporations Act 2001 (Cth)*.
 - 6.3. If the Customer cancels the Agreement outside of clause 6.2 herein then the Customer must reimburse the Contractor for any costs, expenses or losses incurred by the Contractor as a result of the Customers cancellation including any loss of profit. The Customer must make payment for such cancellation costs incurred within seven (7) days from receipt of an invoice from the Contractor detailing such costs.
- 7. EXTENSION OF TIME**
- 7.1. The Contractor shall be entitled to an extension of time to supply the Goods and/or Services if:
 - 7.1.1. the supply of Goods and/or Services are delayed through no fault of the Contractor; and/or
 - 7.1.2. the Contractor stops the Works under clause 4.5.4 of the Agreement.
- 8. EXCLUSIONS**
- 8.1. Unless a Good or Service is outlined in the “inclusions” section of the Quotation it should be presumed to be excluded from the Works.
- 9. REQUIREMENTS OF THE SHEET METAL DUCT**
- 9.1. The Contractor, its employees, agents and/or contractors will manufacture sheet metal ductwork in accordance with the Ductwork Standard to a maximum of 500Pa static pressure.
 - 9.2. The Contractor, its employees, agents and/or contractors will manufacture longitudinal joints in insulation in accordance with the Ductwork Standard.
 - 9.3. Unless otherwise stated sheet metal ductwork will be manufactured using Galvabond.
 - 9.4. All ductwork will be insulated with fiberglass 32kg/m³ unless otherwise stated.
 - 9.5. The Contractor, its employees, agents and/or contractors must comply with the Insulation Standard when fitting internal insulation.
 - 9.6. The Contractors standard lengths for straight ductwork are as follows:
 - 9.6.1. 1475mm for Drive Cleat joints; and
 - 9.6.2. 1405mm for TDF joints.
 - 9.7. The Contractor will internally insulate all ductwork using the “Free Edge” method.
- 10. MANUFACTURING DRAWINGS**
- 10.1. If the Goods and/or Services provided by the Contractor are to be based on manufacturing drawings, these drawings must be:
 - 10.1.1. For final approved manufacturing drawings, be provided to the Contractor 14 days before the first delivery of the Goods and/or Services, being the date as agreed upon by both the Contractor and the Customer.
 - 10.1.2. For any unapproved manufacturing drawings the Customer must provide the Contractor with written authority to proceed on the unapproved drawings not less than 14 days before the first delivery of the Goods and/or Services, being the date as agreed upon by both the Contractor and the Customer.
- 11. OWNERSHIP AND RISK**
- 11.1. The Contractor remains the owner of the Goods until payment has been made in full to the Contractor.
 - 11.2. The Customer must not sell or otherwise deal with the Goods until payment has been made in full to the Contractor. If the Customer sells or otherwise deals with the Goods before payment has been made in full, the proceeds or records of dealings from these actions must be kept identifiable and separate from all other transactions and dealings of the Customer until the Contractor has been paid in full.
 - 11.3. If any account of the Customer with the Contractor is in default, the Contractor reserves the right to repossess any Goods provided to the Customer.
 - 11.4. Upon delivery of the Goods by the Contractor to the site, the Customer bears any and all responsibility and liability in ensuring the Goods are secured.
 - 11.5. Notwithstanding clauses 11.1, 11.2 and 11.3 risk of loss of or damage to the Goods passes to the Customer upon delivery/pick-up.
 - 11.6. The Customer is liable to reimburse the Contractor for the theft of Goods at the site during the completion of the Works through the Customers insurance scheme or otherwise, as if the Works have already been completed (or part thereof) before the theft for costs of resupplying the Goods and/or Services to repair any loss and damage resulting from the theft.
- 12. RETURN CREDIT**
- 12.1. The Contractor will only accept returns of the Goods if prior arrangements for the return have been made.
- 13. CONTRACTOR LIABILITY**
- 13.1. The Contractor shall not be liable for any damage to the Goods and/or Services caused by the Customer or third parties and shall not be required to indemnify any party for any damage caused by others.
 - 13.2. The Contractor will not be liable for any delays caused by any person other than the Contractor or any of its representatives.
 - 13.3. Subject to the Australian Consumer Law, the Contractor will not be liable for any consequential or indirect losses.
- 14. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)**
- 14.1. Until the Contractor receives payment for all monies owed to it, the Customer acknowledges that the Contractor has a Purchase Money Security Interest (PMSI) which attaches over the Goods and their

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proceeds and a security interest in relation to other amounts owed by the Customer to the Contractor.

14.2. The Customer acknowledges that the Agreement constitutes a security agreement for the purpose of the PPSA.

14.3. On default of payment the Customer irrevocably permits the Contractor, or any person authorised in writing by the Contractor, upon reasonable notice to enter the Customers premises or any premises where the Goods are reasonably believed by the Contractor to be held on the Customers behalf. The Customer also agrees to indemnify the Contractor for all costs and expenses of recovery or the Goods and losses if any.

14.4. The Customer undertakes to do anything (such as obtaining consents, producing documents or getting documents completed or signed) which the Contractor considers reasonably necessary for the purposes of ensuring that a PMSI and/or security interest is enforceable, perfected and effective.

14.5. To the extent permitted by law, the Customer waives its rights to:

14.5.1. receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d) and 135 of the PPSA;

14.5.2. redeem the Goods under section 142 of the PPSA;

14.5.3. reinstate the Security Agreement under section 143 of the PPSA; and/or

14.5.4. receive a Verification Statement under section 157 of the PPSA.

14.6. Nothing in this clause prevents the Contractor from taking collection or legal action to recover any monies owed to it from time to time.

15. INSTRUCTIONS AND COMMUNICATIONS

15.1. The Contractor may elect to communicate by electronic mail or such other form as is convenient, and does not warrant that any such communication will be free from defect, virus or shall otherwise be secure. The Customer hereby acknowledges and agrees to accept such communications and releases the Contractor from all liability in respect of any losses that may be incurred by the Customer from such communications.

16. DEFECTS

16.1. The Customer must inspect all Goods provided on delivery to the Customer, as well as the Services when completed, within seven (7) Business Days of delivery or completion of the Works notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or the Quotation. The Customer must provide the Contractor with a reasonable opportunity to modify and/or repair any defect or damage to the Goods and/or Services provided by the Contractor. Failure to notify the Contractor within this timeframe will deem the Goods to be defect free and acceptable to the Customer.

17. LIMITATION OF LIABILITY

17.1. The Agreement does not exclude, restrict or modify the application of any provisions of any

Commonwealth, State or Territorial Law which cannot be excluded, restricted or modified.

17.2. To the extent permitted by law, all terms, conditions, warranties and representations, expressed by statute or otherwise, are hereby expressly excluded.

17.3. To the extent permitted by law, the Contractor shall not be liable to the Customer for any injury, harm, loss, damage, costs, expense or other claim including economic loss or loss of profits however arising from the supply of the Goods and/or Services or arising from any breach, default or negligence of the Contractor in connection with the supply of the Goods and/or Services.

18. FORCE MAJEURE

18.1. The Contractor will have no liability to the Customer in relation to any loss, damage or expense caused by the Contractor's failure to supply the Goods and/or Services as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, vandalism, crime, strike, lockout, breakdown, war, the inability of the Contractor and/or the Contractor's normal suppliers to supply the necessary materials or any other matter beyond the Contractor's control.

19. CONFIDENTIALITY

19.1. The parties shall, except for legal and other advisors or as required at law, keep strictly confidential between them all information shared under the Agreement.

20. DISPUTE RESOLUTION

20.1. Any disputes between parties arising from the performance of provisions of the Agreement and/or the Invoice must be attempted to be settled between the parties by an authorised representative with authority from each party meeting within fourteen (14) days of notification of a dispute in writing from one party to the other party. Such a meeting is to take place within the state of South Australia at a place nominated by the Contractor.

20.2. If the meeting referred to at clause 20.1 above does not result in settlement of the dispute between the Contractor and the Customer, the dispute may then be referred to mediation, if agreed by both parties. The Mediator is to be appointed by agreement between the parties and in the event that the parties agree to mediate but cannot agree to the mediator to be appointed then the mediator is to be appointed by the then current President of the Law Society of South Australia. The costs of any mediation are to be borne equally between the Contractor and the Customer.

20.3. If the dispute cannot be settled through mediation, or the parties do not both consent to a mediation, then either party is at liberty to commence legal proceedings.

20.4. During the period in which the dispute is being resolved, the parties must continue to perform all of the provisions of the Agreement which are not under dispute.

21. ASSIGNMENT

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- 21.1. This Agreement shall not be assigned by either party without prior written consent of the other party with such consent not to be unreasonably withheld.
- 21.2. Any consent that may be given by the Contractor may be granted or withheld in the Contractor's absolute discretion and shall not at any time constitute a waiver of the Contractor's rights and interests under this Agreement.
22. **GUARANTEE**
- 22.1. The person signing this Agreement on behalf of the Customer hereby guarantees the payment of all monies that become due and payable under this Agreement. This Guarantee will continue following the termination of this Agreement until all monies owing to the Contractor are paid in full.
23. **INTELLECTUAL PROPERTY AND COPYRIGHT**
- 23.1. The Customer acknowledges that Intellectual Property of the Contractor is used to provide the Goods and/or Services. The Intellectual Property is the absolute property of the Contractor and will at all times be owned and controlled by the Contractor and is protected by copyright, trademarks and intellectual property laws in Australia. Any use of the Intellectual Property by the Contractor can only occur with the prior written authority of the Inspector.
- 23.2. Copyright in all documents produced by the Contractor for the Customer is owned by the Contractor.
- 23.3. Except where expressly authorised by the Contractor the use of the documents produced as part of the Goods and/or Services, or as permitted under the *Copyright Act 1968* (Cth), no documents provided to the Customer by the Contractor may be reproduced, adapted, provided and/or sold to a third party (unless in the ordinary course of business of the Customer), distributed or transmitted in any form by any process, without the specific prior written consent of the Contractor.
24. **GST AND OTHER TAXES**
- 24.1. The Customer must pay to the Contractor GST on the Goods and/or Services as is required by the Australian Taxation Office as well as any other taxes, duties, fees and levies for the Goods and/or Services supplied that may be applicable. The amount the Customer owes the Contractor will be stated in the Invoice to the Customer.
25. **GENERAL MATTERS**
- 25.1. This Agreement contains the entire agreement between the Contractor and the Customer. The parties agree that any negotiations that led to this Agreement have been accurately incorporated in this Agreement.
- 25.2. In entering into this Agreement the parties hereby acknowledge that they have not made any warranties or representations to each other except as incorporated in this Agreement.
- 25.3. This Agreement is governed by the laws of South Australia and the parties submit to the exclusive jurisdiction of the Courts of South Australia.
- 25.4. The Customer acknowledges that any and all Intellectual Property relation to the Goods and/or Services remains the sole and exclusive property of the Contractor.
- 25.5. If any part of this Agreement is found to be void, voidable or not enforceable, that part shall be struck out without affecting or eroding the enforceability or validity of the remaining parts and such severance shall not detract from the obligations each party has under this Agreement.