

# TERMS OF TRADE

Between Height Safety Engineering Limited and the Customer

Date of Contract:

Contract Reference:

Customer Details	Height Safety Engineering Limited
Name	Name <b>Height Safety Engineering Limited (Company)</b>
Address	Address 52 Sunset Road ROTORUA 3015
Phone	Telephone 0275 66 3255
Fax	Email shirley@heightsafety.co.nz
Email	Website: www.heightsafety.co.nz

## Background

By requesting the Company to supply goods and services to the Customer, the Customer acknowledges and agrees that:

- (i) These Terms will apply to each contract for the supply of goods or services by the Company to the Customer and, where applicable, the provision of any incidental services under such contract; and
- (ii) These Terms form part of each contract with the Customer as if these Terms were set out or implied therein in full.

## Customer's Key Personnel

Name/s	
Position/s	

Signed for and on  
behalf of the  
Customer by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

Signed for and on  
behalf of Height Safety  
Engineering Limited by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

These Terms between the Customer and Height Safety Engineering Limited consist of this cover page together with the attached Standard Terms and Conditions. To accept, please sign and return to Height Safety Engineering Limited via post to Shirley Collins, Height Safety Engineering Limited, 52 Sunset Road, Rotorua, NZ or email Shirley@heightsafety.co.nz.

## HEIGHT SAFETY ENGINEERING LIMITED TERMS AND CONDITIONS OF TRADE

### DEFINITIONS

**Company:** means Height Safety Engineering Limited at Rotorua.

**Customer:** means the person's name on the front page of these Terms or the Customer under the relevant contract with the Company to which these Terms apply.

**goods or services:** All goods, services and advice provided by the Company to the Customer and including without limitation all charges for the manufacture, design, product development, fabrication, installation, repairs, maintenance and development of machinery and equipment; and all charges for labour, hire, insurance, or any fee or charge associated with the supply of goods or services by the Company.

**Order:** An agreement between the Company and the Customer for the Company to supply goods or services to the Customer.

**Quote:** A written offer from the Company to the Customer to supply goods or services for a specified price subject to the terms and conditions of such offer.

**Security Interest:** As defined in section 17 of the Personal Property Securities Act 1999 (PPSA).

**Terms:** means these standard Terms and Conditions of Trade, together (where attached) with the front page of this contract.

**TERMS AND CONDITIONS:** The Company will supply goods or services to you the Customer on these Terms only, unless the Company agrees otherwise in writing. The Company may amend these Terms from time to time. The Company is under no obligation to accept all or any of the Customer's Orders.

**ORDERS, QUOTES, AND ESTIMATES:** The Company may decline in whole or in part any Orders at its sole discretion.

Where these Terms are at variance with the Order or instruction from the Customer these Terms will prevail.

A Customer's acceptance of a Quote constitutes an agreement to purchase goods or services on these Terms.

Quotes are prepared from the information supplied to the Company by the Customer. The Company will not be liable nor will the Company be bound by the Quote where either the supplied information is inaccurate or any information is omitted and/or any variations made by the Customer which results in the work being different from that quoted.

When goods are required in addition to the Quote the Customer agrees to pay the additional costs of such goods.

An estimate for price or quantities is not binding on the Company. The Company will hold the Quote fixed for three months from the date of the Quote. The Company may charge any cost increases at the end of the three month period.

The Company may charge any increased cost from the date of the Quote caused by any alteration or modification requested by the Customer after the date of the Quote or any increase in freight costs.

The Quote must be accepted by the Customer in writing within 30 days unless the Company advises the Customer in writing that it has been withdrawn. Once the Customer has accepted a Quote the Customer may not cancel it without the Company's written consent. If the Company does provide its written consent to cancel, the Customer will be liable to refund to the Company all costs and expenses incurred by the Company in filling the Order up to the date of cancellation.

**PAYMENTS:** Unless otherwise agreed, payment for goods and services are to be paid to the Company by the 20<sup>th</sup> day of the month following the date of the Company's invoice (*Due Date*).

Overdue accounts will incur interest at a penalty rate of 2.5% per month from the Due Date and the Company reserves the right to suspend further delivery of goods and services until the Customer's account is paid in full.

Any expenses, costs and disbursements incurred by the Company in recovering any outstanding monies including debt collection agency fees or solicitor costs will be paid by the Customer.

Receipt of a cheque does not constitute payment until such cheque has been cleared by the bank.

The Company may require a deposit be paid by the Customer, at the sole discretion of the Company.

By agreement between the parties progress payments may apply to large contracts.

The ownership and property of all the goods delivered by the Company will remain with the Company until payment has been received in full. If payment is not received under these Terms by the Due Date the Company will be entitled to take possession of the goods and hold them until payment in full has been received.

**PRICE:** Prices quoted are excluding GST unless otherwise stated and all goods sold are subject to GST. Unless otherwise advised prices quoted are on an "ex warehouse" basis and freight charges are in addition to any pricing for goods.

The Company's prices are subject to alteration without notice and the price payable by the Customer for the goods Ordered will be the price agreed to between the Company and the Customer or in the absence of such agreement the price prevailing at the date the goods are dispatched. The Customer should confirm prices before Ordering.

**DELIVERY:** The Company will deliver the goods to the address stated on the front page of this contract.

While every effort will be made to ensure that delivery of goods is on time, the Company will not be in any way responsible for any damages or consequential loss (direct or indirect) arising from any delay in delivery.

The Customer must notify the Company if the Customer does not receive any order within seven working days. This is to enable the Company to re-supply the order and contact the freight company concerned in order to process a claim within the courier's claim period. If the Customer fails to give notice within such period then the Company may require the Customer to pay for the goods even if the Customer has not received the goods.

**RISK AND INSURANCE:** The Customer will inspect the goods on delivery and will within five days of delivery notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Customer will afford the Company an opportunity to inspect the goods within a reasonable time following notice and before any use is made of them. If the Customer fails to comply with these provisions the goods will be conclusively presumed to be free from any defect or damage, which would be apparent on a reasonable examination of the goods, and the Customer will be deemed to have accepted the goods.

The goods remain at the risk of the Company until delivery to the Customer.

**PROPERTY:** The Company retains ownership of all the goods until full payment is received and the Customer acknowledges this by signature of these Terms.

Until property in goods passes to the Customer, the Customer holds the goods as the Company's bailee and agent for the Company, and the Company (and its employees and agents) may, without prior notice, enter upon any land or premises where the Company believes the goods are kept in order to inspect the goods. The Customer must store the goods so they can be identified separately from the Customer's own goods. The Company authorises the Customer, in the ordinary course of the Customer's business, to use the goods or resell them for full consideration. Such authority will be immediately revoked if the Company notifies the Customer in writing of the same.

**SECURITY INTERESTS:** These Terms create a Security Interest under the PPSA in favour of the Company in all of the Customer's present and after acquired property (including goods, money, accounts receivable, intangibles, negotiable instruments, documents of title and investment securities) to the value of any debt owed by the Customer to the Company.

The Customer acknowledges that the Company may at any time register a Financing Statement on the Personal Property Securities Register (PPSR) to protect the Company's Security Interest described above.

The Customer agrees to do all acts necessary and provide the Company on request all information the Company required to register such a Financing Statement. The Customer waives all rights to receive a copy of any verification of a Financing Statement.

The Customer authorises the Company to search the PPSR at any time for any information about the Customer or any related entity.

**DISPUTES AND RETURN OF GOODS:** If a portion of the Customer's account is under dispute the remaining balance must be paid in full and the nature of the dispute is to be brought to the Company's attention within 14 days or sooner.

Goods returned for credit must be received within 14 days after purchase.

Shortages or damaged goods must be advised within 48 hours of delivery. The Customer will bear all costs of return and the conditions of the goods returned must be in a re-sellable condition. Procured goods (i.e. cut lengths or custom made items) are not returnable. Returned goods may be subject to a handling fee. All relevant documentation must accompany returned goods, (i.e. packing slip). All claims for freight are conditional to damage being endorsed on the consignment note.

**FORCE MAJEURE:** The Company will not be liable for failure to perform its obligations if the failure arises from circumstances beyond the Company's reasonable control, including but not limited to fire, explosion, strikes, lock-outs or any other industrial disputes, secondary boycotts, failure or refusal of its supplier to supply merchandise, inclement weather, acts of God or Government action.

In no such event will the Customer be entitled to damages of any kind for late performance or failure to perform.

**INDEMNITY:** The Company accepts no indemnification for its products if used outside its design specifications or where the products have been used in an application not recommended or designed by the Company.

The Customer warrants that any design or instruction it requests the Company to follow will not cause the Company to infringe any patent, registered design, Trade Mark, copyright or any other intellectual or industrial right.

Where the Company follows any design or instruction given by the Customer the Customer will indemnify the Company against any damages, penalties, costs and expenses for which the Company may become liable.

**WARRANTIES AND LIMITATION OF LIABILITY:** Goods supplied by the Company are guaranteed for the period of the manufacturer's warranty from the date of delivery against defective materials and workmanship, provided payment for such goods has been completed as above.

The Company warrants that all fabricated goods will substantially conform to written specifications supplied by the Customer.

A claim under these Terms must be made in writing to the Company within the period of warranty from date of delivery of the goods and no claim can be made under these Terms unless and until the price is paid in full. The Customer must also give the Company notice of any defect in the goods within seven days of the defect becoming apparent.

The Company's liability under these Terms will be limited in its sole discretion to:

- (i) Restoring the goods in conformity with the written specifications supplied by the Customer; or
- (ii) Replacing the goods.

Any repairs will be done at such place as the Company specifies and the Customer is responsible for cartage of the goods or parts of the goods as is necessary to and from the place so specified.

The repair of the goods under this Term does not include the cost or removal of defective material and fixing replacement material.

The warranty under this Term does not apply to goods repaired by any person not authorised by the Company and does not apply if the goods are used for purposes other than that for which they were intended.

The Company will be under no liability to the Customer for any indirect loss and/or expense (including loss of profits) by the Customer arising out of a breach by the Company of these Terms.

The Company will not be responsible for any damage whatever caused in the event that goods are fitted, serviced or operated incorrectly or if goods are in any way adapted or used in a manner not intended by or made known to the Company.

The Company's liability is limited to the cost of replacement or the repair of any products supplied so that its total liability will not exceed the price of the goods.

**CONSUMER GUARANTEES ACT:** If the Customer is, or holds itself out as purchasing the goods for the purposes of a business (as defined in the Consumer Guarantees Act 1993) the guarantees implied by the Consumer Guarantees Act 1993 are hereby excluded. If the Customer is purchasing the goods for personal, domestic use or consumption, the Customer's rights under these Terms are subject to the Customer's rights expressly conferred by the Consumer Guarantees Act 1993.

**PRIVACY:** The Customer authorises the Company to collect, retain and use personal information about the Customer (including the information collected in this document) for the following purposes only:

- (i) Assessing the Customer's creditworthiness;
- (ii) Disclosing to a third party details of this application and any subsequent dealing it may have with the Customer for the purpose of recovering amounts payable by the Customer and providing credit references; and
- (iii) Credit checks.

**CANCELLATION:** If the Customer cancels an Order after acceptance of the Quote or Order confirmation, the Customer will be responsible for an administration fee together with the full cost of the goods or such parts of the goods for which the Company has committed to pay.

**COPYRIGHT AND INTELLECTUAL PROPERTY:** The Company owns and has copyright in all designs, data, products, specifications and software produced by the Company in connection with the goods and services provided pursuant to these Terms.

The Customer may use the goods and services only if paid for in full and for the purpose for which they were intended and supplied by the Company.

**CONSTRUCTION CONTRACTS ACT 2002:** The Company reserves the right to invoke the Construction Contracts Act 2002 in respect of any supply pursuant to these Terms to which the Construction Contracts Act 2002 may apply.

**APPLICABLE LAW:** This Agreement is to be interpreted and enforced in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.