
Staybrite Stainless Fabricators - Terms & Conditions of Trade

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "SSF" means Staybrite Stainless Fabricators (2015) Limited T/A Staybrite Stainless Fabricators, its successors and assigns or any person acting on behalf of and with the authority of Staybrite Stainless Fabricators (2015) Limited T/A Staybrite Stainless Fabricators.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting SSF to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by SSF to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between SSF and the Customer in accordance with clause 2 of this Contract.

2. Price and Payment

- 2.1 The Price shall be as indicated on invoices provided by SSF to the Customer in respect of the Goods supplied.
- 2.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation, or any other order forms. If no time is stated, then payment will be due seven (7) days following the date of the invoice.
- 2.3 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by SSF nor to withhold payment of any invoice because part of that invoice is in dispute.
- 2.4 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to SSF an amount equal to any GST SSF must pay for any supply by SSF under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

3. Risk

- 3.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 3.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, SSF is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SSF is sufficient evidence of SSF's rights to receive the insurance proceeds without the need for any person dealing with SSF to make further enquiries.

4. Title to Goods (Including any incidental items supplied as part of any Services)

- 4.1 SSF and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid SSF all amounts owing to SSF; and
 - (b) the Customer has met all of its other obligations to SSF.
- 4.2 Receipt by SSF of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 4.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 4.1 that the Customer is only a bailee of the Goods and must return the Goods to SSF on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for SSF and must pay to SSF the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for SSF and must pay or deliver the proceeds to SSF on demand.
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of SSF and must sell, dispose of or return the resulting product to SSF as it so directs.
 - (e) the Customer irrevocably authorises SSF to enter any premises where SSF believes the Goods are kept and recover possession of the Goods.
 - (f) SSF may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of SSF.
 - (h) SSF may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

5. Personal Property Securities Act 1999 ("PPSA")

- 5.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and

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- (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to SSF for Services – that have previously been supplied and that will be supplied in the future by SSF to the Customer.
- 5.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SSF may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, SSF for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of SSF.
- 5.3 SSF and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 5.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 5.5 Unless otherwise agreed to in writing by SSF, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 5.6 The Customer shall unconditionally ratify any actions taken by SSF under clauses 5.1 to 5.5.
- 5.7 Subject to any express provisions to the contrary (including those contained in this clause 5), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

6. Default and Consequences of Default

- 6.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SSF's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 6.2 If the Customer owes SSF any money the Customer shall indemnify SSF from and against all costs and disbursements incurred by SSF in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SSF's collection agency costs, and bank dishonour fees).
- 6.3 Further to any other rights or remedies SSF may have under this Contract, if a Customer has made payment to SSF, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by SSF under this clause 6 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.

7. Security and Charge

- 7.1 In consideration of SSF agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 7.2 The Customer indemnifies SSF from and against all SSF's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SSF's rights under this clause.
- 7.3 The Customer irrevocably appoints SSF and each director of SSF as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 7 including, but not limited to, signing any document on the Customer's behalf.

8. Privacy Policy

- 8.1 All emails, documents, images or other recorded information held or used by SSF is Personal Information as defined and referred to in clause 8.3 and therefore considered confidential. SSF acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). SSF acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by SSF that may result in serious harm to the Customer, SSF will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 8.2 Notwithstanding clause 8.1, privacy limitations will extend to SSF in respect of Cookies where transactions for purchases/orders transpire directly from SSF's website. SSF agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to SSF when SSF sends an email to the Customer, so SSF may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via SSF's website.
- 8.3 The Customer authorises SSF or SSF's agent to:
- (d) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
- 8.4 Where the Customer is an individual the authorities under clause 8.3 are authorities or consents for the purposes of the Privacy Act 1993.

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- 8.5 The Customer shall have the right to request SSF for a copy of the Personal Information about the Customer retained by SSF and the right to request SSF to correct any incorrect Personal Information about the Customer held by SSF.
- 9. General**
- 9.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 9.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand in which SSF has its principal place of business, and are subject to the jurisdiction of the courts of New Zealand.
- 9.3 Where applicable, nothing in this Contract is intended to have the effect of contracting out of the Consumer Guarantees Act 1993 (CGA). SSF shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by SSF of these terms and conditions (alternatively SSF's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 9.4 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 9.5 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.