

# TRUFOLD PRODUCTS (2021) LIMITED

## TERMS OF TRADE

### 1. GENERAL

1.1 These Terms of Trade (**Terms**) govern the supply by Trifold Products (2021) Limited (**our, us or we**) to you (referred to as the **Customer, you or your**) of Work from time to time. By placing an order for Work with us, or engaging us to provide Work, you are deemed to have agreed that all Work is supplied subject to these Terms.

### 2. DELIVERY AND RISK

2.1 Ownership of Goods supplied by us will not pass to you until we receive payment in full and you have performed all of your other obligations under these Terms.

2.2 Delivery will occur and risk passes to you when:

- (a) you (or a person nominated by you) collect the Goods from us at our site; or
- (b) or when the Goods are loaded by a carrier at our site for delivery to you; or
- (c) when the Goods are loaded on our trailer if we have agreed to deliver them to you, whichever is the earlier.

2.3 You must pay to us all third party freight costs. We may hold the benefit of the carrier's insurance policy (**Carrier's Policy**) (currently capped at a maximum of \$2,000) in relation to the delivery of any Goods arranged by us with a third party carrier. We will pass through to you any amounts we recover under the Carrier's Policy in the event that loss or damage occurs to the Goods while in the possession of the carrier. Any loss or damage beyond this amount is at your sole risk.

### 3. PRICE

3.1 Unless otherwise agreed, the price for the Work and/or any Goods will be the price stated in our standard price list. All prices are expressed in New Zealand dollars and exclude GST. GST is payable in addition to the price.

### 4. PAYMENT

4.1 We may require you to pay a deposit, being an advanced payment for the Work, before we commence the Work.

4.2 You must pay for the Work in accordance with the payment terms in our invoice or, if no payment terms are set out, by the 20<sup>th</sup> of the month following the month of invoice (**Due Date**). Payment of all money must be in full without any set-off or deduction of any kind.

### 5. DEFAULT

5.1 If payment is not made on the Due Date we may:

- (a) suspend or withhold the provision of Work until payment is made in full; and/or
- (b) suspend providing Work to you on credit. This cessation does not relieve you for amounts owing up to the date on which we suspend the Work; and/or
- (c) charge default interest at the rate of 20% per annum calculated on a daily basis from the Due Date until the date payment is made.

### 6. PERFORMANCE OF WORK

6.1 We will:

- (a) perform the Work with reasonable skill, care and diligence in a professional manner;
- (b) endeavour to ensure that the Work is performed in accordance with any timeframes agreed with you; and
- (c) liaise with you during the course of performing the Work in accordance with your reasonable requirements.

6.2 You must give reasonable assistance to enable us to perform the Work by:

- (a) giving clear instructions which may be required in writing;
- (b) if applicable, ensuring that you (or a person nominated by you) deliver to us any Customer Products required for performance of the Work by the agreed or specified date(s), unless we agree otherwise;
- (c) if applicable, ensuring that we have clear and free access to your sites on or before the agreed or specified date(s) to enable us to collect any Customer Products necessary to undertake the Work, unless we agree otherwise; and/or
- (d) promptly providing us with any information we may require from you for us to complete the Work.

6.3 If we have given a timeframe for completion of Work, unless agreed in writing to the contrary, such timeframe is approximate only and is not deemed to be of essence of the contract.

### 7. CUSTOMER PRODUCTS

7.1 Where you supply any Customer Products for coating, you must ensure, unless otherwise agreed, that those Customer Products are in a condition and state suitable for the Work to be carried out without the need for us to undertake any additional cleaning, surface preparation, damage repair, drilling of pre-treatment drain holes (especially for gates) or other preparatory work (**Preparatory Work**).

7.2 Any Preparatory Work we have to do prior to commencing the Work will be charged as an extra cost and will be payable by you in addition to the price. We will consult with you before carrying out any such Preparatory Work.

7.3 We will not be liable for any loss, damage or delay that arises out of, or in connection with, your failure to comply with clause 7.1. You agree to indemnify us for any loss or damage incurred by us as a result of your breach of clause 7.1.

7.4 All Customer Products stored at our site are stored at your sole risk. We will not be responsible for any loss, damage or deterioration of any kind caused to such Customer Products.

### COLOUR SELECTION

When placing an order, you must notify us of your powder selection. All powder selections must be made using the Dulux SpecMap (which can be found here <https://duluxpowders.co.nz/specmap/>) and must be accompanied by the corresponding colour code.

If you do not provide a colour code with your colour selection, we will carry out the Work using Dulux Duralloy Matt powder.

We accept no responsibility or liability for any dissatisfaction or claims arising from the application of a default colour option due to your failure to specify the relevant colour code.

You acknowledge that there can be variations between powder batches. It is therefore important to notify us of large and ongoing jobs and we can secure bulk powder from the same batch.

### PERSONAL PROPERTY SECURITIES ACT (PPSA)

These Terms create a security interest in any Goods we may supply to you as part of the Work as security for payment of amounts invoiced to, and owing you, to us. You agree to:

- (a) Grant us a first-ranking, perfected security interest in the Goods;
- (b) not grant any other security interest or lien over the Goods;
- (c) allow us access to your premises to uplift the Goods;
- (d) provide us with notice of a proposed change of your name or address; and
- (e) indemnify us for all costs/losses we may incur from recovery and removal of the Goods.

If any Goods that we have a security interest dealt with in any way causing them to be accessions, processed or commingled goods, our security interest will continue in the whole of which they are included. You agree to waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA. You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA) but we may provide a copy on request.

### LIEN

We are entitled to exercise a general lien over all items in our possession belonging to you until you have paid in full for all Work supplied by us to you (and any other amounts you may owe to us from time to time) in accordance with these Terms. We may sell any item subject to a lien, provided that we pay to you any surplus proceeds that are realised by us from such sale after discharging, in full, all monies outstanding to us in respect of any unpaid Work (or other amount owing to us). The lien claimed by this clause is additional to, and not in substitution for, any other lien right that may be available to us at common law or under the Contract and Commercial Law Act 2017 (**CCLA**) and is not to be interpreted as abrogating those rights in any way. We reserve the right to elect, where necessary, whether to rely on the lien rights contained in this clause, or any rights available to us at common law or under the CCLA.

### WARRANTIES

Any manufacturer or third-party supplier warranty must be applied for in advance. Where we have agreed to provide, or facilitate the provision of, a manufacturer's or third-party supplier's warranty in respect of any Goods (including coating products), you:

- (a) acknowledge that you have been provided with all relevant warranty documentation and have read and understood its terms; and
- (b) agree to comply with all of your obligations under the warranty documentation and to take all other actions that may be necessary to ensure that the warranty remains valid for the entire warranty period.

Subject to the exclusions set out in these Terms, we warrant that:

- (a) all Work will be carried out in a professional and workmanlike manner;
- (b) our workmanship in relation to the application of coating;
- (c) products will be free from defects for a period of 12 months from the date of application;

provided that you have followed Dulux's guidelines for wash and care. The warranty provided in clause 11.2(c) applies only to the application of coating products to Clean aluminium that can be processed in our pretreatment dip tanks located at our Tauranga site. For the avoidance of doubt, the warranty will not apply to:

- (a) the application of coating products to any other substrate, or to pre-coated aluminium (not initially coated by us); or
- (b) Clean aluminium that exceeds the size limitations of our dip tanks and anything which is etch primed.

We make no representations or warranties in relation to any variation in the look of any Goods supplied by or to us that are anodised including but not limited to, any variation:

- (a) in colour, shade or surface pattern; or
- (b) between different batches of the Goods.

Our warranties are limited to those set out in these Terms or as provided in any separate written agreement signed by us. Any and all other conditions, guarantees, warranties or representations which might otherwise be implied by law, trade, custom or otherwise are expressly excluded to the maximum extent permitted by law. In particular, and without limitation:

- (a) the guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire Goods and/or services from us for the purposes of a business in terms of sections 2 and 43 of that Act; and

	(b)	where you are in trade (as defined in the Fair Trading Act 1986) sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply.	17.2	Where any dispute remains unresolved within 20 working days of written particulars being given, either party is free to seek resolution of the dispute by whatever means available at law.
			17.3	This clause does not apply to:
12.		<b>LIMITATION OF LIABILITY</b>		(a) any dispute arising in connection with any attempted renegotiation of these Terms; or
12.1		Except to that extent that the law prevents us from excluding liability, we will not be liable for any loss, damage or liability of any kind whatsoever (including indirect or consequential loss or loss of profit) suffered by you in connection with these Terms or the supply of Work.	17.4	(b) an application by either party for urgent interlocutory relief.
12.2		To the extent that we are found liable for any reason for any loss suffered or liability incurred by you arising under or in connection with these Terms or any other reason, whether suffered in contract, tort (including negligence), equity or otherwise is limited to the amount paid by you for the Work performed or Goods (including coating products) supplied.	18. 18.1	Pending resolution of any dispute the parties will perform these Terms in all respects including performance of the matter which is the subject of dispute but a payment due may be withheld if it is in dispute.
12.4		Where any part of the Work is supplied by any third-party contractor engaged by us, we will not be liable for any loss or damage caused by that third party contractor in relation to that part of the Work supplied.	18.2 18.3	
13.		<b>DEFECTS</b>		<b>GENERAL</b>
13.1		Where you have collected and removed the Goods from our site, you agree that the Goods and the Work are free of any defect. If we deliver the Goods to you then on delivery, you must inspect the Work and/or Goods and notify us within 7 days of any alleged defect (with the exception of Latent Defects which remain our obligation for the relevant period), fault, failure or damage. If you do not notify us within this period, you will be deemed to have accepted the Work and/or Goods and no claim may be made in respect of that Work and/or those Goods.	18.4 18.5 18.6	We may vary any provision of these Terms and you will be bound by such variation following notice from us.
13.2		We may, at our discretion, and as your sole remedy, repair or replace any defective Goods or re-perform any defective part of the Work, or refund the amount of the Work and/or Goods, provided that clause 13.1 has been complied with and further provided that:	18.7	You must pay us costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms.
	(a)	you must supply the date and number of any invoice relating to the Work;	18.8	If any of these Terms is held to be invalid, void, unenforceable or illegal for any reason, such provision must be deemed to be severed from these Terms and the remaining provisions must continue in force.
	(b)	we must have a reasonable opportunity to inspect the Work complained of; and	19. 19.1	A failure or delay in enforcing a right pursuant to these Terms is not a waiver of that right. Any waiver must be in writing and signed by the party granting the waiver.
	(c)	we will not be responsible for any damage or defect caused by your negligence, faulty workmanship or goods supplied by third parties, or unintended use of the Goods or failure to maintain the Work in accordance with our stated or recommended instructions or requirements.		You must not assign or subcontract any of your rights, powers or obligations under these Terms without our prior written consent.
14.		<b>DEFAULT AND TERMINATION</b>		We are not liable to you for any defect, loss, damage or delay if the caused is beyond our control.
14.1		If we reasonably believe that you:		These Terms will be governed by the laws of New Zealand and are subject to the exclusive jurisdiction of New Zealand.
	(a)	are in breach of your obligations under these Terms;		These Terms apply in preference to any terms supplied by you. Except as may be set out in a separate written and signed agreement between you and us, these Terms represent the entire agreement of the Parties in relation to the supply of Work.
	(b)	have committed an act of bankruptcy, have a receiver or manager appointed or are declared insolvent;		<b>DEFINITIONS</b>
	(c)	have sold, parted with possession or disposed of any Goods or do anything inconsistent with our ownership of the Goods prior to making payment in full to us;		In these Terms, unless the context indicates otherwise:
	(d)	place the Goods at risk (as defined in the PPSA), we may (in addition to any other remedies we may have under these Terms or at law):		<b>Clean</b> means surfaces that are free from prior coatings, oils, surface contaminants or defects.
	(e)	cancel this agreement and enforce our security interest under clause 9;		<b>Goods</b> means any products supplied by us to the Customer.
	(f)	employ the services of a debt collection agency or similar to recover any outstanding payments, the cost of which will be payable by you; or	20. 20.1	<b>GST</b> means goods and services tax chargeable or for which a person may be liable under the Goods and Services Tax Act 1985.
14.2	(g)	immediately terminate these Terms by notice in writing to you.		<b>Latent Defect</b> means a defect in coating application workmanship believed to be present at the time of delivery that could not have been discovered by a reasonably thorough inspection at that time and such discovery is made up to 12 months after the date of application.
		Termination or cancellation under these Terms will not affect the rights, powers, remedies, obligations, duties and liabilities of either Party which have accrued before termination.		<b>Customer Products</b> means any items or raw materials (including but not limited to metal, wood, plastic, or composite materials) or other products supplied by you to us in order for us to perform the Work.
15.		<b>NOTICES</b>		<b>Parties</b> means us and the Customer and "party" means either one of us or the Customer.
15.1		Any notice may be given in person or sent by email (or where you are a company, to any of its directors, agents or employees at the Customer's address).		<b>Work</b> means our performance of services for you, and the production or supply of any Goods by us as part of, or related to, such services, as agreed between us from time to time.
16.		<b>PRIVACY OF INFORMATION AND AUTHORISATIONS</b>		<b>working day</b> means any day other than a Saturday or Sunday or Public Holiday observed in New Zealand.
16.1		You authorise us to:		<b>INTERPRETATION</b>
	(a)	collect, retain and use information about you from any person for the purpose of assessing your creditworthiness; and		In these Terms, unless the context indicates otherwise:
	(b)	disclose information about you:		(a) Terms given a defined meaning have that meaning where the context permits.
	(i)	to any person who guarantees ( <b>Guarantor</b> ), or who provides insurance, or who provides any credit support, in relation to your obligations to us; or		(b) Words referring to the singular include the plural and vice versa.
	(ii)	to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of its rights, remedies and powers under these Terms.		(c) Any reference to any of the Parties includes that party's executors, administrators or permitted assigns.
16.2		Where you and/or your Guarantor(s) are an individual, the authorities under clause 16.1 are authorities or consents for the purposes of the Privacy Act 2020.		(d) Everything expressed or implied in these Terms of Trade which involves more than one person binds and benefits those people jointly and severally.
16.3		You and/or your Guarantor(s) shall have the right to request a copy of any information that we hold about you and/or your Guarantors and the right to request correction of any incorrect information.		(e) Clause headings are for reference purposes only.
17.		<b>DISPUTE RESOLUTION</b>		(f) A reference to a person includes any other entity or association recognized by law.
17.1		Where any dispute arises in connection with these Terms the complaining party must promptly give full written particulars of the dispute to the defaulting party. The Parties must then endeavour to meet and resolve the dispute in good faith.		(g) All references to dollars and \$ are references to New Zealand dollars unless otherwise stated.
				(h) All periods of time or notice exclude the days on which they are given and include the days on which they expire.
				(i) Except as expressly provided in these Terms, time is of the essence.