

ACCOUNT APPLICATION / TERMS OF TRADE

Juralco Aluminium Building Products Limited

Juralco Auckland

PO Box 21867, Henderson, Auckland 0650

48 Bruce McLaren Road, Henderson, Auckland 0612

Phone: (09) 478 8018 Email: accounts@juralco.co.nz



JURALCO

Juralco Christchurch

PO Box 6470, Upper Riccarton, Christchurch

Unit 1, 25 Baigent Way, Middleton, Christchurch 8024

Phone: (03) 961 6952 Email: accounts@juralco.co.nz

Customer Name:		
Trading As:		
NZBN:		
Postal Address:		
Physical Address for Deliveries:		
Phone Number:		
GST Number:		
Key Contact:		
Key Contact Email:		
Accounts Contact Name:		
Email address for Accounts:		
Email address for Dispatch Confirmations:		
Opt-in to Marketing and Price Updates: YES NO	Email:	

Trade References

Company	Contact Name	Email	Account open since
1.			
2.			
3.			

The Customer warrants and declares that:

- (a) The above information is to the best of its knowledge, information and belief true and correct.
(b) It has read the attached terms and conditions and understands the nature and extent of its obligations under both documents, and has sought before signing these terms, or will seek if it considers necessary, independent legal advice.

Agreement:

In consideration of Juralco Aluminium Building Products Limited providing the products at the request of the Customer and the Guarantor you agree to the terms and conditions attached and acknowledge you are bound by such terms.

Dated: / /		
Signed: (Juralco Aluminum Building Products Limited)	Signed: (Customer)	Signed: (Guarantor)
Name:	Name:	Name:

1. What is the purpose of this agreement?

- 1.1 This agreement sets out the terms that apply to the relationship between you (and "your") and **Juralco Aluminium Building Products Limited** ("we", "us" and "our").
- 1.2 Signing these terms or otherwise instructing us to provide services or products constitutes acceptance of these terms and conditions.

2. What information about you can we collect?

- 2.1 You agree that we may collect, retain and use information about you (collected directly from you and from others) for the purposes of:
- (a) assessing your creditworthiness;
 - (b) sending invoices to you and to recover money owed to us, associated companies or contractors;
 - (c) marketing any of our products, unless you tell us not to;
 - (d) exercising or enforcing any right that we have under this agreement or at law.
- 2.2 You authorise us to disclose any information obtained for the purposes set out in clause 2.1, including sharing it with associated companies, contractors and with credit reference agencies and collection agencies.
- 2.3 You may ask to see any information held by us as long as it is readily retrievable and you may ask for any details that are wrong to be corrected.

3. What are our products and services?

- 3.1 "Products and services" and "product(s)" means and includes, without limitation, all goods and inventory (whether separate, attached to something or performed work on), services and out of pocket expenses provided to you by us and identified:
- (a) in any account, financial agreement, application, order form, packing slip, email, supply request, estimate, invoice, statement, payment claim or other document issued by us to you, which are deemed to be incorporated into and form part of our agreement with you; or
 - (b) as ours by marking or a manner of storage enabling them to be identified as ours.

4. What is the price?

- 4.1 The price is the cost of the products and services as agreed between you and us from time to time subject to GST and out of pocket expenses. You agree to reasonable changes in the price at any time.
- 4.2 If no price is stated in writing or orally agreed, the products and services will be deemed to be provided at the cost that we provide those products and services at the time of the transaction.

5. What happens when we give you an estimate?

- 5.1 When we give you an estimate for products and services:
- (a) unless otherwise agreed or withdrawn in writing, the estimate will be valid for thirty (30) days from the date of issue;
 - (b) unless stated otherwise, the estimate will be exclusive of GST and other taxes;
 - (c) the estimate is subject to change and we have the right to alter the estimate because of circumstances beyond our control, incorrect or inaccurate information or errors; and
 - (d) you agree to pay for extra costs incurred where other products and services are required in addition to the estimate or you request alterations.

6. When and how do you pay us?

- 6.1 You agree to pay us:
- (a) on or before the 20th day of the month following the date of our invoice ("the due date") unless otherwise agreed in writing;

- (b) interest on any amount you owe after the due date at a rate of 2% per month or part month;
- (c) any expenses, including debt collection and legal costs, that we incur as a result of enforcing any of our rights contained in this agreement;
- (d) without set-off, deduction or counterclaim; and
- (e) a deposit where required (to be paid before work commences).

6.2 We may require progress payments and invoice by payment claims under the Construction Contracts Act 2002.

6.3 If you have a credit account with us, our normal conditions of credit as notified by us shall apply.

6.4 We may require a credit card retention for services, the value of which you agree will be deducted from your credit card. All payments by credit card will incur an extra charge of 2.5% of the value of the invoice.

6.5 You agree to us allocating or reallocating any payment received from you towards any invoice. If no allocation is made then it is deemed to be in such a way that preserves the maximum value of our purchase money security interest in the products.

7. What warranties apply?

- 7.1 If you have entered into this agreement in trade, you acknowledge and agree that the provisions of the Consumer Guarantees Act 1993 are expressly excluded and that it is fair and reasonable to agree to such exclusion.
- 7.2 All warranties, guarantees or conditions, express or implied (including any implied warranties under the Contract and Commercial Law Act 2017) that may be excluded by any law of New Zealand or any other country are excluded to the maximum extent permitted by that applicable law.
- 7.3 We will use our reasonable endeavours to assign to you, the benefit of any warranty which we may obtain from suppliers of products we supply.
- 7.4 Samples and illustrations of products shown to you may vary from products provided to you.

8. What liability applies?

- 8.1 We will not be liable for any physical or financial injury, loss or damage, or consequential loss or damage, of any kind including any loss of profits arising out of any defect in the products, or the supply, installation or use of the products, or arising out of our negligence, or in any way whatsoever, to the maximum extent permitted by law.
- 8.2 To the maximum extent permitted by law and notwithstanding anything contained in this agreement, our total maximum liability to you shall not exceed the price paid or payable under this agreement.
- 8.3 We shall not be liable for any failure or delay in performance if it is caused by circumstances beyond our reasonable control, including weather and any labour dispute between our employees. Costs arising from such delay or stoppage will be borne by the party incurring those costs.
- 8.4 You fully and completely indemnify us against any and all claims, actions, suits, proceedings, costs, expenses, damages and liability including legal fees arising out of or connected with or resulting from a breach by you of your obligations under this agreement or as a result of injury to any person or property caused by or in connection with the use by you of the products (including without limitation the manufacture, selection, delivery, possession, use, operation or return of the products) whether arising under statute or common law.

9. How do I make or vary an order?

- 9.1 All orders are subject to these terms. An order from you will only be accepted when made in writing or verbally followed by written

confirmation within seventy two (72) hours. Variations will be accepted subject to reasonable notice. We reserve the right to change product specifications without notice.

- 9.2 If you wish to cancel or vary an order, you must provide written notice to us within seven (7) days of the date of the order. We may refuse to cancel or vary any order if we have reasonably relied on your original instructions for that order. Additional costs may apply.

10. What if you want to return a product?

- 10.1 A no returns policy applies to all products, unless the return is due to:
- (a) fault, and you have notified us within seven (7) days of delivery; or
 - (b) incorrect supply, and you have notified us within seven (7) days of delivery; or
 - (c) transit damage or loss, and you have notified us within three (3) days of delivery; or
 - (d) incorrect pricing, and you have notified us within seven (7) days of receiving the invoice.
- 10.2 Where 10.1 applies, we may repair or replace the product or credit your account (subject to our Customer Credit Notes Policy) at our discretion. You will not be charged for the cost of the replacement product. We do not reimburse any other costs of return such as freight and labour.
- 10.3 Any product the subject of a return must not be destroyed or removed from the delivery address until we have inspected the product or waived such right.

11. What ownership and security rights do we have?

- 11.1 We are the legal and beneficial owner of any products until all amounts owing to us by you have been paid in full.
- 11.2 We own all existing and new intellectual property rights connected to the products and services including where the products have been modified by any party. You fully indemnify us for any intellectual property infringements we may make when acting in accordance with your instructions.
- 11.3 You grant us a continuing security interest any products and all your present and future rights to those products and all proceeds from any sale, loss, theft or other disposition of them as security for payment of all amounts you owe us, and the performance of your obligations, under this agreement ("Security").
- 11.4 We may at your cost register our Security on the Personal Property Securities Register. You must do all things we may require to ensure we have a perfected first ranking Security, including giving us at least 14 days' notice in writing before you change your name or any of your other details.
- 11.5 You waive your right to receive any verification statement, financing statement or financing change statement and you agree that nothing in sections 114(1)(a), 133 and 134 of the Personal Property Securities Act 1999 (PPSA) will apply to this agreement and to waive all your rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 11.6 Unless expressly stated in writing by us, you are responsible for effecting and maintaining insurance in respect of all of the products. You agree that you will protect our interests in the products. In particular, you will put in place appropriate security precautions to protect the products from loss, damage and destruction including arranging suitable insurance, not permitting any other security interest to attach to the products and not changing the physical appearance of the products.
- 11.7 We may at any time, enter your property or any site or premises where the products are located and remove them if we believe they are at risk.

12. What is a personal guarantee?

- 12.1 In consideration for us agreeing to provide the products and services at the Guarantor(s) request (if any), the Guarantor(s)

unconditionally and irrevocably personally undertake as principal debtor to pay everything that you owe us and to indemnify us against non-payment and/or default.

- 12.2 Any personal liability of the Guarantor under 12.1 will not exclude you from the liabilities and obligations contained in this agreement. The Guarantor will be a principal debtor and not a mere surety. The Guarantor will not be released from liability under this clause by the granting of time or indulgence, any amendment to these terms or any other security interest, or any matter whatsoever.

13. When are we responsible for the products?

- 13.1 Until the products are delivered to you. Delivery is complete when we give the products directly to you or another person who will give the products to you or leave them on your premises. We may make partial deliveries of products listed in one order or invoice.
- 13.2 The time and date stated for delivery is an estimate only and is not an essential term of our agreement, though we will use our best endeavours to meet delivery requirements. We will not be responsible for any losses or cost incurred due to delayed delivery.
- 13.3 Where the products are due for delivery and you do not accept delivery, a storage fee may apply.
- 13.4 All risk and the responsibility in relation to the products will shift to you after the products are delivered in accordance with clause 13.1.

14. When may we cancel our agreement with you?

- 14.1 Without prejudice to any of our other rights or remedies under this agreement or at law, if you fail to pay any amount owing to us, or you breach this agreement and the breach is not capable of remedy within seven (7) days, or you become insolvent, commit an act of bankruptcy, enter into or are likely to enter into any arrangement with your creditors or in the case of a company do any act that would render it liable to be liquidated, or if a resolution is passed or proceedings commenced for the liquidation or voluntary administration of you or if a receiver is appointed in respect of all or part of your assets, then:
- (a) we may immediately cancel this agreement and cease the delivery and/or provision of products;
 - (b) any amounts payable by you to us whether due for payment or not, will become immediately due and payable;
 - (c) we may repossess any products without notice; and
 - (d) we may retain all or part of any deposit paid by you to cover our reasonable costs and/or as compensation for the early termination of the agreement.
 - (e) You agree that:
 - i. you will, upon receiving a written request from us and at your own cost and expense, promptly deliver all or any of the products to us. If you fail to deliver the products upon request, we may at any time enter into any place where the products are located and remove the products;
 - ii. we will not be liable for any damage caused by our entry and repossession of the products, and you irrevocably indemnify us and our agents and representatives against any liability, action or claim (including claims made by third parties), made against, or any loss suffered or incurred by, us, arising from any act, such entry and/or repossession;
 - iii. in the case of installed products, we will not be responsible for any damage caused in both entering the premises where the products are thought to be held or in the removal of any installed products;
 - iv. we may sell all or any of the products without giving prior notice of the sale to you;
 - v. you shall immediately notify us of any change in your name, address or contact person details; and
 - vi. if you resell the products or any part of them or if they have become constituent parts of any other products

sold by you before payment is made to us for them, then you shall ensure that you hold the sale proceeds for an account to us.

- (f) You will pay all of our costs and expenses, including any debt collection costs and all legal costs and expenses (on a solicitor/own client basis together with disbursements) as a result of your late payment and/or incurred by us in enforcing or attempting to enforce our rights and remedies under this agreement or at law.

15. What else are you agreeing to?

- 15.1 On occasions we may outsource (contract out) part of work required to produce the products and services. You agree to pay for all amounts due in connection with the outsourcing.
- 15.2 If required by us, you will store a product in such a way that it can be identified as provided by us.
- 15.3 If we fail to enforce any of the terms of this agreement it will not be deemed to be a waiver of any of the rights or obligations we have under this agreement.
- 15.4 If any of these terms are determined to be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining terms will not be affected.
- 15.5 A reference to any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and regulation, order-in-council and other instrument from time to time issued or made under, that legislation.
- 15.6 This is the entire agreement superseding all prior agreements, representations and warranties. Any instructions we receive from you will be subject to this agreement.
- 15.7 If any dispute arises between you and us we must be notified in writing within seven (7) days of delivery. If the dispute relates to delivery then we must be notified in writing within three (3) days.
- 15.8 You agree that all documentation related to this agreement may be served on you by email.
- 15.9 Any general changes to these terms will be published on our website. All other variations to this agreement must be by mutual agreement in writing.
- 15.10 Clauses 7, 8, 11, 12, 14 and all other clauses which by their nature survive termination, shall survive the termination of these terms.
- 15.11 These terms shall be governed by New Zealand Law and you agree to submit to the non-exclusive jurisdiction of the New Zealand courts.