STEELSPAN LIMITED TERMS AND CONDITIONS

1. DEFINITIONS

In these Terms and Conditions:

"**Contract**" means the agreement between Steelspan Limited and the Customer comprising any quotation, estimate, contract, plans, specifications, variations, these Terms and Conditions, and any other documents expressly incorporated by reference.

"**Customer**" means the person, company, trust or other entity named in the quotation or contract.

"**Steelspan**" means Steelspan Limited and includes its successors and assigns.

"**Works**" means the design, engineering, manufacture, supply, construction, erection, installation and completion of any steel-framed building, structure or associated works undertaken by Steelspan.

"**Site**" means the land where the Works are to be performed.

"Substantial Completion" means when any stage of the Works is at least 95% complete.

"**Contract Price**" means the original price agreed as adjusted by any variations, cost fluctuations or provisional sums.

"**Practical Completion**" means the stage when the Works are substantially complete and can be effectively used by the Owner for its intended purpose, notwithstanding that certain non-critical or aesthetic features are yet to be completed or minor omissions and defects are yet to be rectified.

2. APPLICATION OF TERMS

2.1 These Terms and Conditions apply to all Works undertaken by Steelspan.

2.2 Acceptance of a quotation, payment of any deposit, instruction to commence work, or execution of any contract document constitutes acceptance of these Terms and Conditions.

2.3 These terms and conditions take precedence over any conditions imposed by the Customer, including any terms and conditions in the Customer's purchase order, and any prior communications whether written or oral. These terms and conditions may only be varied by written agreement signed by an authorised representative of Steelspan.

3 SCOPE OF WORKS

3.1 Unless expressly referenced as being included in the original price, the Contract Price excludes, geotechnical reports, consents, development contributions, surveying, utility connections, landscaping, drainage works or site preparation.

4. QUOTATIONS AND VARIATIONS

4.1 Quotations remain open for acceptance for 30 days unless otherwise stated.

4.2 Steelspan may adjust the Contract Price to reflect increases in material, labour, freight, fuel, regulatory or subcontractor costs occurring after the quotation date where commencement is delayed through no fault of Steelspan.

4.3 The Customer may request variations to the Works, including additions, omissions or changes to the scope, quality, quantity, location or sequence of the Works.

4.4 Steelspan shall be entitled to charge a variation administration fee equal to the greater of:

(a) $150.00 plus GST; or

(b) 5% of the value of the proposed variation.

This fee is payable whether or not the variation proceeds.

4.5 Wherever practicable, the value of a variation shall be agreed before the varied work is commenced. Failure to agree a price shall not prevent Steelspan from carrying out the variation or recovering its reasonable costs and margin.

4.6 The Customer shall not remove work from the Contract and engage others to perform that work without Steelspan's prior written consent.

4.7 Where urgent work is required to protect persons, property or the Works, Steelspan may carry out such work without prior approval and recover its reasonable costs.

5. CUSTOMER OBLIGATIONS

5.1 The Customer must not unreasonably impede Steelspan in the performance of its obligations. To the extent that the Customer is to supply any products or services in connection with the Works, then Steelspan's prior written consent is required.

6. SITE CONDITIONS

6.1 The Contract Price is based upon site conditions reasonably apparent at the time of quotation.

6.2 If unforeseen ground conditions, including, without limitation, contamination, rock, underground services, unstable ground or other latent conditions are encountered, Steelspan may claim additional costs and extend the time for completion.

7. PAYMENT

7.1 Payment Claims

Steelspan may serve on the Customer payment claims by email or post in respect of:

(a) a deposit; and/or

(b) in respect of any costs and expenses incurred by Steelspan in making an application for, and/or uplifting any consents in relation to the Works, including but not limited to the costs of obtaining such approvals and professional advice, reports, plans, and drawings as may be necessary in the circumstances and all fees, expenses and levies charged by the building consent authority together with Steelspan associated administration and processing costs; and/or

(c) on Practical Completion of the Works; or

(d) on Substantial Completion of any stages of the works, if the works have been separated into stages; or

(e) by way of progress claims during each fortnightly period commencing from the day on which the works were first carried out.

7.2 Due Date

Payment is due without any retention 5 working days following the date of service of our invoices or payment claims ("Due Date").

7.3 Payment Schedules

Any payment schedule must be provided to us no later than 5 working days following the date of service of our payment claim. In the absence of a payment schedule issued within time, the Customer shall not deduct, set-off or withhold any amount.

Any payment schedule must comply with the requirements of the Construction Contracts Act 2002 and may only be sent to Steelspan by way of email to patrick@steelspan.co.nz.

7.4 Default Interest and Costs

If we do not receive payment on the Due Date, then we shall be entitled to claim:

(a) default interest at the rate of 2% per month, which shall accrue on a daily basis on the total amount outstanding from the Due Date until payment in full; and

(b) any legal costs on a solicitor/client basis that we incur incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms and Conditions.

7.5 Suspension

We shall be entitled to immediately and without notice suspend any further work on credit if any payment is not made by the Due Date. Such suspension shall have the same effect and be on the same terms as those set out in section 24A(2) to (5) of the Construction Contracts Act 2002.

7.6 Termination

In the event that any money payable to Steelspan becomes overdue or a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer, then Steelspan shall be entitled to cancel this Contract or suspend or terminate any uncompleted Works in addition to and without prejudice to any other remedies; and all amounts owing to Steelspan shall, whether or not due for payment, immediately become due.

8. EXTENSION OF TIME

8.1 The expected completion date is the date when it is reasonably anticipated at the time Steelspan commences the Works that the Works will achieve Practical Completion. In determining whether the Work has been completed as soon as is reasonably practicable, full allowance shall be made for any delays arising due to:

(a) variations;

(b) inclement weather;

(c) failure to obtain consent or required approval through no fault of Steelspan;

(d) failure by the Customer to give timely directions or to procure timely inputs from designers or other consultants;

(e) unforeseen physical conditions;

(f) act, omission or default by the Customer or any person for whose acts or omissions the Customer is responsible;

(g) unavailability or shortage of materials or subcontractors;

(h) any other event which is beyond the reasonable control of Steelspan.

9. PERSONAL PROPERTY SECURITIES ACT 1999

9.1 Ownership in the products shall remain with Steelspan and not pass to the Customer until the Customer has paid for all products supplied to Site or ordered in full and the Customer has performed all its other obligations under these Terms and Conditions.

9.2 Steelspan shall retain a purchase money security interest in all products sold and delivered to the Customer. Steelspan may perfect its security interest by registering one or more Financing Statements pursuant to the Personal Property Securities Act 1999, in respect to sales by Steelspan to the Customer. These Terms and Conditions constitute a security agreement for the purposes of the Personal Property Securities Act 1999.

9.3 Steelspan may register and maintain one or more financing statements or financing change statements in respect of its security interest.

9.4 The Customer shall promptly execute all documents and provide all information required by Steelspan to perfect, protect or enforce its security interest.

9.5 To the extent permitted by law, the Customer waives its rights under sections 114(1)(a), 116, 120(2), 121, 125, 129 and 131 of the Personal Property Securities Act 1999.

9.6 The Customer waives the right to receive copies of financing statements, financing change statements and verification statements.

9.7 The Customer gives irrevocable authority to Steelspan to enter any premises, where the property is reasonably believed to be located, at any reasonable time, to remove any unfixed goods not paid for in full by the Customer

10. TITLE AND RISK

10.1 Ownership of materials supplied by Steelspan remains with Steelspan until all monies owing have been paid in full.

10.2 If the Customer defaults in payment, Steelspan may enter any premises where its property is located and recover that property.

11. INSURANCE

11.3 Risk of loss or damage to the Works passes to the Customer upon Practical Completion.

12. DEFECTS LIABILITY

12.1 The Customer shall notify Steelspan of any alleged defect within 30 days of becoming aware of it.

12.2 Steelspan shall be given a reasonable opportunity to inspect and remedy any defect for which it is responsible.

12.3 Steelspan warrants that the Works will be carried out with reasonable care and skill and in accordance with applicable laws and building consent requirements.

13. WARRANTIES

13.1 Manufacturer warranties shall apply to materials and products supplied under the Contract.

13.2 The Customer shall comply with all maintenance requirements specified by manufacturers.

13.3 Warranty claims are subject to normal wear and tear exclusions and proper maintenance.

14. LIMITATION OF LIABILITY

14.1 To the maximum extent permitted by law, Steelspan shall not be liable for any delay damages, loss of profits, loss of opportunity, loss of anticipated savings or any indirect or consequential loss.

14.2 Subject to clause 14.3, Steelspan's total aggregate liability arising out of or in connection with the Works, whether arising in contract, tort (including negligence), equity, statute or otherwise, shall be limited to:

(a) 10% of the Contract Price excluding variations; or

(b) the amount recoverable under Steelspan's applicable insurance policies in respect of the relevant claim,

whichever is greater.

14.3 Nothing in this Contract limits liability for fraud, wilful misconduct or any liability that cannot lawfully be excluded.

15. INTELLECTUAL PROPERTY

15.1 The Customer acknowledges that all plans, drawings, specifications, calculations, engineering designs, producer statements, details, schedules and other documents prepared by or for Steelspan are confidential and remain the exclusive property of Steelspan.

15.2 Except with Steelspan's prior written consent, the Customer must not:

(a) copy, reproduce or modify any such documents;

(b) provide them to any third party for the purpose of pricing, tendering or constructing the Works or any substantially similar building;

(c) use them to construct, procure or permit the construction of the Works or any substantially similar building by any person other than Steelspan; or

(d) use them for any purpose other than the completion of the Works by Steelspan under this Contract.

15.3 The Customer receives a non-exclusive licence to use such documents solely for the purposes of the Works.

15.4 The Customer shall not reproduce, disclose or use Steelspan's intellectual property for any other purpose without written consent.

16. DISPUTE RESOLUTION

16.1 The parties shall first attempt to resolve any disputes by good faith negotiation.

16.2 If the dispute is not resolved within 10 working days, either party may refer the dispute to arbitration under the Arbitration Act 1996.

17. PRIVACY

The Customer authorises Steelspan to collect, use and disclose personal information for credit assessment, account administration, debt recovery and business purposes in accordance with the Privacy Act 2020.

18. GENERAL

18.1 New Zealand law governs these Terms and Conditions.

18.2 If any provision is unenforceable, the remaining provisions continue in full force and effect.

18.3 No waiver of these Terms and Conditions shall be effective unless in writing.

18.4 Where the Customer acquires the Works for business purposes, the parties agree that the Consumer Guarantees Act 1993 does not apply.

18.5 **Entire agreement:** These Terms and Conditions, including any variation, records everything agreed between the Parties relating to the Works. It replaces any previous communications, negotiations, arrangements or agreements that the Parties had with each other relating to the Works before the original contract price was agreed, whether they were oral or in writing.

18.6 **No derogatory remarks:** Each Party undertakes not to publicly make objectionable or derogatory comments about the Services, this Contract, the other Party or any of the other Party’s Personnel, and to ensure that its Personnel do not do so.