

# ALCOPANEL NZ LIMITED TERMS OF TRADE FOR PRODUCTS AND SERVICES

## Applicable Terms and Acceptance of Order

These Terms of Trade for Products and Services between ALCOPANEL NZ LIMITED ("Alcopanel") and the Customer (the "Customer") shall apply to our quotation and any specifications or drawings we nominate as forming part of this contract between Alcopanel and the Customer and applies to all orders accepted by Alcopanel or quotations approved by the Customer and that these terms and conditions shall prevail and take precedence over any written document or oral message from the Customer and in the case of conflict or inconsistency these terms and conditions shall prevail. Where Alcopanel fails to enforce any of the terms and conditions of this contract or fails in any way to exercise its rights under this contract Alcopanel will not be deemed to have waived these rights with respect to any term or condition or right.

## Definition of Goods and Services

**Goods:** All present and after acquired aluminium composite cladding and fabrication products and accessories, spare parts and inventory and designed products and intellectual property supplied to the Customer.

**Services:** Services shall mean labour services for design, forming, site work, advice and consultancy and commissioning of Goods or other contracting supplied at an hourly rate or at a quoted fixed cost following written instructions or reasonable oral instructions from the Customer and the Customer shall confirm acceptance of the fixed cost or hourly rate by supplying orders to the Company.

## Exclusion

Goods and Services excludes site specific OR project specific criteria of the Customer, unless Alcopanel specifically includes those criteria by written statement.

Because of agreements with the Alcopanel manufacturer, territorial boundaries are in place and the Customer shall not make use of the Alcopanel brand of material purchased from Alcopanel outside New Zealand or onsell the Goods on the basis that it will be used outside New Zealand without the written consent of Alcopanel.

## Quotations and Price

Alcopanel shall publish a price list or at the request of the Customer or provide a quotation for its Goods and Services excluding GST and the Customer shall confirm the cost by providing an order to Alcopanel or signing Alcopanel's quotation. Quotations shall form part of the terms and conditions of this contract and shall be valid for (30) thirty days but Alcopanel may withdraw any quotation before the Customer signed acceptance.

The price may be increased where the customer varies or alters its requirements for the Goods or Services or where Alcopanel suffers any cost increases which are beyond its control in the supply, production and delivery of Goods (including increases in import costs and changes in currency) between the date of contract (or, where the contract arises from a quotation the date of the quotation) and the date of delivery, where Alcopanel can supply written evidence of such cost increases. Variations and alterations may result from changes to instructions from the Customer requiring a changed basis for the cost of Goods OR additional parts, materials or Services. Any variations regarding price or supply to that agreed in the quotation or order that may be agreed between the parties during the period of supply shall be in writing and take precedence over that part of the quotation or order so affected.

No order accepted by Alcopanel may be cancelled without the consent of Alcopanel, and unless the Customer pays for all costs and expenses incurred by Alcopanel in fulfilling the order to the date of cancellation; and if the Goods or any part of the Goods cannot be cancelled from the original manufacturer the Customer will be held liable for the cost of the Goods ordered or prepared by Alcopanel to the time of cancellation.

For the sale of Goods or Services to Companies or Incorporations not registered in New Zealand the price shall be the quotation accepted by the Customer and payment shall be by credit card or cleared funds such as cash prior to shipment of the Goods or establishment of the job or provision of services by Alcopanel OR irrevocable letter of credit at sight and established by the Customer, OR by an alternative credit facility agreed between the parties.

**No cancellation for Goods imported by commission** - Upon acceptance of an Alcopanel quotation by the Customer or Customer order to Alcopanel for Goods that are designed or procured specifically on commission for the Customer (meaning non standard or indented to order) cannot be cancelled without the Customer paying the full cost of the procurement of the Goods to the time of cancellation.

## Delivery of Goods and Services

Delivery of the Goods to the address designated by the Customer shall constitute delivery. Completion of Services shall be fulfilling the description of the quotation or Customer order. Alcopanel will make every effort to ensure that Goods and Services are supplied on time, but will not be liable for any loss to the Customer arising in any way from delays in delivery. The Customer agrees that where the Goods or Services are delivered in instalments each delivery will be regarded as a separate contract and subject to the same payment terms.

Where Alcopanel has performed part or all of the supply of Goods or Services at a time agreed by the Customer but where delivery is delayed because of any act, omission or delay by the Customer or where the Customer has not rendered its site safe under the Health and Safety in Employment Regulations, the Company will require the Customer to pay that portion of the contract price which represents the costs incurred by Alcopanel in carrying out supply and Alcopanel may also charge stand by costs while the Customer renders the site ready.

Where the Customer or its agents has arranged for the supply of plans, designs, specifications, drawings or permits for the installation of the Goods or application of Services OR where the Goods are to be applied to or mixed with second hand or existing goods being the property of the Customer, by declaration in the quotation, it shall be the sole responsibility of the Customer that supply is satisfactory for the purposes they are intended and if Alcopanel uses such supply and incurs costs where supply is not fit for the purpose intended by the Customer, the Customer shall pay Alcopanel for all costs incurred in Alcopanel's supply.

## Payment

Payment is to be made by cash in advance unless a credit arrangement has been agreed in which case the terms of the Credit Application for Sale of Goods or the quotation shall also apply.

If payment is not made in full by the due date Alcopanel is entitled to charge the Customer interest on the unpaid overdue balance at the rate of 5% per annum above the current rate charged by Alcopanel's bank for unsecured overdraft facilities calculated from the due date of payment down to the actual

date of payment, and Alcopanel may at its option suspend the sale and secure the Goods in its possession regardless of the term of this contract until the overdue amounts are paid in full.

The Customer agrees that Alcopanel has sole discretion to apply or set off payments from the Customer to any transaction or Company invoice notwithstanding that the Customer may have applied the payment to a particular transaction or invoice.

### **Intellectual Property Liability**

The Customer agrees that where Alcopanel provides written designs, instructions, written technical advice, drawings, models, prototypes or samples, they shall remain the intellectual property of Alcopanel and the Customer agrees that it can only use the intellectual property in the use of the Goods or Services and that it will not give, sell or assign the intellectual property of Alcopanel to any third party. During the general course of transactions proprietary information, designs and trade secrets may be disclosed to the Customer. It is agreed that this information will be kept confidential and only be used for the benefit of the Alcopanel brand of ACM.

Where Alcopanel has followed plans, drawings, designs, specifications and instructions being oral or written provided by the Customer, the Customer shall indemnify Alcopanel against damages, costs and expenses in respect of which Alcopanel may become liable by following such plans, drawings, designs, specifications and instructions and including those arising from the infringement of patents, copyrights or trademarks by the Customer.

If any claim is made against the Customer in respect of infringement of copyright, patent or registered design (intellectual property) relating to the Goods supplied by Alcopanel for the use of the Customer, the Customer shall advise Alcopanel and follow the directions of Alcopanel with regard to defence or security of the intellectual property and Alcopanel will decide its course of action and indemnify the Customer against all claims against infringement of intellectual property brought by any third party.

**Alcopanel may transmit or publish information in the general course of business; however Alcopanel will not be liable for misinterpretation or correctness of the information unless Alcopanel have been specifically contracted to provide a design service for the project. (Note: Alcopanel only accepts liability for its designs where it has provided such designs on project specific Shop Drawings AND Specifications.)**

### **Warranty and Guarantees**

Warranty is conditional upon Alcopanel receiving payment in full. Part payment will not make Alcopanel liable for warranty. The warranty on Goods supplied by Alcopanel but not manufactured by Alcopanel shall be the warranty of the original manufacturer (normally 10 years from the date of delivery). The warranty on Services supplied by Alcopanel shall be for 5 years from the date of delivery.

Alcopanel warrants that it will supply the Goods and Services as the description and general specifications for operation defined in the quotation or the specification data sheet for each product but that it will not be held liable for the fitness of the Goods or Services intended by the Customer except that it will repair, or at its option replace, Goods supplied under this contract that are defective and make good any defect in Services provided that the Customer notifies Alcopanel in writing of any defect within ten (10) days of the defect occurring and subject to the warranty conditions.

The Customer is responsible for requesting documentation during or upon completion of delivery. Where documentation is not requested by the Customer any contractual obligations by Alcopanel towards the Customer will cease six (6) months after delivery of Goods.

Alcopanel shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind whatsoever suffered by the Customer or any other person arising directly or indirectly from any breach of any of Alcopanel's obligations arising under or in connection with the contract including delays in the delivery of Goods or Services or from any cancellation of the contract.

Alcopanel shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, bad weather, adverse environmental conditions, civil commotion, hostilities, strike or lock out, act of God, fire, governmental regulations or directions, or reasons force majeure caused beyond Alcopanel's reasonable control. The occurrence of such an event shall not give the Customer a right of cancellation of any contract.

Notwithstanding anything contained elsewhere in the contract, the liability of Alcopanel whether in contract, tort or equity or pursuant to any cancellation of the contract in respect of all claims for loss, damage or injury arising from breach of any of Alcopanel's obligations or from any cancellation of this contract or from any negligence, misrepresentation or other act or omission on the part of Alcopanel, its servants, agents or contractors, shall be limited at Alcopanel's option to repair or replacement or the price of the Goods or Services.

### **Claims for Damaged or Defective Goods**

Alcopanel will provide a form for any claims for damaged or defective Goods or Services but will not accept any claim by the Customer for any reasons where the Customer may have contributed to the defect or failure of the Goods or Services including economic loss, consequential loss or any other form of loss whatsoever and this guarantee will **not apply**, where:

- (a) Goods or Services have not been paid in full and according to the terms of payment.
- (b) The defect or failure is due to or resulting from damage or misuse or use contrary to the printed instructions of the Alcopanel for maintenance or care of the goods by the customer or end - user.
- (c) The Goods are;
  - Not operated in accordance with Operating Manuals.
  - not used to their rated capacity.
  - subject to impact or sudden movement or continual relocation.
  - used to hold loads of any type.
  - subject to excessive vibration or heat.
- (d) The defect is;
  - due to persons not technically competent to handle the Goods
  - due to the Goods not being used for the purpose for which they were specified.
  - caused by the Customer or a third party on behalf of the Customer attempting integration or interfacing of the Goods with other goods.
  - due to the Customer or its agent attempting modification or repair of the Goods.

If the Customer does not comply with the above requirements, the Customer will be deemed to have accepted the Goods and Alcopanel will not incur any liability whatsoever in relation to the Goods.

### **Consumer Guarantees Act 1993**

It is acknowledged that where the acquisition of Goods by the Customer from Alcopanel is deemed to be for business purposes these terms and conditions of trade shall have the affect of contracting out of the provisions of the Consumer Guarantees Act 1993 to the extent permitted by that Act and all provisions of these terms and conditions shall be read as modified to the extent necessary to give effect to that intention.

The Customer may use published material, manuals, training notes and instructions of care for the Goods and maintenance guidelines provided by Alcopanel but shall not give or make any undertaking assertion or representation in relation to the Goods to any other person or company without the prior approval in writing of Alcopanel and the Customer shall indemnify Alcopanel against any liability or cost incurred by Alcopanel as a result of any breach by the Customer of this provision.

### **Grounds for Termination by the Company**

This Agreement may be terminated by Alcopanel immediately on written notice to the Customer, if;

- (a) If any amount due to be paid by the Customer to Alcopanel is overdue by more than fourteen (14) days; or
- (b) If the Customer shall commit any act of bankruptcy, or enter into any composition or arrangement with creditors; or
- (c) Where the Customer is a company, it does any act that would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of Alcopanel or if a Receiver is appointed in respect of all or any assets of Alcopanel.

**No release from obligations.** Termination of this contract shall not relieve the Customer of its obligation to pay all money owed by it to Alcopanel on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this contract shall not relieve the Customer from liability arising from any antecedent breach of the terms of this contract.

**Immediate Steps upon Termination:** Upon the termination of this contract for any reason, all remaining rights of the Customer granted by this contract shall terminate and the Customer will only be entitled to receive any rebate or refund of the whole or any part of the money paid less costs incurred by Alcopanel pursuant to this contract.

### **Dispute and Arbitration**

In the event of any dispute between Alcopanel and the Customer arising out of this contract the laws of New Zealand shall apply and the Customer shall agree to pay the undisputed part of the outstanding monies owed and such dispute shall be heard in Auckland within twenty (20) days of notification by one party to the other and the dispute shall be first referred to a Mediator who has knowledge and experience in the manufacturing and building or construction industries to be agreed between the parties and the costs shall be equally shared and upon failure to agree to the outcomes of mediation the dispute shall be referred to an Arbitrator on a shared costs basis and arbitration conducted in accordance with the Arbitration Act 1996 and any amendments thereof.

**Upon signing the Company's Credit Application for Goods and Services OR signing these Terms of Trade for Products and Services OR signing acceptance of a Company quotation OR providing an order to the Company, the Customer agrees that these Terms of Trade for Products and Services shall apply.**