

Terms of Sale

Euro Corporation Limited

trading as Complete Reinforcing™, Summit Steel & Wire™ and Tornado Industries Ltd

These Terms of Sale ("terms") apply to all steel and reinforcing products and services we supply in New Zealand.

1. DEFINITIONS

"**agreement**" means these terms, our quotation and any scope of works clarifications.

"**ECL**", "**we**", "**us**" and "**our**" means Euro Corporation Limited and includes the trading divisions of Summit Steel & Wire™, Complete Reinforcing™ and Tornado Industries Ltd.

"**goods**" means steel reinforcing, mesh, nail products, wire fencing or other steel products we supply under this agreement.

"**PPSR**" means the Personal Property Securities Register.

"**quotation**" means the price, specific terms and details on our quotation form.

"**site**" means the site or sites where the goods are to be delivered or works performed.

"**variation**" means an increase, decrease, change in type, rate or quantity of the goods or works required by you or your client.

"**works**" means the work and all services that ECL is engaged to provide under this agreement.

"**you**" and "**your**" means the person or entity engaging us to supply goods or works.

2. APPLICATION

2.1. Where there is no prior signed agreement, any instructions received by ECL to supply goods or carry out works constitutes acceptance of these terms.

2.2. This agreement shall apply to any future supply of goods or works for you unless otherwise agreed in writing.

2.3. You are required to submit a completed Customer Credit Account Application for our approval before we commence works or supply goods.

2.4. These terms will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent).

2.5. We may agree to a head contract provided you notify us at the time of tender of any important terms applicable to our works. Notwithstanding anything to the contrary in the subcontract or head contract, we shall have the same rights and remedies you have vis a vis the client.

2.6. These terms may be updated from time to time and you can find the latest version at www.eurocorp.co.nz.

3. PRICE

3.1. Subject to clause 3.2, our price is valid for 30 days or as otherwise stated in the quotation. Our quotation may be withdrawn at any time before acceptance.

3.2. Any increase in the price of steel between the date of our quotation and delivery will alter the quoted price and be payable by you.

3.3. We will not accept any fixed price contract.

4. CLARIFICATIONS

4.1. These clarifications are in addition to the Specific Terms on our quotation.

4.2. Except where expressly included in our quotation, there is no allowance for:

- rod pods, safety caps, lifting eyes, bars welded to structural steel sections, threading, nuts, bolts, washers, cutting, drilling, grouting, welding or Denso™ tape;
- engineers' inspections, tests, consents or costs associated with the Building Act or any head contract; or
- placing of blockwork reinforcing, panel stitches or bending of starters from panels / blockwork.

4.3. Our quotation is based on reinforcing steel bar Grade 300E and Grade 500E (MA), or as otherwise specified in our quotation, and meets AS/NZS4671:2001.

4.4. You are responsible for:

- setting out and providing us with all levels, gridlines and datums at the workforce;
- providing sufficient details and dimensions on drawings before we commence detailing;
- providing scaffolding and craneage or hoisting at no additional cost;
- Contract Works insurance or any building consents, resource consents, permits or other licences.

4.5. We are not responsible for:

- anything outside our control that affects or disrupts the supply of goods or performance of works.
- protection of works or for steel displaced or damaged by another party after we have completed placing.
- costs associated with design or steel grade change.

5. DELIVERY

5.1. A minimum of 7 working days lead time is required from receipt of all required information.

5.2. Our steel delivery programme will be based on an agreed construction programme. Any changes to the programme affecting our supply must be mutually agreed.

5.3. You are responsible for arranging adequate access for delivery trucks and all unloading, lifting and hoisting facilities on site. This includes movement of goods from the truck drop-off point to safe and suitable lay down areas or the workforce. If our steel fixers need to move the goods on site, day works rates will be charged as a variation.

5.4. HIABs can be supplied on request for unloading at the site and will be treated as a variation unless included in our quotation.

5.5. Where we do not get access to the part(s) of the site at agreed times, we may charge waiting time for trucks and steel placers in accordance with our schedule of rates, the agreement or at standard labour rates for our personnel.

5.6. We will not accept a claim for loss, damage or defects if the carrier docket has been signed as receiving the goods in good order and condition.

5.7. If you receive damaged goods or a shortage, you must notify ECL Customer Services promptly and no later than 7 days after delivery.

5.8. Delivery dates and times are estimates only and we accept no responsibility for delay in delivery howsoever caused.

6. PAYMENT

6.1. Payment is due in full without set-off on or before the 20th of the month following the date of our invoice or payment claim.

6.2. If payment of the invoiced amount is not made in full, ECL will be entitled to charge interest at the rate of 2% per month and you must indemnify ECL for all costs in recovering the outstanding amount.

6.3. You agree that no retentions will be withheld. ECL reserves the right to increase the price if retentions are required.

6.4. If you do not have a recent trading history with us, you may be asked to provide a 50% deposit in advance of work and a director's personal guarantee.

6.5. Contra charges will not be accepted unless advised in writing and agreed by us. We must be given a reasonable opportunity to rectify the cause of the charge.

7. VARIATIONS

7.1. We will not be obliged to carry out any variation where the variation would be an unreasonable burden or where it is for work that is materially different from the goods or works instructed at the outset of this agreement.

7.2. Any variation or cancellation of ordered goods or works for the purpose of having them carried out by another party will be a deemed breach of these terms and you will be liable for loss of profit and costs.

7.3. The variation price shall be in accordance with our schedule of rates or as reasonably determined by us.

7.4. If revised drawings or variations are issued and additional steel is required and delivered prior to the receipt of a variation price request, we will treat it as a normal variation order and adjust the contract price accordingly.

8. RETURN OF GOODS

8.1. You are not entitled to return goods except as provided in this clause.

8.2. For defective goods which you are entitled to reject, our sole remedy is to repair or replace the goods, or refund the price, provided that:

- you notify us within 7 days of delivery that the goods are defective;
- we are given a reasonable opportunity to investigate your claim;
- the goods have not been tampered with or modified without our approval; and
- they have been stored and used in a proper manner.

8.3. ECL may (in its discretion) accept goods for credit but this will incur a handling or restocking fee.

8.4. If we accept returned goods under clause 8.3, it is your responsibility to arrange and pay any freight charges.

9. PROPERTY AND RISK

- 9.1. Title in the goods passes to you when you have paid in full. Until then, you shall be bailee of the goods.
- 9.2. ECL authorises you, in the ordinary course of your business, to use the goods or sell them for full consideration. If you use or resell the goods before ownership has passed to you, the proceeds shall be held by you in trust until you have paid in full.
- 9.3. Where the goods are mixed with other property so as to be part of any new goods, title to these new goods shall be deemed to be assigned to ECL as security for the full amount owed.
- 9.4. If you are in default under the agreement or in our reasonable opinion the payment of any amount is at risk, then you give irrevocable authority to ECL to enter any site where the goods are located to remove the goods without prior notice. You will indemnify us against any action, claim or costs arising out of any act lawfully done by us in exercising our rights under this clause.
- 9.5. Risk of loss, damage or deterioration of the goods passes to you on delivery.

10. SECURITY

- 10.1. Without limiting anything else in the agreement, you agree that:
 - a) This agreement create a security interest in favour of ECL in all goods we supply to you now and in the future and such security interest shall remain until you have paid in full.
 - b) We may register a financing statement on the PPSR and you will not impede the lodgement in any way or grant any other security interest or any lien over goods that we have a security interest in.
 - c) Nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the Personal Property Securities Act 1999 will apply to this agreement, or the security under this agreement.
 - d) The waivers in clause 16.2 of ECL's Customer Credit Account Application are incorporated into these terms and agreed by you.
 - e) At our request, you shall promptly sign any documents and do anything else required by us to ensure our security interest constitutes a first ranking perfected security interest in the goods.
 - f) You will give us 14 days' prior notice of any proposed change in your company or trading name, address or contact details.

11. LIABILITY

- 11.1. We are not liable for any defects where you do not notify us within the times required by this agreement or where you or your client do not provide us with a reasonable opportunity to remedy the defects.
- 11.2. Notwithstanding any other provision of the agreement or requirement of the client and to the maximum extent permitted by law, whether arising in contract, tort (including negligence), under indemnity, warranty or otherwise, the maximum aggregate liability of ECL for any loss, damage or claim arising out of or in connection with the goods, works or the agreement shall be limited to the lesser of \$100,000 and the total price you have paid for the respective goods or works.
- 11.3. ECL excludes any liability for:
 - a) loss of income or profits, loss of opportunity, loss of production or use, business interruption, or any indirect, special or consequential loss arising in connection with, or as a result of, the supply or non-supply of the goods or works;
 - b) liquidated damages or any compensation for delay;
 - c) any statement or recommendation, negligence, advice, supervision or assistance given by ECL, its employees, agents, transport operators or representatives whether oral or written;
 - d) loss or damage relating to suitability of the goods or fitness for any particular purpose unless such purpose is known and agreed by us;
 - e) deterioration of goods due to exposure to the elements after delivery.
- 11.4. If ECL is liable for loss or damage, our liability is reduced proportionately to the extent we have directly contributed to the loss, liability or cost.
- 11.5. The works and goods are provided for business purposes and all warranties, conditions and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 are hereby excluded.
- 11.6. You agree to indemnify ECL against all actions, claims, proceedings, costs, losses and damages however caused or arising which ECL may sustain, incur or pay in connection with supplying the goods or works to you which do not arise from a default or negligence by ECL under the agreement.

12. INTELLECTUAL PROPERTY

- 12.1. Ownership of all intellectual property rights in drawings, plans, designs, specifications, statements of work, presentations, emails, data or any other material prepared by ECL and used in the supply of the goods or works (however recorded or stored) is the exclusive property of ECL.
- 12.2. You warrant that we can rely on all documents and designs provided by you and in so doing shall indemnify us against any breach of a third party intellectual property right.

13. SUSPENSION

- 13.1. Where you are in default of payment, ECL may suspend supply of any goods or works on notice until the amount in the invoice or payment claim is paid in full. This clause does not affect the suspension provisions in the Construction Contracts Act 2002 which remain applicable.

14. TERMINATION

- 14.1. ECL may terminate this agreement or any purchase order immediately on notice to you if in our reasonable opinion you have committed a material breach of the agreement, including but not limited to repeated failure to pay your account on time. We will not be liable to you for repudiation, indemnity, compensation or any other costs or damages whatsoever.
- 14.2. The agreement may be terminated immediately by notice in writing by either party where the other party commits an act of insolvency, including receivership, liquidation, voluntary administration, statutory management, scheme or arrangement with creditors.
- 14.3. Termination shall be without prejudice to any obligations or rights of either party which have accrued prior to termination.

15. DISPUTE RESOLUTION

- 15.1. Where the parties are in dispute over any matter concerned or connected with the goods or works, including any amount payable, the parties shall endeavour to negotiate in good faith to resolve the dispute.
- 15.2. Where the dispute has not been resolved within two weeks of the first communication evidencing the dispute, the parties may pursue any dispute resolution procedure by agreement, or if there is no agreement, by adjudication or arbitration which will be final and binding.

16. FORCE MAJEURE

- 16.1. Either party may cancel the agreement by notice in writing if the performance of the agreement is interrupted by circumstances beyond the reasonable control of that party which persists for at least 30 days and is not able to be overcome despite reasonable efforts, or without materially increasing the cost or materially decreasing the benefit to the party to perform the agreement.
- 16.2. In the event of termination under this clause, ECL shall be entitled to recover any costs reasonably incurred before termination.

17. GENERAL

- 17.1. You shall not assign the agreement without our prior written consent.
- 17.2. Failure by ECL to enforce any of the terms and conditions contained in the agreement shall not be deemed to be a waiver of any of the rights or obligations we have under the agreement.
- 17.3. If any provision of the agreement shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.4. The agreement constitutes the entire understanding and agreement of the parties relating to the matters dealt within and supersedes and extinguishes all prior agreements, statements, representations and understandings whether verbal or written given by or made between the parties relating to the matters dealt with in the agreement.
- 17.5. The agreement is governed by New Zealand law and subject to the exclusive jurisdiction of the courts of New Zealand.
- 17.6. You agree to keep all confidential and proprietary information provided or disclosed confidential and must ensure that your employees, agents and contractors assume the same obligations.