Novotec Metal Fabrication Pty Ltd (further **Novotec)** – Terms & Conditions of Trade
ABN 63 628 291 145
69 Discovery Drive Bibra Lake WA 6163

01/01/2021

Novotec Terms & Conditions of Trade apply and cover of the following Divisions:
Novotec Fabrication - Metal Fabrication - www.novotecfabrication.com.au
Novocoat – Powdercoating - www.novotecfabrication.com.au
Cyber Trioz - Computer Repair Centre - www.cybertrioz.com.au

1. **Definitions**

1.1 "Novotec" means Novotec Metal Fabrication Pty Ltd (ACN 628 291 145), or any person acting on behalf of and with the authority of Novotec Metal Fabrication Pty Ltd.
1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order.
1.3 "Goods" means all Goods or Services supplied by Novotec to the Customer at the Customer's request.
1.4 "T&C" means Terms and Conditions
1.5 "Delivery" means Delivery of Goods and Services by Novotec
1.6 "Price" means the Price payable for the Goods as agreed between Novotec and the Customer.

2. **Acceptance**

2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
2.2 These T&C may only be amended with Novotec's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Novotec. Novotec reserves the right to modify Trading Terms & Conditions without notice.

3. **Orders**

3.1 The Customer shall give Novotec written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Novotec as a result of the Customer's failure to comply with this clause.

4. **Prices**

4.1 At Novotec's sole discretion the Price shall be either:
a) as indicated on any invoice provided by Novotec to the Customer; or
b) Novotec's quoted price, which will be valid for the period stated in the quotation
c) GST is applicable to all prices.
4.2 Novotec reserves the right to change the Price if a variation to any quotation is requested.
4.3 At Novotec's sole discretion a deposit may be required stated in the quotation.
4.4. Bill Of Quantities
a) Novotec Quote price is limited to only the items in Novotec' Quotation. The quotations are an offer to receive orders only and we reserve the right to accept or refuse an order.
b) Lead time will be confirmed upon placement of order.
c) All products in the quotation will be manufactured at Novotec Premises.
d) When multiple items are quoted on the price per item reflects bulk discount. If some items are selected from a Quote to which a bulk discount applies, the prices for selected items will be reconsidered.
e) Any changes to the design in the drawings will be subjected to extra cost. Updated quotation may apply when we will receive detailed workshop drawings.
f) Should you require any additional items they will be added to the existing quote and re-price or quoted separately.
4.5. Quotes **Exclusions**, (will be not supplied by Novotec) unless stated otherwise in the quotation:
a) Measurements, Installations, Site works, Installations and Deliveries
b) Appliances / tap ware
c) Painting /powdercoating /galvanizing / anodising or any treatments' works
d) Any accelerated program schedule, standby/down or any lost time due to project hold ups which effects Novotec access to perform works sequentially.
e) The obtaining of any approval from any authorities or the preparation of any drawings or documentations for submission to any authorities or the payment of any fees or deposits to any authorities and does not allow for any retention of monies.
f) Workshop drawings
g) Non Destructive Testing & Welding Procedure Specifications
h) Works On Site: No responsibility for damage to any underground services (i.e. pipes, cables etc) will be accepted unless we are advised of the location of these services in writing prior to commencement of our works.
4.9 Novotec quotation is an offer only to receive orders and Novotec reserves the right to accept or refuse an order without any obligations.
4.10 If the customer is accepting Novotec quote - the customer also accepting the Payments Adding Costs as below.

5. **Payments and Adding Costs**

5.1 All payments are on C.O.D. terms, unless otherwise stated in approved credit application.
a) Deposit of 50% is required on Placement of Purchase Order
b) Balance of 50% is required on Collection of Ordered Products
c) Time for payment for the Goods/Services are payable on the date/s specified on the Invoice.
5.2 For a deposit /payment please write the Quote or Invoice Number in the reference field. Novotec account details are as in invoice supplied.
Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Novotec, which may be:
a) on delivery of the Goods ("C.O.D." Cash on Delivery) or before delivery of the Goods;
b) by way of installments/progress payments in accordance with Novotec's payment schedule;
c) thirty (30) days following the end of the month;
d) the date specified on any invoice or other form as being the date for payment; or
e) failing any notice to the contrary, the date which is on any invoice given to the Customer by Novotec.
5.3 Payments may be made by cash, bank cheque, electronic/on-line banking, by credit/debit card (card surcharge may apply) or by any other method as agreed to between the Customer and Novotec.
5.4 Any goods supplied by Novotec remain the property of Novotec until such time as any invoices relating to this quotation are paid in full
5.5 Adding Cost of reminder and Interest to outstanding invoices:
i) The Cost of Reminder of $50.00 excl. gst will be charged monthly, and
ii) Overdue accounts will be subject to interest at the rate of 2.5% per month excl gst, calculated for the period the account is due until the date it is paid
5.6 Adding Collection Costs: In the event where customer's overdue account is referred to a collection agency and/or law firm, the customer will be liable for all recover costs which would be incurred as if the debt is collected in full, including legal demand costs.

6. **Delivery of Goods**

6.1. Delivery ("Delivery") of the Goods is taken to occur at the time that:
a) the Customer or the Customer's nominated carrier takes possession of the Goods at Novotec's address; or
b) Novotec (or nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
6.2 At Novotec's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
6.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Novotec shall be entitled to charge a reasonable fee for redelivery and/or storage.
6.4 Novotec may deliver the Goods in separate installments. Each separate installment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
6.5 Any time or date given by Novotec to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Novotec will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

7. **Risk**

7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Novotec is entitled to receive all insurance proceeds payable for the Goods. The production of these T&C by Novotec is sufficient evidence of Novotec's rights to receive the insurance proceeds without the need for any person dealing with Novotec to make further enquiries.
7.3 If the Customer requests Novotec to leave Goods outside Novotec's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
7.4 Where the Customer is to supply Novotec with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. Novotec shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.
7.5 The Goods have been designed to withstand various wind conditions however there is a risk that the Goods will fail or the integrity of the retaining wall may be damaged, if mounted on or close to the retaining wall and exposed to high wind conditions. Novotec does not warrant that the product is suitable for use in such conditions and specifically excludes any liability for claims arising from such use whether or not the wall has been built to engineering specifications, with council approval or self-installed.
7.6 Where Novotec is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Novotec shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

8. **Site Works**

8.1 The Customer shall ensure that Novotec has clear and free access to the work site at all times to enable them to undertake the works. Novotec shall not be liable for any loss or damage to the site unless due to the negligence of Novotec.
8.1 Novotec and the Customer agree that ownership of the Goods shall not pass until: (a) the Customer has paid Novotec all amounts owing to Novotec; and (b) the Customer has met all of its other obligations to Novotec.

8.2 Receipt by Novotec of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honored, cleared or recognised.
8.3 It is further agreed that:
(a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to Novotec on request.
(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Novotec and must pay to Novotec the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Novotec and must pay or deliver the proceeds to Novotec on demand.
(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Novotec and must sell, dispose of or return the resulting product to Novotec as it so directs.
(e) the Customer irrevocably authorises Novotec to enter any premises where Novotec believes the Goods are kept and recover possession of the Goods.
(f) Novotec may recover possession of any Goods in transit whether or not delivery has occurred.
(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Novotec.
(h) Novotec may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

9. **Personal Property Securities Act 2009 ("PPSA")**

9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
9.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Novotec to the Customer.
9.3 The Customer undertakes to:
(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Novotec may reasonably require to;
(1). register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
(2) register any other document required to be registered by the PPSA; or
(3) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
(b) indemnify, and upon demand reimburse, Novotec for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
(c) not register a financing change statement in respect of a security interest without the prior written consent of Novotec;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Novotec;
(e) immediately advise Novotec of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
9.4 Novotec and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
9.7 Unless otherwise agreed to in writing by Novotec, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
9.8 The Customer must unconditionally ratify any actions taken by Novotec under clauses 9.3 to 9.5.
9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

10. **Security and Charge**

10.1 In consideration of Novotec agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
10.2 The Customer indemnifies Novotec from and against all Novotec's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Novotec''s rights under this clause.
10.3 The Customer irrevocably appoints Novotec and each director of Novotec as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

11. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

11.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify Novotec in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Novotec to inspect the Goods.
11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
11.3 Novotec acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
11.4 Except as expressly set out in these terms and conditions or in respect of the Non Excluded Guarantees, Novotec makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Novotec's liability in respect of these warranties is limited to the fullest extent permitted by law.
11.5 If the Customer is a consumer within the meaning of the CCA, Novotec's liability is limited to the extent permitted by section 64A of Schedule 2.
11.6 If Novotec is required to replace the Goods under this clause or the CCA, but is unable to do so, Novotec may refund any money the Customer has paid for the Goods.
11.7 If the Customer is not a consumer within the meaning of the CCA, Novotec's liability for any defect or damage in the Goods is:
(a) limited to the value of any express warranty or warranty card provided to the Customer by Novotec at Novotec's sole discretion;
(b) limited to any warranty to which Novotec is entitled, if Novotec did not manufacture the Goods;
(c) otherwise negated absolutely.
11.8 Subject to this clause 11, returns will only be accepted provided that:
(a) the Customer has complied with the provisions of clause 11.1; and
(b) Novotec has agreed that the Goods are defective; and
(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and the Goods are returned in as close a condition to that in which they were delivered as is possible.
11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Novotec shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
(a) the Customer failing to properly maintain or store any Goods;
(b) the Customer using the Goods for any purpose other than that for which they were designed;
(c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) the Customer failing to follow any instructions or guidelines provided by Novotec; fair wear and tear, any accident, or act of God.
11.10 Notwithstanding anything contained in this clause if Novotec is required by a law to accept a return then Novotec will only accept a return on the conditions imposed by that law.

12. **Limitation of Liability**

12.1 The Customer accepts and acknowledges that Novotec shall not accept liability for any damage or loss including personal injury or death in the event that the Customer chooses to install product that subsequently proves to be insufficient for the purposes that the Customer desired to achieve particularly where this against any recommendation of Novotec.
12.2 Novotec shall accept no responsibility for Services (including but not limited to equipment failure) undertaken by any third party contractor employed by the Customer to effect installation of the Goods. If the Customer believes that they have any claim in relation to Services undertaken by that third party then said claim must be made against the third party contractor in the first instance.

13. **Intellectual Property**

13.1 Where Novotec has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Novotec.
13.2 The Customer warrants that all designs, specifications or instructions given to Novotec will not cause Novotec to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Novotec against any action taken by a third party against Novotec in respect of any such infringement.
13.3 The Customer agrees that Novotec may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or photos of Goods which Novotec has created for the Customer.

14. **Default and Consequences of Default**

14.1 Interest on overdue invoices shall accrue monthly from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Novotec sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
14.2 If the Customer owes Novotec any money the Customer shall indemnify Novotec from and against all costs and disbursements incurred by Novotec in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Novotec's collection agency costs, and bank dishonor fees).
14.3 Without prejudice to any other remedies Novotec may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Novotec may suspend or terminate the supply of Goods to the Customer. Novotec will not be liable to the Customer for any loss or damage the Customer suffers because Novotec has exercised its rights under this clause.
14.4 Without prejudice to Novotec's other remedies at law Novotec shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Novotec shall, whether or not due for payment, become immediately payable if:
(a) any money payable to Novotec becomes overdue, or in Novotec's opinion the Customer will be unable to make a payment when it falls due;
(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15. **Cancellation of Orders**

15.1 Novotec may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Novotec shall repay to the Customer any money paid by the Customer for the Goods. Novotec shall not be liable for any loss or damage whatsoever arising from such cancellation.
15.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Novotec as a direct result of the cancellation (including, but not limited to, any loss of profits).
15.3 Cancellation of orders for Goods made to the Customer's specifications, or for nonstocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

16. **Privacy Act 1988**

16.1 The Customer agrees for Novotec to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Novotec.
16.2 The Customer agrees that Novotec may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
(a) to assess an application by the Customer; and/or
(b) to notify other credit providers of a default by the Customer; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or (d) to assess the creditworthiness of the Customer.
The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
16.3 The Customer consents to Novotec being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1)(h) Privacy Act 1988).
16.4 The Customer agrees that personal credit information provided may be used and retained by Novotec for the following purposes (and for other purposes as shall be agreed between the Customer and Novotec or required by law from time to time):
(a) the provision of Goods; and/or
(b) the marketing of Goods by Novotec, its agents or distributors; and/or
(c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
(e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
16.5 Novotec may give information about the Customer to a credit reporting agency for the following purposes:
(a) to obtain a consumer credit report about the Customer;
(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
16.6 The information given to the credit reporting agency may include:
(a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
(b) details concerning the Customer's application for credit or commercial credit and the amount requested;
(c) advice that Novotec is a current credit provider to the Customer;
(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
(e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
(f) information that, in the opinion of Novotec, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
(g) advice that cheques drawn by the Customer for one hundred dollars ($100) or more, have been dishonored more than once;
(h) that credit provided to the Customer by Novotec has been paid or otherwise discharged.

17. **Confidentiality**

17.1 Novotec and the Customer agree to keep confidential any information in relation to the other party, which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form).

18. **General Provisions**

18.1 The failure by Novotec to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Novotec's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which Novotec has its principal place of business, and are subject to the jurisdiction of the courts in that state.
18.3 Subject to clause 11 Novotec shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Novotec of these terms and conditions (alternatively Novotec's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
18.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Novotec nor to withhold payment of any invoice because part of that invoice is in dispute.
18.5 Novotec may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
18.6 The Customer agrees that Novotec may amend these terms and conditions at any time. As Novotec reserves the right to modify Trading Terms & Conditions without notice we suggest that the customer must check our website www.novotecfabrication.com.au prior to placing further orders
18.7 Neither party shall be liable for any default due to any act of God, Nature: such as fire, flood, storm, war, terrorism, strike, lock-out, industrial action, or other event beyond the reasonable control of either party.
18.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
18.9 Novotec reserves the right to modify Terms & Conditions without notice.