#### Platinum Metal Fabrication Pty Ltd – Terms & Conditions of trade

27a Stockdale Road, O’Connor, WA, 6163

Platinum reserves the right to modify terms & conditions without notice.

Updated Terms & Conditions of Trade are available on the Platinum Website.

13/09/2018

1. **Definitions:**

1.1“Platinum” means Platinum Metal Fabrication Pty Ltd (ACN 627 953 342), it’s successors and assignees or any person acting on behalf of or with the authority of Platinum 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 Platinum to the customer at the customers’ request from time to time.

1.4 “Price” means the price payable for the goods as agreed between Platinum and the customer in accordance with clause 4 below.

1. **Acceptance:**
	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. These terms and conditions may only be amended with Platinum’ consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the customer and Platinum. Platinum reserves the right to modify Trading Terms and Conditions without notice.
2. **Change in control**
	1. The customer shall give Platinum not less than fourteen (14) days prior written notice of any proposed change of ownership of the customer and/or any other change in the customers 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 Platinum as a result of the customers failure to comply with this clause.
3. **Prices and Payments**
	1. At platinum’s’ sole discretion the price shall be either:
4. As indicated on any invoice provided by Platinum to the customer; or
5. Platinum’s quoted price which will be valid for the period stated on the quotation.
	1. Platinum reserves the right to change the price if a variation to Platinums quotation is requested.
	2. At Platinums’ sole discretion a deposit may be required stated in the quotation.
	3. Time for payment for the goods being of the essence, the price will be payable by the customer on the date/s determined by Platinum, which may be:
		1. On delivery of the goods (“C.O.D” Cash on delivery) or before delivery of the goods;
		2. By way of installment/progress payments in accordance with Platinums’ payment schedule;
		3. Thirty (30) days following the end of month;

4.4.4 The date specified on any invoice or other form being the date for payment;

4.4.5 Falling any notice to the contrary, the date which is on any invoice given to the customer by Platinum.

* 1. Payment may be made by cash, bank cheque, electronic/online banking, by credit card or by any other method as agreed to between the customer and Platinum.
	2. GST is applicable
	3. BILL OF QUANTITIES
		1. Our quote price in limited to only the items in our quotation
		2. Lead time will be confirmed upon placement of order
		3. All products in the quotation will be manufactured on Platinum premises
		4. When multiple items are quoted on the price per item reflects bulk discount. If some items are selected from a quotation to which a bulk discount applies, the prices for selected items will be reconsidered
		5. Any changes to the design in the drawings will be subjected to extra cost. Updated quotations may apply when we receive detailed workshop drawings
		6. Should you require any additional items they will be added to the existing quote and re priced or quoted separately.
	4. Quote exclusions, unless stated otherwise in quote.
		1. No site works will be supplies by Platinum
		2. No appliances/tapware will be supplied by Platinum
		3. No deliveries or installments will be supplied by Platinum
		4. No paint/powder coat works will be supplied by Platinum

Please note:

* + 1. Platinum is not allowing for accelerated program schedule, standby/stand down or any loss of time due to project hold ups which affect Platinums’ access to preform work sequentially
		2. The quotation does not include obtaining of any approval from any authorities or the preparation of any drawings or documentations for submission to any authorities of the payment of any fees or deposits to any authorities and does not allow for any retention of monies.
	1. WORKSHOP DRAWINGS
		1. Workshop drawings are available but are not included in the price unless stated otherwise in the quote.
	2. NDT & WPS

4.10.1 Nondestructive testing and welding procedure specifications are available but are not included in the price unless otherwise stated in the quote.

* 1. WORKING ON SITE
		1. If welding or installation are included in this quote all areas of site must be ready for installation when we arrive
		2. Access to the site (within 10 meters) by installation vehicle and electricity for power tools is to be made available during the installation period
		3. Platinum takes 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 works.
	2. PAYMENT TERMS
		1. All payments are on C.O.D terms, unless otherwise stated in approved credit application.
		2. Deposit of 30% required on placement of purchase order
		3. 70% payment on collection of goods
		4. When making a deposit/payment please write the quote or invoice number in reference field
		5. Platinum account details are as follows:

Account Name: Platinum Metal Fabrication

BSB: 016-016

Account No: 417425792

* + 1. If the customer accepts the quote from Platinum the customer also accepts the following
		2. Any goods supplied by Platinum metal fabrication remain the property of Platinum Metal Fabrication until such time as any invoices relating to this quote are paid in full;
		3. Adding cost of reminder and interest to the outstanding invoices
		4. The cost of reminder $50.00 excl gst will be charged monthly

4.12.10 Overdue accounts will be subject to interest at the rate of 2.5% per month excl gst, this will be calculated for the period the account is due until the date it is paid in full

4.12.11 Adding collection cost; In the event where customers’ overdue account is referred to a collection agency and/or law firm, the customer will be liable for all recovery costs which may be incurred as if the debt is collected in full, including legal demand costs.

1. **Delivery of goods**
	1. Delivery (“Delivery”) of the goods is taken to occur at the time that the customer;
		1. The customer or the customers nominated carrier takes possession of the goods at Platinums address
		2. Platinum or Platinums nominated carrier delivers the goods to the customers’ nominated address even if the customer is not present at time of delivery.
	2. At Platinums’ sole discretion the cost of delivery is either included in the price or may incur additional charge at the customers expense
	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 Platinum shall be entitled to charge a reasonable fee for redelivery and/or storage
	4. Platinum 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
	5. Any time or date given by Platinum to the customer is an estimate only. The customer must still accept delivery of goods even if late and Platinum will not be held accountable for any loss or damage incurred by the customer as a result of the delivery being late.
2. **Risk**
	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
	2. If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the customer, Platinum is entitled to receive all insurance proceeds payable for the goods. The production of these terms and conditions by Platinum is sufficient evidence of Platinums rights to receive the insurance proceeds without the need for any person dealing with Platinum to make further enquiries.
	3. If the customer requests Platinum to leave goods outside of Platinums premises for collection or to deliver the goods to an unattended location, then such goods shall be left at the customers sole risk.
	4. Where the customer is to supply Platinum with any design specifications (including but not limited to; CAD Drawings) the client shall be responsible for providing accurate data. Platinum shall not be liable whatsoever for any errors in the goods that are caused by incorrect or inaccurate data being supplied by the customer.
	5. Goods that 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. Platinum doesn’t 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/shire approval or self-installed.
	6. Where Platinum 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 Platinum shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever cause or arising should the premises or equipment be unable to accommodate the installation.
3. **Access**
	1. The customer shall ensure Platinum has clear and free access to the work site at all times to enable them to undertake the works. Platinum shall not be liable for any loss or damage to the site unless due to the negligence of Platinum workers.
4. **Title**
	1. Platinum and the customer agree that ownership of the goods shall not pass until;
		1. The customer has paid Platinum all amounts owing to Platinum
		2. The customer has met all of its obligations to Platinum
	2. Receipt by Platinum of any form other than cash shall not be deemed to be payment until that form of payment has been honored, cleared or recognised.
	3. It is further agreed that;
		1. 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 Platinum on request
		2. The customer holds the benefit of the customers insurance of the goods on trust for Platinum and must pay to Platinum the proceeds of any insurance in the event of the goods being lost, damaged or destroyed
		3. The customer must not sell, dispose or otherwise part with possession of the goods other than in the ordinary course of business and for the 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 Platinum and must pay or deliver the proceeds to Platinum on demand.
		4. 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 Platinum and must sell, dispose of or return the resulting product to Platinum as it so directs.
		5. The customer irrevocably authorises Platinum to enter any premises where Platinum believes the goods are kept and recover possession of the goods.
		6. Platinum may recover possession of any goods in transit whether or not to delivery has occurred.
		7. 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 Platinum.
		8. Platinum may commence proceedings to recover the price of the goods sold notwithstanding that ownership of the goods has not passed to the customer.
5. **Personal Property Securities Act 2009 (PPSA)**
	1. In this clause financing statement, financing change of statement, security agreement and security interest has the meaning given to it by the PPSA.
	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 been previously supplied and that will be supplied in the future by Platinum to the customer.
	3. The customer undertakes to;
		1. 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 Platinum may require to;
			1. Register a financing statement or financing change or statement in relation to a security interest on the personal property securities register
			2. Regisiter any other document required to be registered by the PPSA
			3. Correct a defect in a statement referred to in clause 9.3
		2. Indemnify, and upon demand reimburse, Platinum for all expenses incurred in registering a financing statement or financing change of statement on the personal property securities register established by the PPSA or releasing any goods charged thereby;
		3. Not register a financing change statement in respect of a security interest without the prior written consent of Platinum.
		4. Not register, or permit to be registered, a financing statement or a financing change statement in relation to the goods in favor of a third party without the prior written consent of Platinum
		5. Immediately advise Platinum 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.
	4. Platinum 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.
	5. The customer waives their rights to receive notice under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA
	6. The customer waives their rights as a guarantor and/or a debtor under sections 142 and 143 of the PPSA
	7. Unless otherwise agreed to in writing by Platinum, the customer waives their right to receive a verification statement in accordance with section 157 of the PPSA
	8. The customer must unconditionally ratify any actions taken by Platinum under clauses 9.3 to 9.5
	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 in the PPSA.
6. **Security and charge**
	1. In consideration of Platinum agreeing to supply the goods, the customer charges all of its rights, title and interest (whether joint or several) in 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 monies).
	2. The customer indemnifies Platinum from and against all Platinums costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Platinums rights under this clause.
	3. The customer irrevocably appoints Platinum and each director of Platinum as the customers true and lawful attorney/s to perform all necessary acts to give the provisions of this clause 10 including but not limited to, signing any document on the customers’ behalf.
7. **Defects, Warranties and returns, Competition and Consumer Act 2010 (CCA)**
	1. The customer must inspect the goods on delivery and must within seven (7) days of delivery notify Platinum 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 Platinum to inspect the goods.
	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).
	3. Platinum acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
	4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Platinum makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the goods. Platinums liability in respect of these warranties is limited to the fullest extent permitted by law.
	5. If the customer is a consumer within the meaning of the CCA, Platinums liability is limited to the extent permitted by section 64A of schedule 2.
	6. If Platinum is required to replace the goods under this clause or the CCA, but is unable to do so, Platinum may refund any money the customer has paid for the goods.
	7. If the customer is not a consumer within the meaning of the CCT, Platinums liability for any defect or damage in the goods is;
		1. Limited to the value of any express warranty card provided to the customer by Platinum at Platinums sole desecration;
		2. Limited to any warranty to which Platinum is entitled, if Platinum did not manufacture the goods;
		3. Otherwise negated absolutely.
	8. Subject to this clause 11, returns will only be accepted provided the;
		1. The customer has complied with the provisions of clause 11
		2. Platinum has agreed that the goods are defective
		3. The goods are returned in as close a condition to that in which they were delivered as it possible.
	9. Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Platinum shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of;
		1. The customer failing to properly maintain or store any goods
		2. The customer using the goods for any purpose other than that for which they were designed
		3. The customer continuing the use of any goods after any defect became apparent or should have become apparent to a reasonable prudent operator or user
		4. The customer failing to follow any instructions or guidelines provided by Platinum; fair wear and tear, any accident or act of god
	10. Notwithstanding anything contained in this clause if Platinum is required by a law to accept a return then Platinum will only accept a return on the conditions imposed by that law.
8. **Limitation of liability**
	1. The customer accepts and acknowledges that Platinum 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 Platinum.
	2. Platinum 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.
9. **Intellectual Property**
	1. Where Platinum has designed, drawn or developed goods for the customer, then the copyright in any designs and drawings and documents shall remain the property of Platinum.
	2. The customer warrants that all designs, specifications or instructions given to Platinum will not cause Platinum to infringe any patent, registered design or trademark in the execution of the customer’s order and the customer agrees to indemnify Platinum against any action taken by a third party against Platinum in respect of any such infringement.
	3. The customer agrees that platinum may (at no cost) use for the purpose of marketing or entry into any competition, any documents, designs, drawings or photos of goods which Platinum has created for the customer.
10. **Default and Consequences of default**
	1. Interest on overdue invoices shall accrue monthly from the date when the payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Platinums sole discretion such interest shall compound monthly at such rate) after as well as before any judgement.
	2. If the customer owes Platinum any money the customer shall indemnify Platinum from and against all costs and disbursements incurred by Platinum in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Platinums collection agency costs and bank dishonor fees).
	3. Without prejudice to any other remedies Platinum may have, if at any time the customer is in breach of any obligation (including those relating to payment) under these terms and conditions Platinum may suspend or terminate the supply of goods to the customer. Platinum will not be liable to the customer for any loss or damage the customer suffers because Platinum has exercised its rights under this clause.
	4. Without prejudice to Platinums other remedies at law, Platinum shall be entitled to cancel all or any part of any order of the customer which remains unfulfilled and all amounts owing to Platinum shall, whether or not due for payment, become immediately payable if;
		1. Any money payable to platinum becomes overdue, or in Platinums opinion the customer will be unable to make a payment when it falls due,
		2. The customer becomes insolvent, convenes a meeting with its creditors, or makes an assignment for the benefit of its creditors,
		3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the customer or any asset of the customer.
11. **Cancellation of orders**
	1. Platinum 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 Platinum shall repay to the customer any money paid by the customer for the goods. Platinum shall not be liable for any loss or damage whatsoever arising from such cancellation
	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 Platinum as a direct result of the cancellation (including but not limited to any loss of profits).
	3. Cancellations of orders for goods made to the customers specifications or for nonstockist items, will definitely not be accepted once production has commenced, or an order has been placed.
12. **Privacy Act 1988**
	1. The customer agrees for Platinum to obtain from a credit reporting agency a credit report containing personal credit information about the customer in relation to credit provided by Platinum.
	2. The customer agrees that Platinum may exchange information about the customer with those credit providers either named as trade referees by the customer or named in a consumer credit reporting agency for the following purposes;
		1. To assess an application by the customer
		2. To notify other credit providers of a default by the customer
		3. 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
		4. To assess the credit worthiness of the customer.

The customer understands that the information exchanges 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.

* 1. the customer agrees to Platinum being given a consumer credit report to collect overdue payment on commercial credit (Section 18k (1)(h) Privacy Act 1988).
	2. The customer agrees that personal credit information provided may be used and retained by Platinum for the following purposes (and for other purposes as shall be agreed between the customer and Platinum or required by law from time to time)
		1. The provision of goods
		2. The marketing of goods by Platinum, its agents or distributers
		3. Analysing, verifying and/or checking the customers credit, payment and or status on relation to the provision of goods
		4. Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the customer
		5. Enabling the daily operation of customers account and/or the collection of amounts outstanding in the customer’s account in relation to the goods
	3. Platinum may give information about the customer to a credit reporting agency for the following purposes
		1. To obtain a consumer credit report about the customer
		2. Allow the credit reporting agency to create or maintain a credit information file containing information about the customer.
	4. The information given to the credit reporting agency may include;
		1. personal particulars (the customer’s name, sex, address, previous addresses, date of birth, name of employer and drivers license number)
		2. Details concerning the customers application for credit or commercial credit and the amount requested
		3. Advice that Platinum is a current credit provider to the customer
		4. 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
		5. That the customers overdue accounts, loan repayments and or any outstanding monies are no longer overdue in respect of any default that has been listed
		6. Information that, in the opinion of Platinum, the customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the customer’s credit obligations)
		7. Advice that Cheques drawn by the customer for one hundred dollars ($100) or more, have been dishonored more than once
		8. The credit provided to the customer by Platinum has been paid or otherwise discharged.
1. **Confidentiality**
	1. Platinum 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).
2. **General Provisions**
	1. The failure by Platinum to enforce any provisions of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Platinums 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
	2. These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which Platinum has its principle place of business and are subject to the jurisdiction of the courts in that state.
	3. Subject to clause 11 Platinum 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 breech by Platinum of these terms and conditions (alternately Platinums liability shall be limited to damages which under no circumstances shall exceed the price of goods)
	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 platinum nor to withhold payment of any invoice because part of that invoice in in dispute
	5. Platinum may license or sub-contract all or any part of its rights and obligations without the customers consent
	6. The customer agrees that Platinum may amend these terms and conditions at any time. As Platinum Metal fabrication reserves the right to modify Trading Terms and Conditions without notice we suggest that the customer check out website [www.platinummetalfabrication.com](http://www.platinummetalfabrication.com) prior to placing further orders
	7. Neither party shall be liable for any default dur 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
	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