

PARTIES

1. **SUPREME STEEL PRODUCTS LIMITED** at Auckland, Company Number 1201624 (**Supreme Steel**)
2. **[XXX]** at Auckland, Company Number **[xx]** (**Subcontractor**)

BACKGROUND

- A. Supreme Steel and the Customer have entered into a contract (**Contract**) for Supreme Steel to provide products and services to the Customer (**Services**).
- B. Supreme Steel has, or proposes to, enter into a separate contract with the Subcontractor for the Subcontractor to provide some of the Services to the Customer.
- C. To enable the provision of the Services, Supreme Steel has requested that the Customer provide certain information to it and/or the Subcontractor. That information is confidential and commercially sensitive information, and constitutes part of the Intellectual Property of the Customer.
- D. Supreme Steel has also developed and owns extensive Intellectual Property, both in relation to the Technology and otherwise, which is confidential and commercially sensitive information.
- E. The Customer has agreed to enter the Contract and to provide the information requested by Supreme Steel on the basis that Supreme Steel and the Subcontractor agree to enter into, and be bound by, the terms of this Deed.

COVENANTS

1. Definitions and Interpretations

- 1.1 **Defined Terms:** In this Deed the following initially capitalised terms shall have the meanings specified:

Affiliate any director, officer, employee, subsidiary, related company, agent, consultant, banker or professional advisor of the Subcontractor.

Confidential Information any confidential information of the:

- a. Customer, including the Customer IP; and/or
- b. Supreme Steel, including the Supreme Steel IP,

communicated orally, visually, in writing, electronically or in any other form, other than information which:

- c. at the time of disclosure to the Subcontractor was in the public domain or which subsequently enters the public domain without fault on the part of the Subcontractor; or
- d. at any time is received in good faith by the Subcontractor from a third party who has lawful possession of such information and a right to disclose the same; or
- e. the Subcontractor can establish by reasonable proof was in its possession or known to it or developed by it without knowledge of or reference to such Customer IP and/or Supreme Steel IP; or
- f. both Parties mutually agree in writing to release from the terms of this Deed; or
- g. the Subcontractor is required to disclose pursuant to a court order (which is not subject to appeal) or any applicable legislation.

Customer**[XXX]****Customer IP**

all Intellectual Property supplied by the Customer to Supreme Steel or the Subcontractor for the provision of the Services, including all plans, designs, drawings and specifications supplied by the Customer from time to time.

Intellectual Property

all intellectual property including concepts, ideas, discoveries, inventions, improvements, designs, trade secrets, technical data, know how, systems, procedures, processes, protocols, construction techniques, formulae, plans, specifications, laminate specifications, product prototypes, samples, contracts, customer lists, customer requirements, data, business plans, financial information, accounts, reports, computer software and programs (whether denominated software, firmware or otherwise), trade marks, trade names, brands, branding materials, copyright materials, patents, any applications or registrations for any of the foregoing, and any other intellectual property whatsoever, whether or not patented or registered and in any form, regardless of whether the information has been recorded in writing or is printed or electronically stored or otherwise.

Supreme Steel IP

all Intellectual Property of Supreme Steel, other than the Customer IP, including all Intellectual Property in relation to the Technology.

Technology

the manufacture of steel casted products by Supreme Steel and other materials from time to time, as designed and manufactured using the process and combination of materials developed by Supreme Steel, together with any

related designs, information or material prepared or produced by Supreme Steel.

Territory [New Zealand.]

1.2 **Interpretation:** In the interpretation of this Deed, unless the context otherwise requires:

1.2.1 References to the parties include their respective executors, administrators, successors and permitted assigns; and

1.2.2 *including* does not imply any limitation.

1.3 **Joint and Several Liability:** If a party comprises more than one person then each person comprising that party shall be bound jointly and severally.

2. Prohibition on Disclosure

2.1 The Subcontractor shall not at any time during the course of its dealings with Supreme Steel, or at any time thereafter (including after termination of this Deed) except as expressly provided in this Deed or as otherwise expressly agreed by Supreme Steel in writing, disclose to any person or copy or make use of in any manner any Confidential Information.

2.2 Nothing in this Deed shall obligate Supreme Steel to provide any Confidential Information to the Subcontractor.

2.3 The Subcontractor shall maintain all Confidential Information in confidence and shall disclose such Confidential Information only to those of its Affiliates:

2.3.1 who Supreme Steel has agreed to in writing; and

2.3.2 who, before disclosure of Confidential Information, agree unconditionally to be bound by the terms of this Deed by signing and returning to Supreme Steel a document to that effect.

2.4 The Subcontractor shall take all necessary and reasonable steps to prevent Confidential Information from being disclosed to any person not authorised to receive it under this Deed.

2.5 Notwithstanding any provision of this Deed or rule of law to the contrary the Subcontractor acknowledges that any subsequent unauthorised disclosure of such Confidential Information by its Affiliates shall be deemed to be a disclosure in breach of this Deed and the Subcontractor will be responsible for such breach.

2.6 The Subcontractor shall indemnify Supreme Steel and the Customer against any loss, claims, damages, expenses, liabilities, costs (including solicitor-client costs), proceedings or demands arising from any breach of its obligations, whether such breach arises due to any act or omission of the Subcontractor or any person the Subcontractor discloses the Confidential Information to, including the Affiliates pursuant to clause 2.3 of this Deed.

2.7 The Subcontractor agrees that if it, or any Affiliate, is required by any law, court order, or regulatory authority having jurisdiction over the Subcontractor or the Affiliate, or the listing rules of any stock exchange, to disclose any Confidential Information, the following shall apply:

2.7.1 such disclosure may be made only after Supreme Steel has been notified and has had an opportunity to consult with the Subcontractor or the Affiliate as to

the content of any such disclosure (keeping in mind any time constraints imposed on the Subcontractor by law); and

2.7.2 the provisions of this clause **2.7** shall not affect the right of Supreme Steel to institute proceedings against the Subcontractor for any pre-existing breach of this Deed by the Subcontractor or the Affiliate.

3. Intellectual Property

3.1 The Subcontractor acknowledges:

3.1.1 the Customer's ownership of the Customer IP;

3.1.2 Supreme Steel's ownership of the Supreme Steel IP; and

3.1.3 the Subcontractor does not own, nor will acquire, any Intellectual Property rights in the Confidential Information.

3.2 All Intellectual Property conceived, discovered, developed, made, perfected, improved, modified or altered by the Subcontractor as a result of the provision by Supreme Steel of any Supreme Steel IP, whether:

3.2.1 alone or in conjunction with Supreme Steel or any other parties;

3.2.2 capable of being patented or registered or not,

shall be disclosed to Supreme Steel, be the absolute property of Supreme Steel and shall not be used by the Subcontractor except by express prior written agreement with Supreme Steel on terms acceptable to Supreme Steel in its sole discretion.

3.3 The Subcontractor agrees that at all times it will not:

3.3.1 challenge the validity of any of the Customer's Intellectual Property rights or Supreme Steel's Intellectual Property rights;

3.3.2 knowingly, recklessly or intentionally cause or permit anything which may damage or endanger:

(a) the Customer IP or the Customer's title to the Customer IP, or assist or allow others to do so; or

(b) the Supreme Steel IP or Supreme Steels title to the Supreme Steel IP, or assist or allow others to do so;

3.3.3 use or deal with any Customer IP or Supreme Steel IP except strictly in accordance with the terms of any express written agreement with Supreme Steel;

3.3.4 represent that it has any title, right or interest in or ownership of, or that it has any right to acquire any title, right or, interest in or ownership of, any Customer IP or Supreme Steel IP;

3.3.5 do anything without the prior written consent of Supreme Steel which might be contrary to the rights or interest of:

(a) the Customer in any Customer IP; or

(b) Supreme Steel in any Supreme Steel IP;

3.3.6 apply to register in its own name any Intellectual Property rights subsisting in, relating to or used in relation to any Customer IP or Supreme Steel IP,

and the Subcontractor agrees to compensate Supreme Steel for any use by the Subcontractor of any Customer IP or Supreme Steel IP otherwise than in accordance with this Deed.

3.4 The Subcontractor shall use its best endeavours to safeguard the Customer IP and the Supreme Steel IP and shall immediately notify Supreme Steel of any improper, unlawful or infringing use of any Customer IP or Supreme Steel IP in the Territory.

3.5 No rights or obligations other than those expressly referred to are granted under, or to be implied from, this Deed.

4. Breach

4.1 The Subcontractor agrees that monetary damages will not be a sufficient remedy for any breach of this Deed and in addition to all other remedies Supreme Steel and the Customer shall be entitled to specific performance, injunctive or other equitable relief.

5. Termination

5.1 Supreme Steel may terminate this Deed at any time by notice in writing to the Subcontractor.

5.2 The Subcontractor shall, unless otherwise agreed, upon termination of this Deed immediately:

5.2.1 cease to use, and (if applicable) to hold itself out as having any right to use, all Confidential Information (whether on paper, a website, any directory, any electronic information storage or retrieval system or any other medium);

5.2.2 return to Supreme Steel all written material or other storage media containing, referring to or arising out of any Confidential Information supplied pursuant to this Deed, including any such items held by its Affiliates; and

5.2.3 destroy or erase all copies (whether on paper or any other storage media) of any Confidential Information or any analysis, studies, notes or memoranda prepared by the Subcontractor or its Affiliates which contain or reflect any Confidential Information.

6. Waiver

6.1 The failure or delay of Supreme Steel to insist in any one or more instances upon a strict performance of any of the terms of this Deed or the waiver by Supreme Steel of any term or right under this Deed or of any default of the Subcontractor shall not be deemed or construed as a waiver thereof of any other term, right or default or operate to bar the enforcement or exercise of any term or right in any other instance at any time or times thereafter.

7. Miscellaneous

7.1 This Deed shall be construed in accordance with the laws of New Zealand and each party irrevocably and unconditionally submits to the jurisdiction of the High Court of New Zealand.

7.2 For the purpose of the Contracts (Privity) Act 1982, the agreements and undertakings given by the Subcontractor in this Deed are given for the benefit of Supreme Steel and the Customer and are enforceable at the suit of all or any of them.

7.3 If any part of this Deed is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Deed which shall remain in full force.

7.4 The Subcontractor also acknowledges that the undertakings and agreements on the Subcontractor's part set out in this Deed are in addition to, and do not detract from, the duties of confidentiality which are imposed in the Subcontractor by law and in equity.

7.5 Nothing in this Deed creates any fiduciary relationship between the Subcontractor and Supreme Steel. No form of joint venture, agency, trust or partnership is created as a result of this Deed or the acts contemplated under it.

7.6 The parties agree that:

7.6.1 this Deed may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same Deed; and

7.6.2 this Deed may be executed on the basis of an exchange of email or facsimile copies and that their respective execution of this Deed by such means shall be a valid and sufficient execution.

SIGNED by the parties.

SIGNED on behalf of SUPREME STEEL PRODUCTS LIMITED:	
Signature: _____	Signature: _____
Name: _____	Name: _____
(for a company specify position: Director/Attorney/Authorised Signatory)	(for a company specify position: Director/Attorney/Authorised Signatory)
whose signature was witnessed by:	
Signature: _____	Name: _____
Occupation: _____	Address: _____

*To sign as a deed, if the Author is a company two directors of the company must sign. If the company only has one director, then that director's signature must be witnessed.

SIGNED on behalf of XXX:	
Signature: _____	Signature: _____
Name: _____	Name: _____
(for a company specify position: Director/Attorney/Authorised Signatory)	(for a company specify position: Director/Attorney/Authorised Signatory)
whose signature was witnessed by:	
Signature: _____	Name: _____
Occupation: _____	Address: _____

*To sign as a deed, if the Author is a company two directors of the company must sign. If the company only has one director, then that director's signature must be witnessed.