

TERMS AND CONDITIONS

1. GENERAL

For the purpose of these terms "Goods" means all building, landscaping products, masonry, stone and concrete products including pre-cast, pre-stressed and certified concrete (as may be sold from time to time) supplied by The Company including all goods referred to in any invoice issued by The Company to the Customer at any time. "GST" means goods and services tax within the meaning of the Goods and Services Tax 1985. "PPSA" means the Personal Properties Securities Act 1999 and where the context required includes the Regulations. "Security Interest" has the same meaning given to that term under the PPSA. The Goods are supplied on these terms. By placing an order on any Goods the Customer agrees to purchase the Goods on these terms. Please read the terms carefully and seek clarification from either The Company's Branch Manager or your Solicitor if you are unclear on any point. No variation of these terms is permitted unless The Company has agreed in writing to such variation.

2. PRICE

Goods will be invoiced at a GST Inclusive price as contained in The Company's price list current on the date of delivery unless otherwise agreed in writing by The Company. The Company may alter any prices without notice and the purchase price of the Goods payable by the Customer may be different for the price quoted or the price current when the Goods were ordered. Quoted prices may not be assumed to apply to variations.

3. PAYMENT

- 3.1 Unless The Company agrees to payment being made in terms of clause 3.2, the Customer will pay for the Goods plus GST in cash on or before delivery.
- 3.2 Where the Company agrees in writing that the sale of Goods is not a cash sale in terms of clause 3.1, the invoiced price of the Goods plus GST is to be paid by the Customer in full on the 20th of the month following the date of invoice for the Goods. If payment is not made on the due date, the Customer will pay default interest to The Company at the rate of 1.5% per month above the rate charged by The Company's bank for commercial overdraft facilities, on all money owing by the Customer to The Company from the due date for payment until the date payment is received by The Company. Payments made to the company shall be applied first in payment of default interest and secondly in reduction of invoiced amounts.
- 3.3 The Customer will make all payments due to The Company whether in respect of the price or the Goods or otherwise, in full without deduction or set off. The Customer will not withhold any amount as a retention except where The Company has agreed in writing that the Customer can withhold an agreed amount.
- 3.4 In the event of default in due payment by the Customer to The Company, The Company is entitled to recover from the Customer any discount given on the defaulted purchase together with all legal and other associated costs howsoever incurred by The Company arising from or consequent on enforcement and/or collection of money due and owing.
- 3.5 Receipt by the Company of any cheque or other payment method shall not be deemed to be payment until the same has been honoured or cleared and until such time shall not prejudice or affect The Company's rights, powers or remedies against the Customer or the Goods.

4. DELIVERY

- 4.1 The Company is not a carrier and does not undertake the obligations or liabilities of a carrier pursuant to the Carriage of Goods Act 1979.
- 4.2 Unless otherwise agreed in terms of clause 4.3, delivery of the Goods will be deemed complete when the Goods are available for the collection from The Company's premises on the specified delivery date. The Customer shall be responsible for arranging the carriage of the Goods to the Customer's premises.
- 4.3 Where The Company has agreed to arrange the carriage of the Goods:
 - 4.3.1 loading or deliveries carried out outside the hours of 7:30am and 4:00pm on weekdays must be by special arrangement and will incur an extra charge;
 - 4.3.2 delivery will be deemed complete when the Goods arrive at the delivery address specified by the Customer (whether or not the Customer is present at the time of a delivery to acknowledge receipt);
 - 4.3.3 the Customer is responsible for ensuring, at the Customer's cost, that the delivery address has sufficient and suitable access and means of access. If such access is not provided, the Customer will reimburse The Company for all of its consequential costs. The Company shall, at its discretion, determine whether there is sufficient and suitable access and may leave the Goods as near to the delivery address as a safe, hard public road permits; and
 - 4.3.4 if the Goods cannot be delivered (as a result of insufficient or unsuitable access or otherwise) or if the Customer fails or refuses to take delivery of any of the Goods at any specified time, The Company may (without limiting any other right that The Company may have) charge the Customer for any of the following expenses incurred:
 - (a) hourly truck and delivery rates for waiting time; and
 - (b) transportation, disposal of the Goods or other additional expenses incurred in relation to the Goods.
- 4.4 The Company will not be liable for loss, damage or delay of whatsoever nature or kind howsoever arising caused by circumstances outside its reasonable control or by unscheduled delays, provided however that all reasonable steps are taken to comply with the Customer's preferred timetable for delivery. Any stated time for delivery is an estimate only. Late delivery or failure to deliver any Goods does not entitle the Customer to cancel any order or part order.
- 4.5 All claims for errors or short delivery must be made to The Company in writing within 5 days of delivery. The Company is not liable for any shortages or damage to Goods where the Goods are left on-site unattended following delivery.
- 4.6 Delivery charges are to the Customer's account in the absence of prior agreement in writing to the contrary. The Customer will pay to The Company any additional cost or expenses incurred by The Company in delivering the Goods where it is necessary to leave a public road or street or paved or sealed road or street to deliver the Goods to the address requested by the Customer. Such additional costs or expenses include (but are not limited to) the following:
 - 4.6.1 any amount that The Company may be liable to pay because of damage to property whether its own or that of any other person;
 - 4.6.2 the cost of repairs to the delivery vehicle if it has been damaged during such delivery; and
 - 4.6.3 additional labour costs incurred in such delivery.

5. RISK

Notwithstanding clause 6, the Customer bears the risk of any loss or damage to, or deterioration of, the Goods due to any cause whatsoever after delivery of the Goods. Until title to, and property in, the Goods passes to the Customer in accordance with clause 6 the Customer will insure the Goods against all usual risks for the full insurable value and treat the Goods with all proper care. Any insurance claims in respect of damage to, or destruction of, the Goods are hereby assigned by the Customer to The Company. The Customer hereby indemnifies The Company against any loss or damage to the Goods howsoever arising.

6. OWNERSHIP

- 6.1 Title to, and property in, the Goods (whether or not any of the Goods have been paid for by the Customer) will not pass the Customer unless and until all amounts owing by the Customer to The Company in respect of the Goods or otherwise have been paid. Until title to, and property in, the Goods passes to the Customer:
 - 6.1.1 all goods are held by the Customer as bailee for, and on behalf of The Company;
 - 6.1.2 the Customer will store the goods in such a way that it is clear that the Goods are the sole property of The Company;
 - 6.1.3 The Company is entitled to enter any premises in respect of which the Customer has the right of entry to view the Goods and check that the Goods are being stored pursuant to these terms.
 - 6.1.4 if any of the goods are stored on any premises other than the premises in which the Customer has the right to access, then the Customer will immediately notify the person or persons entitled to possession of such premises of the rights of The Company under these terms. The Customer will not place the Goods in any premises where The Company's rights under these terms are not acknowledged by the person in possession thereof.
- 6.1.5 the Customer may incorporate the Goods into another product or chattel subject to the condition that:
 - (a) if the goods are admixed or united in an way with those of the Customer, the resultant product shall become and shall be deemed to be for all purposes the sole property of The Company; and
 - (b) if the Goods are admixed or united in any way with other goods which include goods of any other party, or are possessed with or are incorporated therein, the resultant Goods shall be deemed for all purposes to be owned in common by The Company with that other party on a pro rata basis to be calculated by reference to the cost of the Customer of the incorporated materials.

7. CANCELLATION

7. If any amount payable by the Customer to The Company is overdue, or the Customer fails to comply with any other obligation owed to The Company, or in The Company's opinion the Customer is likely to be unable to meet its obligations to The Company or the Customer becomes insolvent, has a receiver appointed in respect of all or some of the Customer's assets, makes or is likely to make an arrangement with the Customer's creditors or as a liquidator (provisional or otherwise) appointed or is placed under statutory management then, without prejudice to any other remedy of The Company:
 - (a) The Company is entitled to cancel all or any part of any contract or contracts with the Customer which remains unperformed; and
 - (b) all amounts outstanding under the then current contracts between the Customer and The Company will, whether or not due for payment, immediately become due and payable; and
 - (c) The Company is entitled to reclaim any Goods which are in the Customer's possession or control and to dispose of them for The Company's own benefit and for that purpose The Company shall be entitled, without notice, to enter directly or by its agents on any premises where it believes the Goods which it has supplied may be, without in any way being liable to any person.
 - (d) Notwithstanding anything in these terms, there is no intention to contract out of the Credit (Repossession) Act 1997 where it may apply and any provision which has such an effect shall be ineffective to that extent.

8. LIMITATIONS

- 8.1 If the Customer is, or holds itself out, as purchasing the Goods for the purpose of the business (as defined in the consumer Guarantees Act 1993) it is hereby expressly agreed that the guarantees implied by the Consumers Guarantees Act 1993 are excluded. Other than as expressly required by law (including but not limited to the Consumers Guaranteed Act 1993) The Company makes no other representations, warranties or conditions, express or implied as to the nature or quality of the Goods, and any and all other representations, warranties, terms implied by any laws including but not limited to the Sale of Goods Act 1908, are excluded;
- 8.2 To the extent permitted by law:
 - 8.2.1 no liability whatsoever is accepted by The Company as to the condition of the Goods after leaving The Company's premises unless The Company has agreed to deliver the Goods, in which case liability will cease at the time of on-site delivery;
 - 8.2.2 The Company is not liable for any consequential, incidental or special damages arising directly or indirectly from the use of the Goods and in any circumstances whatsoever; and
 - 8.2.3 The Company's liability is limited to the repair or re-supply or any defective goods.

9. CUSTOMER WARRANTIES

The Customer warrants that it will correctly advise its customers as to the purposes to which Goods should or should not be put and it will effectively and in writing contract out of the Consumer Guarantees Act 1993 whenever it agrees to supply Goods for a customer for the purpose of that customer's business.

10. PRIVACY ACT 1993

The Customer consents to The Company collecting, using and holding general credit information about the Customer and to disclosing that information to any third party in connection with credit management and control purposes. The Customer consents to The Company using the information to market to the Customer other products or services offered or sold by The Company.

11. PALLETS

Where pallets are supplied by The Company an additional charge will be made by The Company to the Customer. Where a charge is made by The Company for the supply of pallets, the amount charged will be at the sole discretion of The Company and these terms will apply to the supply of such pallets. The Company may purchase pallets previously supplied by The Company and issue a credit to the Customer upon return of the pallets and proof of purchase by the Customer is provided. No such purchase by The Company will be considered after a 12 week period and credits issued will be at the sole discretion of The Company but will take account of the condition of the pallets and the cost of collection where appropriate.

12. PERSONAL PROPERTIES SECURITIES ACT 1999

The Customer agrees that:

- 12.1 it grants a security interest in all present and after-acquired Goods as security for all the Customer's obligations to The Company;
- 12.2 it will do all things to execute or arrange for execution all such documents as is necessary or desirable to ensure that The Company has a perfected first ranking Security Interest(s) in the Goods;
- 12.3 it waives its right to receive a copy of the verification statement under PPSA;
- 12.4 it will have none of the rights under sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 129, 131, 132, 133, and 134 of the PPSA;
- 12.5 where The Company has rights in addition to those in part 9 of the PPSA, those rights shall continue to apply and, in particular, will not be limited by section 109 of the PPSA;
- 12.6 it will indemnify The Company for any cost The Company incurs in registering, maintaining and/or enforcing the Security Interest created by these terms; and
- 12.7 it will immediately notify The Company of any change in the Customer's name.

13. MISCELLANEOUS

- 13.1 If at any time The Company does not enforce any of these terms or grants the Customer time or other indulgence The Company will not be constructed as having waived that term or condition or its rights to later enforce that or any other term or condition.
- 13.2 References to clauses in these terms are references to the clauses in these terms. All clauses, words, phrases, sentences and paragraphs in these terms are separate and independent from the others, each one being able to be severed from the other, and if any of them or any part of them are held or found to be void, invalid, unenforceable or otherwise ineffective by operation of law, they shall be deemed to be severed from these terms to the extent of the voidance, invalidity or invalid, unenforceability but the remainder shall remain in full force and effect.
- 13.3 The right of The Company to sub-contract the whole or any part of any order for Goods is hereby reserved.
- 13.4 The Company and the Customer hereby acknowledge that these terms express the entire understanding and agreement between them, and that there have been no representations made by either party to the other except as expressed in these terms. If there is any inconsistency between these terms and any order that may be lodged by the Customer or any other agreement, then these terms will prevail.
- 13.5 If, in The Company's opinion, payment of any Goods is unlikely to be made or if payment of any Goods has not been made by the due date, the Customer hereby irrevocably agrees to grant a registered mortgage over all such land owned by the Customer on the then most current Auckland District Law Society all obligations Memorandum of Mortgage form in favour of The Company and agrees that in event of any default of the provisions of these terms The Company may lodge a caveat over any interest the Customer has in any land situated within New Zealand as a security for all indebtedness which exists from time to time to The Company.
- 13.6 The Company reserves the right to:
 - 13.6.1 suspend the supply of any order in whole or in part or to discontinue the supply of Goods and services to the Customer without incurring any liability whatsoever and without being obliged to give any reason for its action pending the provision of a guarantee or further guarantee or otherwise;
 - 13.6.2 make part delivery of any order and each part delivery shall constitute a separate contract of supply; and
 - 13.6.3 alter these terms by written notice to the Customer and such revised terms will thereafter apply to subsequently supplied Goods.
- 13.6.7 All customary construction industry tolerances will apply to the dimensions and measurements of the Goods unless the company and the Customer agree otherwise in writing.