



STANDARD TERMS AND CONDITIONS OF SALE

1. APPLICABLE TERMS

- 1.1 Notwithstanding any terms of trade of the customer, these Standard Terms and Conditions of Sale will apply to all supplies of cement and supplementary cementitious materials products (“Goods”) to a customer by Golden Bay, a business unit of Fletcher Concrete and Infrastructure Limited (the “Company”), unless the Company and the customer expressly agree otherwise in writing.
- 1.2 If the Company agrees that the Goods will be supplied on credit terms (and not as a cash sale with payment in full at or prior to delivery), the Fletcher Building Terms of Credit will also apply to that supply of Goods in conjunction with these Standard Terms and Conditions of Sale. In the event of any inconsistency between these Standard Terms and Conditions of Sale and the Fletcher Building Terms of Credit, the provisions of the Fletcher Building Terms of Credit will prevail.
- 1.3 The Company may amend these Standard Terms and Conditions of Sale from time to time by notice in writing to the customer.

2. PRICES AND QUOTATIONS

- 2.1 A quote given by the Company may be withdrawn by the Company at any time prior to its acceptance in writing by the customer. All quotes not expressly withdrawn by the Company become null and void unless the customer’s written acceptance is received within thirty (30) days of the date of the quotation.
- 2.2 Quoted prices are based on rates, royalties and charges applicable at the date of quotation unless otherwise specified. The Company reserves the right to pass on to the customer all or any increases in rates, royalties and charges incurred by the Company whatsoever that occur between the time the price is quoted and the time of delivery.
- 2.3 Quoted prices are for delivery to the customer’s site unless otherwise specified in the quote or agreed.
- 2.4 The provision by the Company of a quote shall in no way be construed as a readiness to extend credit.

3. DELIVERY

- 3.1 Unless agreed otherwise, the Company will deliver the Goods into the customer’s possession at the applicable delivery address or if agreed from the applicable Golden Bay service or distribution centre.
- 3.2 Where the Company has agreed to deliver to a site on request by the customer:
 - (a) the Company is not a common carrier and does not undertake the obligations or liabilities of a common carrier for the purposes of the Contract and Commercial Law Act 2017.
 - (b) the Company shall use its commercially reasonable endeavours to ensure that any delivery time, day or date provided to the customer is adhered to, however the Company shall not be liable for any cost, damages, loss or expenses whatsoever arising from or related to any failure to deliver on the estimated time, day or dates;
 - (c) the Company’s “buck stop” policy will apply where applicable subject to the terms of that policy which is on the Company’s website.



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- (d) any additional terms related to delivery of the Goods that are agreed to in writing by the Company or are included in any quote by the Company that is accepted by the customer will also form part of these Standard Terms and Conditions of Sale.
- 3.3 Where the Company has agreed to leave a public road or street in order to effect delivery of Goods to the customer as requested then:
- (a) if in the opinion of the Company's employee, contractor or representative there is not safe, sufficient and suitable means of access to and from the delivery point, it shall be the customer's responsibility to provide such sufficient and suitable means of access, and the customer shall be liable for, and reimburse and fully indemnify the Company for, all costs, damages, expenses and liability incurred by the Company arising from or relating to access (or attempted access) by the Company and the Company's delivery vehicles to and from the delivery point if the customer fails to provide such safe, sufficient and suitable means of access;
- (b) the final decision on entry onto any site and/or to discharge into Customer silos will be at the option and discretion of the Company's employee, contractor or representative. Failure to complete a delivery of Goods to the customer due to the operation of this clause will be deemed to not be a breach of contract by the Company.
- 3.4 Without limiting clause 5, the Company shall not be liable for any damage to the Goods or other property during delivery of the Goods where such damage could not have reasonably foreseen by the Company's employee, contractor or representative prior to such damage occurring.
- 3.5 Hourly truck hire and driver rates may (at the Company's option) be charged for excessive waiting times and delays caused by the customer or its client.
- 3.6 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 delivery time, the Company may (without limiting any other right that the Company may have) charge the Customer for transportation, disposal of the Goods or any other additional expenses incurred in relation to the Goods.
- 3.7 Where pallets are supplied by the Company an additional charge will be made by the Company to the Customer for such supply and these terms will apply to such supplies. The Company may purchase pallets previously supplied by the Company and Issue a credit, such credit being at the sole discretion of the Company but will take into account the condition of the pallets and the cost of collection where appropriate.
- 3.8 Late delivery or failure to deliver any Goods does not entitle the Customer to cancel any order or part order. All claims for errors or short delivery must be made to the Company in writing within thirty business days of delivery. Without limiting any other provision in these terms, the Company is not liable for any shortages or damage to Goods where the Goods are left on-site unattended, following delivery.

4. PAYMENT

- 4.1 Unless otherwise agreed with the Company in writing, all payments due to the Company shall be made in New Zealand dollars and shall only be by electronic bank transfer.
- 4.2 The Fletcher Building Terms of Credit will apply to all sales in conjunction with these Standard Terms and Conditions of Sale, including in relation to due date for payment and applicable provisions in the event of non-payment by the due date.
- 4.3 Under no circumstances shall the customer be entitled to apply any form of retention or set off from any monies due to the Company.



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4.4 The Company may decline at any time to make any further deliveries to the customer and may require payment before delivery of any further order.

5. LIABILITY

5.1 Subject any express warranties given by the Company, all warranties, representations and statements as to fitness or suitability for purpose, workmanship, tolerance to any conditions or otherwise in relation to the Goods are expressly excluded to the fullest extent permitted by law.

5.2 The liability of the Company to the customer or any third party, whether in tort (including negligence), contract or otherwise, for any loss, cost, damage, expenses or injury arising directly or indirectly from any non-compliance of the Goods with applicable standards or specifications will be strictly limited to a refund of the price of any non-compliant Goods or the supply of replacement Goods that comply with applicable standards and specifications. The Company will not be liable to the customer or any third party in any way whatsoever for:

- (a) any amounts whatsoever relating to Goods supplied to the customer once the Goods have been installed in any building or construction works, mixed into concrete or masonry products or otherwise co-mingled with another product;
- (b) any indirect losses or consequential damages of any kind, loss of production, loss of profits, loss of anticipated savings, loss of use, loss of business or punitive damages arising from or related to the supply of any Goods;
- (c) in any circumstance, any amount in excess of the price paid by the customer for the Goods supplied.

5.3 The Company accepts no liability for any non-compliant Goods unless it is notified of any such non-compliance within sixty (60) days from the date of delivery of the Goods to the customer.

5.4 To the fullest extent permitted by law, the Company will not be liable to the customer or any third party in any way whatsoever for:

- (a) loss caused by any factor beyond the Company's control;
- (b) any cost, damages, loss or expenses whatsoever arising from or related to any delay or failure to deliver Goods to the customer on the estimated or specified day or dates;
- (c) damage from misuse, accident, neglect or improper use of the Goods supplied;
- (d) any Goods to be treated as becoming wastage or scrap;
- (e) the loss of or damage to any of the customer's chattels left within the Company's possession or control (whether such loss or damage results from the Company's negligence or default or otherwise howsoever);
- (f) deterioration of Goods as a result of exposure to the elements after delivery;
- (g) Goods that have been tampered with or modified by the customer;
- (h) Goods that have been stored in an improper manner by the customer.

5.5 To the fullest extent permitted by law, the Company excludes its liability for business-to-business transactions under the Consumer Guarantees Act 1993 and the Fair Trading Act 1986, in particular sections 9, 12A, 13 and 14 of the Fair Trading Act 1986 and any other applicable consumer law. Where the customer is a "Consumer" as defined by the Consumer Guarantees Act 1993, the Consumer Guarantees Act will apply, and nothing in this



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clause is intended to limit any applicable rights of a customer (including the benefit of any applicable statutory warranties) under the Consumer Guarantees Act in relation to the supply of Goods to that customer.

6. NOTICES

- 6.1 Any notices to the customer may be given by posting the notice to the customer's last known postal address or faxing it to the customer's last known facsimile number, or by e-mail message sent to the customer's last known e-mail address.

7. CHANGE OF DETAILS

- 7.1 The customer must notify the Company of any change in any of the details provided by it on the Credit Account Application/Acceptance within 7 days of such change occurring.

8. ENVIRONMENTAL COMPLIANCE

- 8.1 The Customer acknowledges that it must comply with all laws (including without limitation the Resource Management Act 1991) in respect of the use, storage and/or disposal of any Goods.

9. GENERAL

- 9.1 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 construed as having waived that term or condition or its rights to later enforce that or any other term or condition. If any of these terms or any part of them, are held or found to be void, invalid, unenforceable or otherwise ineffective by operation of law, they shall (to the extent necessary) be deemed to be severed from these terms but the remainder shall remain in full force and effect
- 9.2 The right of the Company to sub-contract the whole or any part of any order for Goods is hereby reserved
- 9.3 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.