

ITW NEW ZEALAND (the "Supplier")
Terms and Conditions of Sale and Hire ("Terms")



GENERAL

The Supplier supplies all goods to every customer (the "Customer") subject to the following Terms, which shall prevail despite any indication to the contrary by any person acting or purporting to act on the Supplier's behalf. "Goods" means goods and/or services sold by the Supplier to the Customer and, unless the context otherwise requires, goods hired or leased by the Supplier to the Customer and goods loaned by the Supplier to the Customer at no charge.

The contract and these terms and conditions of sale shall be governed by New Zealand Law and the New Zealand courts shall have exclusive jurisdiction in connection herewith.

No waiver of any breach or failure to enforce any provision, of these terms at any time by the Supplier shall in any way limit or waive the right of the Supplier to subsequently enforce and compel strict compliance with these terms.

The Customer and the Supplier acknowledge that these Terms of Trade constitute a Security Agreement as defined by the Personal Property Securities Act 1999 ("PPSA"). For the Purposes of the PPSA, Collateral shall include all and any Goods supplied by the Supplier and the proceeds from the sale of those Goods. The Customer also agrees not to allow any person to file a finance statement over any of the Collateral secured by the Security Agreement without the prior written consent of the Supplier. The Customer hereby acknowledges that it has received a copy of these terms and conditions and, in particular, acknowledges that these terms and conditions constitute a security agreement for the purposes of the PPSA.

1. Acceptance

1.1 These Terms constitute the entire agreement between the Supplier and the Customer and it is expressly agreed that there are no other understandings, representations or warranties of any kind (expressed or implied) forming part of this agreement.

1.2 In particular:

- (a) Any condition contained in the Customer's order which is inconsistent with, qualifies, or is contrary to these terms and conditions shall be of no effect unless that condition is expressly accepted in writing by the Seller.
- (b) Any variation, waiver or cancellation of the Customer's order shall be of no effect unless accepted in writing by the Supplier. Where the Supplier accepts cancellation the Supplier may levy a handling charge of up to 15% of the price.

1.3 Where the Customer and the Supplier agree to a variation in the quantity of the Goods, the Goods shall be priced either at the rate applicable to the original quantity or the revised quantity at the absolute discretion of the Supplier.

2. Delivery

2.1 Delivery will take place upon despatch of goods from the premises of the Supplier and its agent.

2.2 Goods are offered subject to availability and the Supplier shall not be responsible or liable in any way to the Customer for delays or defaults or consequential loss or damage arising.

2.3 The Supplier may deliver the Goods by instalments, and each instalment shall be treated as a separate contract governed by these terms. Failure to deliver any instalment does not entitle the Customer to cancel the contract.

2.4 No claim for any discrepancy or shortage in the Goods delivered will be admitted unless it is made in writing to the Supplier within 14 days of delivery and the Customer co-operates with the Supplier to allow investigation of the shortage.

2.5 The Supplier reserves the right to cancel delivery of the Goods or such instalments thereof without prejudice to its rights to recover all sums owing to it in respect of deliveries already made.

2.6 Any quotations of delivery times by the Supplier are made in good faith as estimates and the Supplier shall not be bound by such quotations.

2.7 Liability for shortages in the quantity of the goods is limited to making up the shortage.

2.8 Where the Customer asks the Supplier to deliver Goods directly to another person, that person takes possession of the goods for the Customer as the Customer's agent.

3. Ownership and Risk

3.1 The Goods will be at the Customer's risk immediately on despatch. Where the Goods are being hired, they will remain at the Customer's risk at such time until they are returned at the Customer's expense to the Supplier's premises.

3.2 The Customer will insure the Goods comprehensively against all insurable risks for their full replacement value from the time of delivery until legal and beneficial ownership of the Goods has passed to the Customer (for the avoidance of doubt, if the Goods are being hired, the Customer will keep the Goods insured at all times until they are returned to the Supplier's premises). The Customer must pay all insurance premiums immediately as they fall due. The Customer must not do anything, permit anything to be done, or refrain from doing anything that might prejudice the insurance cover. If the Goods are damaged or destroyed before legal and beneficial ownership of them has passed to the Customer, the Customer will hold the proceeds of such insurance in a separate fund and on trust for the Supplier.

3.3 Where Goods are being purchased by the Customer, notwithstanding any period of credit, legal and beneficial ownership of any and all Goods shall remain with the Supplier until payment in full is made:

- (a) For the Goods; and
- (b) For all other amounts owing by the Customer to the Supplier.

3.4 Where the Customer is hiring Goods:

- (a) The Goods (and all information relating to the Goods) remain the property of the Supplier and the Customer's rights in relation to the Goods are those of use only;
- (b) Where any part of the Goods is replaced, such replacement part is the property of the Supplier;
- (c) The Customer will protect the Supplier's interest in the Goods, including making it clear to third parties that the Goods are the property of the Supplier; and
- (d) In the event that the Goods are required to be registered, it will ensure that such Goods are registered at all times during which they are in the Customer's possession.

3.5 Until payment is made in full by the Customer for the Goods the Customer holds the Goods as bailee for the Supplier and will store the Goods in such manner that they are clearly identifiable as the property of the Supplier and will keep separate records in respect of the same.

3.6 If the Goods are sold or otherwise disposed of by the Customer prior to payment in full, the Customer will have been deemed to have done so as agent for the Supplier and the proceeds of such sale will be the property of the Supplier. The Customer will hold the proceeds of such sale on trust, on account for the Supplier, and keep them in a separate fund from its own money.

3.7 The Customer will upon demand being made by notice in writing signed by the Supplier or some person appointed by it for such purpose and served or posted to the Customer at its place of business, registered office, or residential address assign all proceeds of sale of any Goods by the Customer to the Supplier and will upon request disclose full details of sale and proceeds of sale to the Supplier.

3.8 The Supplier may appoint a receiver in respect of the Goods and the proceeds of the same supplied to the Customer under these terms and conditions. Any receiver so appointed may take possession of the Goods and resell them and otherwise exercise all rights conferred on a receiver by law.

4. Pricing

4.1 Where Goods are being purchased, prices are subject to change without notice and all Goods will be supplied at the price prevailing at the time of delivery and the Customer is to pay the prices charged. (Please refer to clause 16 for special provisions in relation to Hire pricing.)

4.2 There may be a charge for the Supplier's pallets supplied by the Supplier. The Supplier will issue a credit on return of the Customer's pallets.

4.3 The price of the Goods or hire thereof excludes Goods and Services Tax ("GST") or any other taxes, which will be paid by the Customer in addition to the price.

4.4 If the Goods are exported the price and other monies due by the Customer shall be paid in the currency of the transaction.

4.5 Clerical errors or omissions, whether in computation or otherwise in any quotation, acknowledgements or invoice, shall be subject to correction.

4.6 Where the Supplier approves payment by way of credit card the Supplier reserves the right to impose on the Customer a financial transaction cost as determined by the Supplier.

5. Payment/Trade Terms

5.1 Trade terms are available only to approved customers upon application to, and the approval of an account by the Supplier.

5.2 The price of the Goods plus GST must be paid, in cleared funds, no later than the 20th of the month following the month in which the invoice was dated.

5.3 Payment of all moneys will be made without set-off, deduction or counterclaim of any kind.

5.4 The Supplier reserves the right to change the Customer's credit limit, suspend or terminate a contract and close the account without notifying the Customer.

5.5 Any disputes as to Goods or services supplied by the Supplier will not be considered except if brought to the Supplier's attention within fourteen (14) days of the date of delivery.

6. Default of Payment

6.1 If full payment for the Goods is not made to the Supplier by the due date for payment (or, where the Goods are being hired, any hireage instalment is not paid by the due date for payment), the Supplier may at the Supplier's discretion (and without affecting any other rights the Supplier may have), require the Customer to pay, on demand, default interest on any amount outstanding at the rate of 15% per annum. Default interest will accrue on a daily basis on the unpaid portion of the price from the date when payment is due until the date when payment is actually made, plus GST. The Customer will be liable to pay all expenses and collection costs (including legal costs as between solicitor and client and debt collectors' costs) in connection with the Supplier recovering or attempting to recover any overdue amounts.

6.2 If the Customer is in breach of any of these terms and conditions or in breach of any other agreement with the Supplier, the Supplier shall be entitled to cancel this and any other agreement and seek damages accordingly.

6.3 Where payment is overdue or the Customer is otherwise in breach of these terms and conditions or commits any act of bankruptcy (as defined in section 19 of the Insolvency Act 1967) or (if a company) has or receiver appointed in respect of any of its assets or has an application made or passes a resolution for its liquidation, the Supplier may, despite section 109 of the PPSA and in addition to the rights contained in that section, recover any or all of the Goods and re-sell the Goods and for such purpose may at any time of the day or night enter by force if necessary upon any premises where such Goods are reasonably thought to be stored and the Customer grants to the Supplier an irrevocable right and authority to so recover, re-enter and re-sell. The Supplier in exercising its rights pursuant to this clause shall be entitled to deduct from any sale of Goods recovered from the Customer all the liabilities and expenses (including legal expenses) incurred by the Supplier in enforcing or attempting to enforce its rights pursuant to this clause and all other amounts owing by the Customer, under these Terms or otherwise. The Customer indemnifies the Supplier, its employees and agents against any claims, actions, costs or losses that they suffer or incur by the repossession or attempted repossession of the Goods and for any damage to the Goods or any premises occurring during repossession.

6.4 The Customer will be liable to pay all expenses and collection costs incurred by the Supplier (including legal costs as between solicitor-client basis and debt collectors' costs) incurred in connection with registration of a financing statement or financing change statement, protection or preservation of its security interest or its registration, recovery or attempted recovery of any overdue amount and the enforcement of these terms and conditions or the security interest credited by this Agreement.

6.5 Payments by the Customer shall be applied first in the reduction of interest, liquidated damages and costs due pursuant to clause 6 and the balance then being in reduction of any amounts due.

6.6 A flat fee for non-payment may also be applied for each month in default.

7. Damage

7.1 The Supplier will not be liable for Goods damaged in transit.

7.2 Prior to acknowledging delivery to the carrier the Customer must ensure that the complete consignment as per the carrier's note has been received.

7.3 Should there be a shortage or visible damage to outer packaging the carriers note must be endorsed accordingly.

7.4 Within 7 days of receipt of consignment the Customer must ensure that all Goods received are in good order and condition.

7.5 No claims will be considered after 14 days of receipt of Goods.

8. Return of Goods

8.1 Where the Customer is purchasing Goods and the Supplier delivers the wrong Goods or Goods in excess of the quantity ordered by the Customer, the Customer may return the wrong Goods or the Goods in excess of quantity ordered, to the Supplier. If such Goods are returned within 14 days of delivery by a carrier nominated by the Supplier. The Supplier will pay for the cost of the return freight.

8.2 Goods will not be accepted for return after 14 days from the date of delivery unless agreed in writing by the Supplier. In the event that Goods are accepted for return an administration and handling fee may be charged at 15%.

8.3 The Customer may return any Goods (other than Goods to which clause 8.1 applies) to the Supplier, if the Supplier in its absolute discretion, consents to such return.

8.4 All such returns pursuant to clause 8.3:

- (a) Must be an authorised return within 14 days of delivery;
- (b) Must be returned freight paid in original packs and in a saleable condition;
- (c) Will be accepted subject to inspection by the Supplier; and
- (d) Must be accompanied by number and date of Supplier's invoice.
- 8.5 Subject to clause 8.4 the Supplier may (at its discretion) accept the Goods for credit less a 15% re stocking charge plus any freight. Acceptance of Goods returned does not imply agreement to issue credit note.
- 9. Guarantees, Warranty and Conditions**
- 9.1 If the Customer is a consumer under the Consumer Guarantees Act 1993 (for the purposes of this clause 9, "the Act") and is acquiring or holding itself out as acquiring Goods for business purposes, the Act will not apply.
- 9.2 Subject to clause 9.1:
- (a) The Customer relies upon its own knowledge, skill and judgment in relation to the particular use or suitability of the Goods for the Customer's purpose.
- (b) All warranties, descriptions, representations or conditions whether implied by the Sale of Goods Act 1908 or otherwise or contained in any document not furnished by the Supplier are expressly excluded to the fullest extent permitted by law;
- (c) No liability will be accepted by the Supplier for any damages or losses arising from a consequence of any act, default or negligence on the part of the Supplier or of an employee, agent or contractor of the Supplier;
- (d) Insofar as the Supplier may be liable, notwithstanding clause 9.2(b), for any loss, damage or injury arising directly or indirectly from any defect in the Goods, total liability of the Supplier, whether in tort, contract or otherwise, will be limited to the lesser of the price of the Goods complained of, the cost of repairing or replacing the defective Goods and the actual loss or damage suffered by the Customer; and
- (e) The Supplier will not be liable in any event for any consequential, indirect or damage, loss or injury of any kind suffered by the Customer.
- 9.3 In the case of Goods not of our own manufacture the Customer is entitled to only such benefits as the Supplier may receive under any warranty or guarantee given to the Supplier by the manufacturers in respect thereof.
- 9.4 If the Customer is a consumer under the Act, to the extent that the Customer's rights under the Act have not been excluded under clause 9.1, nothing in these terms will affect the rights of the Customer under the Act.
- 10. Limitation of Liability**
- 10.1 The liability of the Supplier in any case of:
- (a) A claim for any discrepancy or shortage in the Goods delivered (which must be made within the time limit in clause 8.1); or
- (b) A claim in relation to disputes as to the type or nature of the Goods supplied by the Supplier (which must be made within the time limit in clause 8.1); or
- (c) A claim in respect of Goods which are found to be defective;
- shall be limited to the purchase (or hire) price of the Goods concerned or where appropriate and at the sole discretion of the Supplier in the case of shortage to making up the shortfall and in any other case to replacement or repair of the Goods and the Supplier shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage whatsoever and howsoever arising.
- 10.2 The Supplier shall not be responsible for any damage whatsoever caused either to the Goods supplied or as a result of the malfunction of such Goods if:
- (a) The Goods are fitted by unqualified tradesmen; or
- (b) The Goods are fitted in any non-tradesman like manner; or
- (c) The Goods are in any way adapted to a use for which they are not specifically intended; or
- (d) The Goods are added to or repaired using components not recommended or approved by the manufacturer of such Goods; or
- (e) The Goods are improperly transported or stored; or
- (f) The damage or malfunction results from the misuse of, accidental damage to, or improper operation, maintenance, installation, modification or adjustment of, the Goods.
- 11. Patents & Copyright**
- 11.1 Copyright in all drawings, specifications and other technical information provided in connection with any contract with the Customer is vested in the Supplier.
- 11.2 Any technical information, knowledge or processing methods at any time transmitted either orally or in writing by the Supplier to the Customer remains the property of the Supplier and will be considered absolutely confidential by the Customer and the Customer will not use any such technical information, knowledge or processing methods for any purpose, nor sell, transfer or divulge them in any manner to anyone without the Supplier's prior written consent.
- 12. Security**
- 12.1 The Customer grants the Supplier a security interest in all present and after acquired Goods and their proceeds as security for the payment of all Goods supplied to the Supplier and for any other amounts owing to the Supplier by the Customer, whether under these terms and conditions or in relation to any other agreement. Without limiting the foregoing, to the extent applicable the security interest is a purchase money security interest (as defined under the PPSA) in the Goods and their proceeds. The security interest is a continuing interest irrespective of whether there may be monies or obligations owing by the Customer to the Supplier at a particular time, until the Supplier discharges its security interest.
- 12.2 On the Supplier's request the Customer shall promptly execute any documents and do anything else required by the Supplier to ensure that the security interest created under these terms and conditions constitutes a first ranking perfected security interest over the Goods. The Customer will also provide the Supplier with any information the Supplier reasonably requires to complete a financing statement or financing change statement.
- 12.3 The Customer shall immediately notify the Supplier in writing of any change in the Customer's name.
- 12.4 The Customer waives any right to receive a copy of a verification statement under the PPSA.
- 12.5 Where the Customer is purchasing the Goods, until all moneys due to the Supplier are paid the Customer:
- (a) Shall not sell charge or part with possession of the Goods otherwise than for its full value in the ordinary course of business;
- (b) shall not alter, obliterate or deface the Goods (other than for the purpose of becoming an Accession or an Ingredient) and shall not alter, obliterate, deface, cover up or remove any identity mark indicating that the Goods are the property of the Supplier;
- (c) Must store the Goods in such a manner that they are clearly identifiable as the property of the Supplier and will keep separate records in respect of the Goods
- 12.6 The Customer agrees that nothing in sections 114(1) (a), 117(1) (c), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.7 The Customer agrees that its rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to these terms and conditions.
- 12.8 The Customer will not allow a security interest to be created or registered over the Goods in priority to the security interest held by the Supplier.
- 13. Force Majeure**
- 13.1 The Supplier shall not be liable to the Customer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the Goods or failure to perform any term of this contract where such delay or failure is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour, materials or manufacturing facilities, accidents, interruptions of or delay in transportation or any other cause beyond the Supplier's control.
- 14. Compliance with Regulations**
- 14.1 The Customer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the Goods.
- 15. Assignment**
- 15.1 The Customer may not assign any of its rights under these Terms or any rights to the Goods without the prior written consent of the Supplier.
- 15.2 The Supplier may at any time assign its rights under these Terms to any party on such terms as it sees fit.
- 16. Special Provisions relating to Hire**
- 16.1 **Responsibility:** On placing an order for hired goods the Customer accepts responsibility for the goods from the time of despatch until such time as they are returned to the Supplier's premises, at the Customer's expense.
- 16.2 **Hireage:** Hireage shall be charged at the Supplier's hireage rates at the date of despatch of the goods. Goods hired on a daily basis shall be charged as a seven- (7) day week and shall include a hire charge for the day on which Goods were collected and the day Goods were returned. Goods hired on a monthly basis shall incur the standard full monthly hire charge for each month and part thereof that the Goods are on hire.
- 16.3 **Delivery:** Where the Customer does not request a particular method of delivery or return of hired Goods the Supplier will select a method of transport on behalf of the Customer who shall cover the responsibility and cost of delivery.
- 16.4 **Variation:** The Customer acknowledges that the Supplier may from time to time vary its hireage rates, upon at least 1 month's written notice to the Customer.
- 16.5 **Care of Goods:** The Customer must:
- (a) keep the Goods in its possession under its control at the Customer's address or at such other place as the Supplier has approved in writing;
- (b) use the Goods in a careful and prudent manner and in such a way is consistent with the Safe Handling, Transportation and Erection of Precast Concrete, Approved Code of Practice and the Code of Practice for Structural Design Actions AU/NZS 1170 (or any updated versions of those codes of practice);
- (c) notify the Supplier immediately in writing of any loss or damage to the Goods;
- 16.6 **Obligations:** The Customer must not without the prior written approval of the Supplier:
- (a) Sell, assign, hire, charge or part with possession of the Goods or any part of them;
- (b) Remove the Goods or allow them to be removed from the address at which the Supplier has approved that they be located;
- (c) Interfere or modify the Goods in any way or allow such interference or modification;
- (d) Use the Goods for non-business operations;
- (e) Use the Goods in any way or for any purposes other than that for which they were designed;
- (f) Permit the Goods to be connected to or linked with any other device or system; or
- (g) Interfere with any identification marks, labels, logos, or notices on the Goods.
- 16.7 **Inspection:** The Customer irrevocably authorizes the Supplier and its authorized employees or agents to enter the Customer's address and any other location to which the Customer has access at all reasonable times to inspect the Goods. The Supplier will give the Customer reasonable notice of such inspection.
- 16.8 **Return of Goods:** Where the Customer returns the Goods it must:
- (a) Return the Goods in clean condition and good working order and in good repair (fair wear and tear excepted). The Customer will;
- (b) Have the goods packed and stacked on "dunnage" (timber) in a manner normally used for the transportation by truck (HIAB), in an accessible location. All ends must be wound in prior to transporting.
- (c) Upon receipt of the Goods, the Supplier or its agent will complete a return condition report.
- (d) If the Goods do not comply with any of the conditions in this clause 16.8, the Customer will be charged the amount necessary to bring the Goods to compliance, with full payment due within 7 days of the date of invoice for such amount.
- (e) The Supplier charges a service charge per prop upon return to cover cleaning and service.
- 16.9 **Termination:** The Supplier may terminate any or all hire arrangements or orders upon notice in writing to the Customer. Upon termination the Customer must pay the Supplier all hireage and other monies due to the Supplier which may be due and unpaid at the date of termination, including any amounts payable upon the return of Goods under clause 16.8 above. Where termination is by reason of the Customer's Default, the Customer must also pay the Supplier the balance of all hireage yet to accrue from the date of termination to the end of any agreed hire period/s (discounted for early payment as the Supplier at its sole discretion allows); and all costs and expenses incurred by the Supplier in relation to the enforcement of any of its rights or powers implied or expressed (including legal costs on a solicitor/client basis).