

TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale shall apply to all contracts of sale with Terrazzo and Stoneworks NZ Ltd unless superseded by new terms and conditions as may from time to time be issued.; EFFECTIVE FROM 1ST JANUARY 2013

1. GENERAL

The seller accepts the buyers order on these conditions (which together with the acceptance) constitutes the entire agreement between the seller and the buyer and it is expressly agreed that there are no other understandings, representations or warranties of any kind (express or implied) forming part of this contract. In particular:

- I. Any condition contained in the buyer's order that is inconsistent with, qualifies, or is contrary to these conditions shall be of no effect unless the seller expressly accepts that condition in writing.
- II. Any variation, waiver or cancellation of the buyer's order shall be of no effect unless accepted in writing by the seller.
- III. Where the buyer and the seller agrees 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 discretion of the seller.
- IV. This contract is made under the auspices of the Construction Contracts Act 2002.

2. PRICES AND TERMS OF PAYMENT

- I. The seller's prices are subject to alteration without notice and the price payable by the buyer for the goods ordered shall be the price ruling at the date the goods are dispatched for delivery to the buyer.
- II. The sellers prices are exclusive of taxes, duties and other imposts which, if chargeable, are payable by the buyer whether they are imposed or brought into force before or after acceptance of the buyers order.
- III. If the goods are exported the price and other moneys due by the buyer shall be paid in New Zealand currency unless expressly stated otherwise in writing.
- IV. All prices are strictly net and unless otherwise stated in writing by the seller on acknowledging the order, are due for payment on the 20th day of the month following the month on which the goods (or any installment of the goods) are delivered.
- V. Without prejudice to its rights to sue for payment or exercise any other remedy where any payment is not made by the due date, the seller may:
 1. demand payment of the arrears as well as payment in advance for any undelivered goods before proceeding with manufacture or making any further delivery of goods under this or any other contract between the seller and the buyer.
 2. rescind this contract or any other contract between the seller and the buyer and the buyer shall not be entitled to demand or enforce delivery of any goods or any installment of goods under this or any other contract.
 3. Notwithstanding the above, the right to restrict or withhold the sale of further goods on credit is reserved where the seller has reason to doubt the ability to pay for such purchases.

3. RETURN OF GOODS FOR CREDIT

Goods supplied ex stock in accordance with the buyers order can only be returned with the express approval of the seller or otherwise required by law:

- I. Requests to return goods must be submitted in writing within 10 days from the date of supply.
- II. Where goods are accepted for credit they must be delivered, at the buyers expense, into the sellers warehouse, in original condition and packaging.
- III. The original invoice number must be quoted.

To the fullest extent permitted by law, goods specially imported or procured on behalf of the buyer cannot be returned except by prior written approval from the seller and then only on such terms and conditions as the seller may agree.

4. SHORTAGES

Liability for shortages in the quantity of the goods supplied is limited to making up the shortages. No claim for shortages in quantity will be allowed unless the customer gives written notification of the shortage within 7 days of delivery and provides a reasonable opportunity to take all necessary steps to investigate the claim.

5. DAMAGE OR LOSS IN TRANSIT

Goods leaving the sellers premises are adequately packed. Claims made for damage or loss in transit must be made against the carrier in the prescribed manner:

- I. Prior to acknowledging delivery to the carrier the buyer must ensure that the complete consignment as per the carriers note has been received.
- II. Should there be a shortage or visible damage to the outer packaging the carrier's note must be endorsed accordingly.
- III. Within 7 days of receipt of consignment the buyer must ensure that all product received is in good order and condition.

No claims will be considered after 7 days of receipt of goods. While no liability for goods damaged or lost in transit will be accepted by the seller, details of any claim should be advised to the seller

6. DELIVERY

- I. The seller may withhold delivery in terms of clause 2 above.
- II. The seller reserves the right to dispatch the buyers order in one delivery or by installments. Where the seller acknowledges an order which provides for delivery by installments the seller shall be entitled to payment for each installment delivered (as if it were a separate contract) but failure to deliver any installment shall not entitle the buyer to repudiate the contract as to any remaining installments.
- III. Any quotations of delivery times by the seller are made in good faith but as estimates and not commitments. The seller shall not be bound by such estimate.
- IV. Where the buyer requests delivery by a particular method and the seller agrees in writing then the buyer shall cover the cost of delivery by that method from the point of dispatch of the goods by the seller. Otherwise the seller will select the method of delivery.

7. DISPUTES

In the event that any part of an invoice is disputed, the amount not under question shall be paid promptly according to applicable payment terms. Any claim or dispute arising hereunder shall be subject to arbitration in accordance with the Arbitration Act (1980) of New Zealand.

8. PROPERTY AND RISK

Risk (including insurance responsibility) shall pass to the buyer on collection of the goods by the customer or on delivery by the seller or by the source to the buyer or his agent or to a carrier for delivery to the buyer. Ownership of all goods sold by the seller ("the goods"), is retained by the seller until full payment is received for all amounts owing in respect of the goods supplied. This provision is designed to protect the seller in the event of the bankruptcy, receivership or liquidation of the buyer, a seizure of goods by a creditor of the buyer or default in payment. Such events and the filing of legal proceedings seeking any such event are subsequently referred to as "the said events". Until such payment is made the buyer shall only be a fiduciary owner of the goods and the buyer agrees to:

- I. Enable the goods to be readily identifiable as the property of the seller;
- II. Maintain the goods so supplied in good order and condition and to return the goods immediately if called upon to do so by the seller.

In the event of default in payment on the due date, time for which is strictly of the essence, or in any of the other said events the buyer shall at the request of the seller hand to the seller the said goods or such of the goods that had not been sold AND the seller is authorised by the buyer to enter any premises on which the goods may be located and to recover the same. The buyer hereby agrees to meet all costs of, and any incidentals in the recovery of the said goods, as well as any shortfalls between the amount owing and the value of the goods recovered. Notwithstanding the retention of ownership, the buyer may prior to payment in full, as agent for the seller, sell the goods under a bona fide transaction not intended simply to deprive or in an attempt to deprive the seller of the benefit of the retention of title. In the event of a sale of the goods or any of them prior to payment in full the buyer shall, as trustee for the Seller;

- a) Hold all moneys received by the buyer on any such sale of the goods separate from the buyer's own money and in the name of and to the credit of the seller and the buyer will on request from the seller pay such proceeds to the seller;
- b) Hold all claims against purchasers of any such goods who have not made payment for the same in trust for the seller and the seller may in any of the said events either in its own name or in the name of the buyer make claim to and issue proceedings to recover the sale price of such goods.

In respect of any goods that are mixed with or used as constituent parts of any product manufactured or constructed by the buyer for on-sale to third parties, immediately upon such manufacture and construction occurring the buyer agrees to store such resultant product in a separate and identifiable part of the buyers premises. All proceeds of sale shall be held for the buyer's account of the seller in the bank account operated as aforesaid.

9. PERSONAL PROPERTY SECURITIES ACT 1999 – NEW ZEALAND SUPPLIES

If the Seller is supplying goods and services to a Buyer situated in New Zealand this clause 8 will apply.

- I. The Buyer acknowledges that these General Terms and Conditions create a security interest in all goods supplied by the seller and any proceeds of the sale of the goods as security for all of the Buyer's obligations to the Seller pursuant to the Personal Property Securities Act 1999 ("the PPSA"), and that the Seller may register a financing statement to perfect its security interest in the goods delivered or to be delivered to the Buyer in accordance with the provisions of the PPSA.
- II. The Buyer shall provide all information, execute or arrange for execution of all documents and do all other things that the Seller may require, to ensure that the Seller has a perfected first ranking security interest in the goods under the PPSA.
- III. The Buyer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on

behalf of the Seller under the PPSA and agrees that as between the Seller and the Buyer, the Buyer will have no rights under (or by reference to) sections 114(1)(a), 116, 119, 120(2), 121, 125, 129, 131, 132, 133 and 134 of the PPSA, and where the Seller has rights in addition to those in part 9 of the PPSA, those rights shall continue to apply.

- IV. The Buyer shall immediately upon request by the Seller, procure from any person considered by the Seller to be relevant to its security position such agreements and waivers as the Seller may at any time require to protect or enforce its security position.
- V. The Buyer shall immediately notify the Seller of any change in the Buyer's name, address details and any other information provided to the Seller to enable the Seller to register a financing change statement if required.
- VI. Until the Buyer has made full payment for goods it shall not without the prior written consent of the Seller create a security interest in the goods or the sale proceeds of the goods to any third party or permit any lien over the goods or the sale proceeds of the goods.

10. SELLERS LIABILITY

- I. The buyer shall ensure that the goods ordered are fit and suitable for the purpose for which they are required and the seller is under no liability if they are not, except where the goods are part of a system designed by the seller.
- II. In the case of goods not of our own manufacture the buyer is entitled to only such benefits as the seller may receive under any guarantee given to the seller by the manufacturers in respect thereof. The seller shall not be liable for consequential or special damages under any circumstances whatsoever.
- III. In lieu of any warranty condition, or liability, implied by law, the sellers liability in respect of any defect in or failure of the goods supplied, or for any loss, injury or damage attributable thereto, is limited to making good the replacement or repair of defects arising under normal proper use and maintenance arising solely from faulty design, materials, or workmanship within the guarantee period, if stated, or otherwise no warranty is supplied, provided always that such defective parts are promptly returned to the seller, unless otherwise arranged or required by law. At the termination of the appropriate period all liability on the sellers part ceases.
- IV. This warranty does not cover damage from misuse, accident, neglect or improper operation, maintenance, installation, modification or adjustment.

- V. The sellers liability under this contract and the warranty in this clause is confined to the buyer named in this contract it being agreed that the seller has no liability to any purchaser of the goods from the buyer in that the buyers rights under this contract are not assignable without the prior written consent of the seller.
- VI. The Consumer Guarantees Act 1993 shall not apply if the buyer acquired, or held himself or herself out as acquiring, the goods for the purpose of a business.
- VII. The buyer agrees to include a provision in its conditions of sale to the effect that the Consumer Guarantees Act 1993 shall not apply where a purchaser is acquiring the goods for the purposes of a business. The buyer agrees to indemnify the seller for any liabilities, losses, damages, costs or expenses of whatever kind of nature by the seller if the buyer fails to do so.

11. ERRORS OR OMISSIONS

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

12. FORCE MAJEURE

The seller shall not be liable to the buyer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of 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 or a government, inability to obtain labour, materials or manufacturing facilities, accidents, interruptions of, or delay in transportation or any other cause beyond the sellers control.

13. COMPLIANCES WITH REGULATIONS

The buyer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, bylaws or rules having the force of law in connection with the installation and operation of the goods.

14. PROPER LAW

The contract and these conditions of sale shall be governed by New Zealand law, and the New Zealand Courts shall have exclusive jurisdiction in connection herewith