

Terms of Trade

1. Terms of Trade

- 1.1 The terms and conditions set out below apply to every supply of Goods and Services made by Holcim to the Customer. By placing an Order with Holcim the Customer agrees that it is bound by these Terms of Trade and that the Customer's own terms and conditions do not apply.
- 1.2 Where the Customer has entered into a separate written supply agreement with Holcim, these Terms shall also apply except to the extent that there is any inconsistency between these Terms and the separate supply agreement, in which case the relevant provisions of the supply agreement shall prevail.

2. Definitions

Credit Account means the account for purchasing goods on credit held by the Customer with Holcim.

Customer means the person who purchases Goods or Services from Holcim, and includes the Customers' employees, contractors, subcontractors and agents. Where the Customer comprises two or more persons, means those persons jointly and severally.

Goods means any goods provided and/or manufactured by Holcim.

Holcim means Holcim (New Zealand) Limited.

PPSA means the Personal Property Securities Act 1999.

Order means an agreement between Holcim and the Customer for Holcim to supply Goods and/or Services to the Customer.

Quote means a written offer from Holcim to the Customer to supply Goods and/or Services for a specified price subject to the terms and conditions of such offer.

Services means any services performed by Holcim.

Terms means the terms and conditions of the supply set out in this document, including any variation to these Terms.

3. Orders and Quotes

- 3.1 These Terms apply to all Goods and Services supplied by Holcim. These Terms may be modified or added to by specific terms specified by Holcim in a Quote or other Order. A Customer's acceptance of a Quote constitutes an agreement to purchase Goods or Services on the terms of that Quote and these Terms.
- 3.2 All Quotes are based on rates and charges in effect at the date of the Quote. Any increase in rates or charges will result in an equivalent increase in the quoted price. A Quote may be withdrawn at any time. A Quote will be valid for the term specified on the Quote. If no term is specified, the Quote is valid for 30 days.
- 3.3 Quotes are prepared in accordance with information provided to Holcim by the Customer. Holcim will not be liable nor will it be bound by the Quote where:
- such information is inaccurate or any information omitted;
 - the Customer makes any variations to the work quoted for.
- 3.4 Holcim may decline any Order in its sole discretion.

4. Price

- 4.1 The price of Goods and Services shall be as agreed between Holcim and the Customer, as specified in Holcim's price list (as amended from time to time), or in an Order or accepted Quote, as applicable. Unless otherwise stated, prices stated do not include GST, other taxes or levies, transport or insurance charges.

5. Payments, Discounts and Rebates

- 5.1 Payment for Goods and Services charged to a Credit Account must be made in accordance with this clause 5. If the Customer does not have a Credit Account with Holcim, payment must be made on placing an Order.
- 5.2 Where the Customer receives a volume based discount on Goods and the Customer fails to purchase the total volume of such Goods, Holcim reserves the right to withdraw such discount and charge the Customer for the full price of the Goods without applying the discount.
- 5.3 Unless requested otherwise, invoices will be sent electronically. All accounts must be paid by the 20th of the month following invoice. If any item or part of any item in an invoice is disputed, the Customer shall notify Holcim prior to the last business day of the month in which the invoice is submitted specifying the item disputed. Payment of a disputed invoice may be deferred only in respect of the disputed part of the invoice.
- 5.4 Holcim reserves the right to suspend any discount or rebate and to restrict or withhold the supply of further Goods and Services to the Customer if these payment terms are not strictly adhered to. If the Customer defaults in making payment Holcim may:
- charge interest on all overdue invoices at Holcim's cost of borrowing plus 5% calculated from the due date to the date of the payment;
 - charge the Customer all costs including legal fees (as between solicitor and client), debt collection charges and court costs incurred by Holcim in recovering outstanding monies; and
 - cancel this agreement and/or the Customer's right to hold a Credit Account.

6. Security Interest

- 6.1 The Customer grants to Holcim a security interest in the Goods as security for all amounts owing to Holcim and the performance of the Customer's obligations under these Terms.
- 6.2 Title in the Goods shall remain with Holcim until there are no longer any amounts owing to Holcim for those Goods. The Customer acknowledges receipt of these Terms of Trade and agrees that it will execute all documents required by Holcim to maintain, register and enforce Holcim's security interest in respect of the Goods.
- 6.3 If Holcim registers the security interest created by these Terms under the PPSA, the Customer waives its rights to receive a copy of the verification statements in terms of section 148 of the PPSA and also waives its rights under sections 121 and 131 of the PPSA. Holcim and the Customer also contract out of Part 9 of the PPSA to the extent that the rights and obligations contained in sections 114, 125, 129, 132, 133 and 134 of that part of the PPSA do not apply as between Holcim and the Customer.
- 6.4 The Customer agrees that:
- the Customer will, upon receiving a written request from Holcim and at its own cost and expense, promptly deliver all or any of the Goods to Holcim. If the Customer fails to deliver the Goods upon request, Holcim may at any time enter into any place where the Goods are located and remove the Goods;
 - Holcim may sell all or any of the Goods without giving prior notice of the sale to the Customer;
 - it shall immediately notify Holcim of any change in the Customer's name, address or contact person details.

7. Warranties

- 7.1 To the extent permitted by law, all statutory, express or implied warranties by Holcim including, without limitation, implied warranties of merchantability and fitness for any particular purpose are expressly excluded.
- 7.2 Colour and texture variations may occur in Goods due to:
- the use of natural materials in the manufacturing process; and
 - normal manufacturing tolerances and processes.
- The Customer agrees that such variations do not constitute a product defect and Holcim shall not be liable for any loss or damage suffered by the Customer as a result of such variations.

8. Limitation of liability

- 8.1 The liability of Holcim in respect of all claims for loss, damage or injury arising from a breach of any of Holcim's obligations under these Terms or from any act or omission of Holcim is limited, in each case, to the lesser of:
- replacement or repair of the affected Goods;
 - payment of the actual cost of replacing or repairing the affected Goods; or
 - the price of the affected Goods or Services
- 8.2 Holcim shall not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of or in connection with the supply of Goods or Services by Holcim, except as set out in clause 8.1.
- 8.3 No action arising out of the supply of Goods or Services by Holcim, regardless of form, may be brought more than six months after the Customer becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the action.

9. Intellectual Property

- 9.1 All intellectual property rights in the Goods or arising out of the performance of the Services are and shall remain the property of Holcim. The Customer warrants that any design or drawing provided by it does not infringe any intellectual property rights of any other person.

10. Risk

- 10.1 Risk in the Goods shall pass to the Customer upon delivery as set out in clause 10.2.
- 10.2 Delivery of Goods shall be deemed to occur at the point specified in an Order or Quote, or if no delivery point is specified, then:
- when the Goods arrive at the address specified by the Customer (whether or not the Customer is present to acknowledge receipt), or
 - when the Customer takes possession of the Goods, whichever occurs first.
- 10.3 Holcim may deliver Goods by instalments. If the Customer fails to pay for an instalment on the due date Holcim may suspend deliveries of future instalments.
- 10.4 Where Holcim delivers the Goods, the Customer shall:
- ensure Holcim has all-weather access to the site, to enable Holcim to deliver the Goods safely;
 - obtain all necessary consents from the relevant local authority and inform Holcim of all matters relating to such consents;

- c) locate, mark and advise Holcim of all pipes, cabling and other utilities that are on, or near, or adjacent to the delivery point, and of any actual or possible hazard on the land where Goods are to be delivered; and
- d) indemnify Holcim against any costs, claims and damages incurred in the delivery of the Goods including any cleaning, repairing damage to the site or delivery equipment and returning the delivery vehicle to the road, provided Holcim has acted with reasonable care and skill.
- 10.5. The final decision on entry onto any site will be at Holcim's discretion. Failure to deliver pursuant to this clause will not be deemed to be a breach of contract by Holcim.
- 10.6. If the Customer collects the Goods from Holcim, the Customer agrees that it shall comply with Holcim's rules applicable to health and safety at Holcim's site, including ensuring that they are inducted to an appropriate induction standard at the site. The Customer shall also assist Holcim to provide and maintain a safe and healthy workplace where all hazards, unsafe acts and/or conditions are identified and analysed before being controlled by elimination/isolation or minimisation of the risk of harm.
- 10.7. The Customer must make any claims for short delivery within 48 hours of delivery of Goods by Holcim, and must state the date of delivery of the Goods and the delivery docket number.
- 10.8. The despatch docket will set out the specifications of the Goods ordered by the Customer. The Customer shall be responsible for signing the despatch docket and for checking that such specifications are correct prior to the discharge of the Goods from Holcim's truck.
- 10.9. If the Customer refuses all or part of any Order upon delivery at a Customer's site, the Customer shall be bound to make full payment for the Goods, together with all disposal costs in respect of the returned Order.
- 11. Returns and Cancellations**
- 11.1. Holcim is under no obligation to accept the cancellation of any Order or the return of Goods, which must be agreed to in writing by Holcim. A failure or refusal to sign a despatch docket shall not be evidence of rejection of any Goods or cancellation of any Order, such rejection or cancellation to be notified in writing at least two hours prior to delivery.
- 11.2. Goods which are damaged before delivery to the Customer may be returned for replacement or credit by quoting the date of delivery and the despatch docket numbers or invoice number provided that:
- the Goods are returned to Holcim at Holcim's cost, or Holcim is requested to uplift the Goods, within 48 hours of delivery; and
 - the Goods are in their original condition and packaging as supplied.
- 12. Consumer Guarantees Act 1993**
- 12.1. Where Goods or Services are being supplied for the purposes of a business, the Customer agrees that the Consumer Guarantees Act 1993 will not apply.
- 12.2. Where the supply of Goods is to a Customer who is a supplier (as defined in the Consumer Guarantees Act) the Customer covenants with Holcim that it will not make or allow to be made in respect of the Goods supplied any statements or representations as to quality or description other than those made by Holcim. The Customer hereby indemnifies and will keep indemnified Holcim against any claims, losses, damages and costs which may be made against Holcim in respect of statements or representations which are made contrary to the provisions of this clause.
- 13. Force Majeure**
- 13.1. No claim or liability will arise against Holcim under these Terms or any Order or Quote, if and to the extent that Holcim's failure or omission to carry out or observe any provisions of these Terms or any Order or Quote arises by reason of Force Majeure. "Force Majeure" means any event outside the reasonable control of Holcim.
- 14. Termination**
- 14.1. All outstanding monies shall become immediately due and payable from the Customer, and Holcim reserves the right to immediately cancel any Order and/or the Customer's right to hold a Credit Account, if the Customer:
- ceases or threatens to cease carrying on business;
 - becomes unable to pay its debts as they fall due or otherwise becomes insolvent or bankrupt;
 - has a receiver or a receiver and manager appointed in relation to all or part of its assets, commences liquidation or is placed in statutory management; or
 - breaches any of these Terms and fails to remedy the breach within ten days of written notice requiring the breach to be remedied.
- 15. Privacy Act 1993**
- 15.1. The Customer authorises Holcim to collect, retain and use personal information about the Customer for the following purposes:
- assessing the Customer's creditworthiness;
 - administering the Customers' Orders;
 - receiving information from one or more credit reference agencies, concerning the credit history of the Customer;
- d) disclosing credit-related information to, and using the credit services of, one or more credit reference agencies, on a continuing basis at any time and entirely at its discretion concerning the Customer's credit worthiness.
- 15.2. For the avoidance of doubt, all authorities given above are continuing authorities, to apply throughout the duration of the trading relationship.
- 15.3. The Customer, if an individual, has a right of access to personal information about the Customer held by Holcim and may request correction of the information.
- 16. Disputes**
- 16.1. The parties agree to use their best endeavours to promptly resolve any dispute or difference between them. If a dispute arises ("Dispute"), the party claiming that a Dispute has arisen shall serve notice on the other party stating the subject matter and details of the Dispute. After receipt of the notice, senior management of both parties shall meet within ten (10) working days and shall attempt in good faith to resolve the Dispute.
- 16.2. If the senior management fail to resolve the Dispute within twenty (20) working days of notice of the Dispute, either party may take such legal action including the commencement of legal proceedings as deemed appropriate or necessary to resolve or determine the Dispute.
- 17. Guarantee and Indemnity**
- 17.1. The Guarantor/s of the Customer jointly and severally unconditionally guarantee to Holcim the due and punctual payment by the Customer of all outstanding monies, and agree to keep Holcim fully indemnified against all damages, losses, costs and expenses arising from any failure of the Customer to pay the monies hereby guaranteed.
- 17.2. As between the Guarantor/s and Holcim the liability of the Guarantor/s shall be deemed to be that of principal debtor. This guarantee is in addition to and not in substitution for any other security or right which Holcim may have in respect to the Customer's indebtedness and may be enforced against the Guarantor/s without first having recourse to any such securities or rights and without taking steps or proceedings against the Customer.
- 17.3. The liability of the Guarantor/s shall not be affected by the granting of time, credit or any indulgence or other concession to the Customer or to any person giving any similar guarantee.
- 17.4. The guarantee and indemnity in this clause 17 is an irrevocable and continuing guarantee and indemnity and shall remain in full force until all obligations under the Customers' credit account have been fully paid, satisfied or performed.
- 18. General**
- 18.1. **Waiver:** Holcim's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Holcim's right to exercise or enforce such right or any other right in the future.
- 18.2. **Severance:** Should any part of these Terms be unenforceable such part shall be severed and the remainder of these Terms shall remain binding.
- 18.3. **Confidentiality:** Except as required by law both parties shall preserve as confidential any information of a confidential nature that they acquire in relation to the other.
- 18.4. **Variation:** Holcim may at any time and in its sole discretion vary these Terms with immediate effect, by posting the revised Terms of Trade on Holcim's website at www.holcim.com/nz provided that Holcim shall not make any variation to the nature or extent of the security interest granted by the Customer under clause 6 without the written agreement of the Customer. Holcim may notify the Customer by delivering the Customer an invoice with a notice of amendment and receipt of that invoice will be deemed acceptance by the Customer of these Terms as amended.
- 18.5. **No Partnership:** Notwithstanding any provision of these Terms, the parties agree that the relationship between them is not and shall not be construed to be a partnership.
- 18.6. **Further Acts:** The Customer shall execute all documents and do all acts and things as may reasonably be required by Holcim to carry into effect the matters contemplated by these Terms.
- 18.7. **Entire Agreement:** Except as otherwise agreed in writing, including in accordance with clause 1.2, these Terms constitute the entire agreement between the parties.
- 18.8. **Notice:** Any letter or notice given under these Terms will be validly and sufficiently given if sent by pre-paid post, facsimile or electronic mail to the address details notified by one party to the other from time to time. A notice sent by post shall be deemed to have been received on the third working day following the day of posting. A notice sent by facsimile or electronic mail shall be deemed to have been received on the date specified on the facsimile transmission receipt or email delivery receipt.
- 18.9. **Jurisdiction:** These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.
- Signed for and on behalf of the Customer:** _____ **Date:** _____