

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf.

DATE: _____ REF No. _____

CUSTOMER'S TRADE NAME: _____

CUSTOMER'S FULL or LEGAL NAME: _____

Phone: _____ Fax: _____

Mobile: _____ Email: _____

Billing Address: _____ Physical Address: _____

_____ Postcode: _____ _____ Postcode: _____

COMMERCIAL CUSTOMERS ONLY

Company Number: _____

Requested Credit Limit: _____ Date Established: _____

Contact 1: _____ Contact 2: _____

Position: _____ Position: _____

Phone: _____ Phone: _____

DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company)

Full Name: _____ Full Name: _____

Home Address: _____ Home Address: _____

_____ Postcode: _____ _____ Postcode: _____

Home Phone: _____ Home Phone: _____

TRADE REFERENCES

Business Name 1: _____ Business Name 2: _____

Address or A/C No: _____ Address or A/C No: _____

Phone: _____ Phone: _____

Fax: _____ Fax: _____

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Rockbond Special Concrete Products Limited which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director or a shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.***

SIGNED (ROCKBOND): _____ SIGNED (CUSTOMER): _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CUSTOMER'S SIGNATURE:

ID: _____ DOB: _____

Signed: _____ Name: _____ Date: _____

Rockbond Special Concrete Products Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Rockbond" shall mean Rockbond Special Concrete Products Limited, its successors and assigns or any person acting on behalf of and with the authority of Rockbond Special Concrete Products Limited.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Rockbond to the Customer.
- 1.3 "Guarantor" shall mean that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by Rockbond to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by Rockbond to the Customer.
- 1.5 "Services" shall mean all services supplied by Rockbond to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between Rockbond and the Customer in accordance with clause 4 of this contract.

2. Consumer Guarantees Act 1993

- 2.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Rockbond to the Customer.

3. Acceptance

- 3.1 Any instructions received by Rockbond from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by Rockbond shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Rockbond.
- 3.4 The Customer shall give Rockbond not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Rockbond as a result of the Customer's failure to comply with this clause.
- 3.5 Goods are supplied by Rockbond only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price and Payment

- 4.1 At Rockbond's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Rockbond to the Customer in respect of Goods supplied; or
- (b) Rockbond's Price at the date of delivery of the Goods according to Rockbond's current pricelist; or
- (c) Rockbond's quoted Price (subject to clause 4.2) which shall be binding upon Rockbond provided that the Customer shall accept Rockbond's quotation in writing within sixty (60) days.
- 4.2 Rockbond reserves the right to change the Price in the event of a variation to Rockbond's quotation. Any variation from the specifications of the Goods or plan of scheduled Services (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or as a result of increases to Rockbond in the cost of materials and labour) will be charged for on the basis of Rockbond's quotation and will be shown as variations on the invoice.
- 4.3 At Rockbond's sole discretion:
- (a) a non-refundable deposit may be required; and/or
- (b) payment shall be due before delivery of the Goods.
- 4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due twenty (20) days end of the month in which the invoice is dated.
- 4.5 Payment will be made by cash, cheque, bank cheque, credit card (plus a surcharge of up to four percent (4.0%) of the Price), direct credit, or by any other method as agreed to between the Customer and Rockbond.
- 4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery of the Goods

- 5.1 At Rockbond's sole discretion delivery of the Goods shall take place when:
- (a) the Customer takes possession of the Goods at Rockbond's address; or
- (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Rockbond or Rockbond's nominated carrier); or
- (c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
- 5.2 At Rockbond's sole discretion the costs of delivery are in addition to the Price and, where applicable, charged to the Customer's account.
- 5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Rockbond shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.5 Rockbond may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.6 The failure of Rockbond to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 Rockbond shall not be liable for any loss or damage whatsoever due to failure by Rockbond to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Rockbond.

6. Risk

- 6.1 If Rockbond retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Rockbond is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Rockbond is sufficient evidence of Rockbond's rights to receive the insurance proceeds without the need for any person dealing with Rockbond to make further enquiries.

7. Title

- 7.1 Rockbond and Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Rockbond all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to Rockbond in respect of all contracts between Rockbond and the Customer.
- 7.2 Receipt by Rockbond of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Rockbond's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until Rockbond shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from Rockbond to the Customer Rockbond may give notice in writing to the Customer to return the Goods or any of them to Rockbond. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Customer is only a bailee of the Goods and until such time as Rockbond has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Rockbond for the Goods, on trust for Rockbond; and
- (d) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Rockbond will be the owner of the end products; and
- (e) if the Customer fails to return the Goods to Rockbond then Rockbond or Rockbond's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods, and Rockbond will not be liable for any reasonable loss or damage suffered as a result of any action by Rockbond under this clause.

8. Personal Property Securities Act 1999 ("PPSA")

- 8.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods previously supplied by Rockbond to the Customer (if any) and all Goods that will be supplied in the future by Rockbond to the Customer.
- 8.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Rockbond may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Rockbond for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of Rockbond; and
- (d) immediately advise Rockbond of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.3 Rockbond and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 8.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 8.5 Unless otherwise agreed to in writing by Rockbond, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

- 8.6 The Customer shall unconditionally ratify any actions taken by Rockbond under clauses 8.1 to 8.5.

9. Security and Charge

- 9.1 Despite anything to the contrary contained herein or any other rights which Rockbond may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Rockbond or Rockbond's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Rockbond (or Rockbond's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should Rockbond elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Rockbond from and against all Rockbond's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Rockbond or Rockbond's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 9.1.

10. Defects and Returns

- 10.1 The Customer shall inspect the Goods on delivery and shall within two (2) days of delivery (time being of the essence) notify Rockbond of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Rockbond an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Rockbond has agreed in writing that the Customer is entitled to reject, Rockbond's liability is limited to either (at Rockbond's discretion) replacing the Goods or repairing the Goods.
- 10.2 At their sole discretion (and by prior arrangement), Rockbond may accept the return of Goods, provided that:
- (a) the return of the Goods has been pre-arranged with Rockbond; and
- (b) the Goods are returned at the Customer's cost within five (5) days of the delivery date; and
- (c) Rockbond will not be liable for Goods which have not been stored or used in a proper manner; and
- (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 10.3 Rockbond will not accept the return of Goods for credit.

11. Warranty

- 11.1 To the extent permitted by statute, no warranty is given by Rockbond as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Rockbond shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

12. Intellectual Property

- 12.1 Where Rockbond has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in Rockbond, and shall only be used by the Customer at Rockbond's discretion.
- 12.2 The Customer warrants that all designs or instructions to Rockbond will not cause Rockbond to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Rockbond against any action taken by a third party against Rockbond in respect of any such infringement.
- 12.3 The Customer agrees that Rockbond may use any documents, designs, drawings or Goods created by Rockbond for the purposes of advertising, marketing, or entry into any competition.

13. Default and Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Rockbond's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 In the event that the Customer's payment is disallowed for any reason the Customer shall be liable for any disallowance fees incurred by Rockbond.
- 13.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Rockbond from and against all costs and disbursements incurred by Rockbond in pursuing the debt including legal costs on a solicitor and own client basis and Rockbond's collection agency costs.
- 13.4 Without prejudice to any other remedies Rockbond may have, if at any time the Customer is in breach of any obligation (including those relating to payment) Rockbond may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. Rockbond will not be liable to the Customer for any loss or damage the Customer suffers because Rockbond has exercised its rights under this clause.
- 13.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.6 Without prejudice to Rockbond's other remedies at law Rockbond shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Rockbond shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Rockbond becomes overdue, or in Rockbond's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Cancellation

- 14.1 Rockbond may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Rockbond shall repay to the Customer any sums paid in respect of the Price. Rockbond shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any loss incurred by Rockbond (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14.3 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

15. Privacy Act 1993

- 15.1 The Customer and the Guarantor/s (if separate to the Customer) authorises Rockbond to:
- (a) collect, retain and use any information about the Customer and/or Guarantors, for the purpose of assessing the Customer's and/or Guarantors creditworthiness or marketing products and services to the Customer and/or Guarantors; and
- (b) disclose information about the Customer and/or Guarantors, whether collected by Rockbond from the Customer and/or Guarantors directly or obtained by Rockbond from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or Guarantors.
- 15.2 Where the Customer and/or Guarantors are an individual the authorities under clause 15.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 15.3 The Customer and/or Guarantors shall have the right to request Rockbond for a copy of the information about the Customer and/or Guarantors retained by Rockbond and the right to request Rockbond to correct any incorrect information about the Customer and/or Guarantors held by Rockbond.

16. Customer's Disclaimer

- 16.1 The Customer hereby disclaims any right to rescind, or cancel any contract with Rockbond or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Rockbond and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

17. General

- 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Wellington.
- 17.3 Rockbond shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Rockbond of these terms and conditions.
- 17.4 In the event of any breach of this contract by Rockbond the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price.
- 17.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Rockbond nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.6 Rockbond reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Rockbond notifies the Customer of such change.
- 17.7 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) of the Act which states that nothing in the Act shall affect the Sale of Goods Act 1908, were omitted from the Contractual Remedies Act 1979.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 17.9 The failure by Rockbond to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Rockbond's right to subsequently enforce that provision.