

TERMS AND CONDITIONS OF TRADE

The Company and Purchaser acknowledge that the following terms and conditions of trade have been completed pursuant to the provisions of the Consumer Guarantees Act 1993.

1. Definitions

“Company” shall mean Urban Building Products Limited.

“Purchaser” shall mean the person(s), firm, company, partnership or corporate entity who has completed the application set out herein or to whom the Company enters into a contract. The term Buyer by definition excludes any household or domestic consumer and is a general reference to the customer who is purchasing the goods solely for use in his/her/their business.

2. Customer Acknowledgement

The Buyer acknowledges that any sale by the Company to the Buyer is conducted as a contract for the sale of building products, whether supplied directly by the Company or as a result of supply from any other source whatsoever for the business purposes of the Buyer and are not goods of the kind ordinarily required for personal domestic or household use or consumption. The Buyer accepts that the provisions of the Consumer Guarantees Act 1993 have no application in respect of the provisions of goods and services under this contract and/or under any purchase order related to this contract. In the event that the Buyer is determined to be a consumer as defined by the Consumer Guarantees Act 1993, the provisions of this clause will not apply to the contract.

3. Warranties

Where the contract is completed between the Company and the Buyer as described in the definitions clause, the following shall apply:

The Company accepts full responsibility for the delivery of the supplied goods in an undamaged condition. Other than the warranties given in this paragraph, no other warranties are implied into this contract. Without limiting the generality of the above the parties are agreed that -

- (i) all terms, conditions and warranties otherwise implied by the Sale of Goods Act 1908 shall not apply; and
- (ii) the Company give no warranty in respect of the goods suitability to any particular location, environmental or weather conditions, or that the goods comply with any particular statutes, regulations or local by-laws.

Any dispute between the Buyer and the Company in respect of the Company's compliance with the warranties given in this clause are to be resolved by way of the decision of a single arbitrator appointed by the President for the time being of the Auckland District Law Society.

Such an arbitrator shall have absolute authority to determine issues and the procedure of the arbitration including the awarding of costs. The decision of the arbitrator shall be final and binding on the parties hereto. The application of this condition will not apply where the Purchaser is deemed to be a consumer within the definition of the Consumer Guarantees Act.

4. Title

- (i) The goods shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the Buyer has paid the Company the agreed price, and all other debts including but not limited to all freight and insurance charges associated with, and all GST payable in respect of the goods.
- (ii) The Buyer acknowledges that the Buyer will have possession of the goods solely as bailee for the Company until such time as all liabilities are paid to the Company, and shall accordingly store or install the goods in such a way as they are identifiable and keep full and complete records of the physical location of the goods from time to time.

- (iii) Notwithstanding that the property of the goods remains with the Company, the Buyer may resell the goods in the ordinary course of business prior to the Company receiving full payment. If the Buyer sells the goods as aforesaid, then the Buyer shall account to the Company for any part of the proceeds of sale as are equal to the liabilities payable by the Buyer to the Company and accordingly shall hold such proceeds in such for the benefit of the Company.
- (iv) Should the Buyer default in its obligation to make any payment as required in this agreement, or the Buyer not being a company commits an available act of bankruptcy, or if the Buyer being a company does anything or fails to do anything which would entitle a receiver to possession of any assets or which would entitle any person or any other entity to present a petition for the winding up of the Buyer, the Company shall be entitled to retake possession of the goods, such retaking to be without prejudice to any other rights whether under this contract or otherwise.
- (v) The Company or its agent may, for the purposes of recovery of the goods either upon any premises where the goods are located or installed, or where they are reasonably thought to be located or stored, and may repossess any goods in which property has not passed to the Buyer. The Company shall not be responsible for any damage caused while repossessing the goods.

5. Security

In part consideration for any credit advanced under this agreement, the Buyer agrees to mortgage and charge any interest held by the Buyer in any land on which the goods are installed, used or stored. Such mortgage or mortgages being in favour of the Company and shall secure all monies from time to time owing by the Buyer to the Company.

6. Privacy Act

The Buyer does hereby authorise any person(s) or company to provide the Company with such information as the Company may require in response to credit and/or employment inquiries. The Buyer further authorises the Company to furnish any third party details of this application and any subsequent dealings that the Buyer may have with the Company as a result of this application being actioned by the Company.

7. Payment

- 7.1 Payments shall be made without deduction on the 20th of the month following date of delivery of goods:
- 7.2 If all payment is not made to the Company by the due date above then:
 - (a) The Buyer shall default under these terms and conditions of trade and the Company may exercise all of the rights and remedies hereunder in respect of defaulting Buyers;
 - (b) There shall be due and payable by the Buyer interest upon the monies in default at the rate of 21.75 percentum per annum, this being payable on a daily basis as from the due date of payment. Such interest shall continue to accrue at such a rate after (as well as before) judgment and after termination of this contract.
 - (c) The Buyer shall be liable for all expenses incurred by the Company as a result of the default.

8. Taxes and duties

Unless otherwise indicated all prices quoted or submitted are exclusive of GST and other taxes or duties . The Company shall add to each invoice all such taxes and/or duties at the ruling rate.

9. Price

The prices quoted are based upon rates and conditions ruling at the date of quotation and are subject to any variations, extras, deletions, price increases or decreases, and any applicable taxes incurred or arising between the date of the quotation and the date of despatch. Where no quotation applies, prices shall be those ruling at the time of the despatch as designated by the Company.

10. Risk

The risk in the goods passes to the Buyer on receipt of the goods by the Buyer.

11. Supplier

The Company shall use its best endeavours to supply the goods ordered by the date requested by the Buyer, such date to be noted on the Purchase Order and initialled by the parties. The Company shall not be liable for delays resulting directly or indirectly from hostility, strikes or lock-outs, labour disputes, acts of God, forces of Nature, sanctions, acts, and regulations of any government, breakdown of machinery or transportation, or any other cause of any nature beyond the control of the Company.

12. Delivery

- (a) Unless specifically referred to in the Purchase order, all goods shall be delivered to the Buyer.
- (b) Without prejudice to any other rights and remedies which it may, if a delivery date is specified and the Buyer fails or refuses to take or accept delivery, or indicates to the Company a failure or refusal to take or accept delivery on the date specified in the contract or at any other time the Company delivers the goods, or if delivery is not specified in the contract and the Buyer fails to collect the goods within 7 days of this agreement (or such time as agreed) the Buyer shall be liable to the Company for any resulting storage and transportation costs the Company may incur. If the Company, in its sole discretion, decides to store the goods then the Company shall be entitled to charge and receive from the Buyer a reasonable charge for such storage.

13. Delivery Place

Delivery will be made to the gates of the place indicated by the Purchase Order. The Buyer shall ensure sufficient workers are in attendance to take the goods from the transporters. Should the premises where delivery is made be unattended, or if the Buyer fails or refuses to accept delivery of the goods then the goods shall be deemed to have been delivered. Costs thus incurred by the Company are recoverable from the Buyer.

14. Delivery Date and Time

The Buyer shall confirm or reschedule the delivery date 3 working days prior to the requested delivery date. The Company will endeavour to deliver at the time requested by the Buyer, such time shall be approximate and at the convenience of the Company.

15. Contract

The contract shall arise upon receipt of the Purchase Order and the items in the Purchase Order, together with these terms and conditions, shall be the conditions of the contract. All other conditions, warranties, descriptions, representations and agreements, whether expressed or implied by law, trade, custom or otherwise are hereby expressly excluded. No agent or representative of the Company is authorised to make any representations, statements and conditions or agreements not expressly confirmed by the Company in writing, and the Company is in no way bound by such unauthorised statements nor shall any such statement be, or be capable of being taken to form part of a contract with the Company collateral to this contract. Any contract arising otherwise than in response to a Purchase Order given by the Company shall include these terms and conditions which shall prevail in the case of any conflict with the terms of the Buyers order. The application of this condition will not apply where the purchaser is deemed to be a consumer within the definition of the Consumer Guarantees Act.

16. Claims

The liability of the Company, whether in contract or in tort, for any loss, damage or injury arising directly or indirectly from any defect or non-compliance of the goods supplied is limited to replacement or repair of such defective or non-complying goods or damages not exceeding the invoice value of such defective or non-complying goods at the option of the Company as the case may be. The Company shall not be liable for any consequential, indirect or special damage or loss of any kind whatsoever, nor shall the Company be liable for any damage or loss caused by the Buyers servants, agents, contractors, visitors, tenants, trespassers or other person(s) whomsoever. The Company may, at its discretion, remedy damage caused by any person other than the Company at the expense of the Buyer. The Buyer shall indemnify the Company against any claim by the Buyers servants, agents, contractors, visitors, tenants, trespassers or any other person(s) whomsoever (whether similar to the foregoing or not) in respect of any loss, damage or injury arising from any defect or non-compliance of the goods supplied. No claim by the Buyer either for damages or for repudiation of the contract shall be effective or enforceable unless made in writing and received by the Company within 14 days after delivery of the goods to the Buyer. The Buyer shall not be entitled to withhold any payment or to make any deduction therefrom for any reason whatsoever. The application of this condition will not apply where the Buyer is deemed to be a consumer within the definition of the Consumer Guarantees Act.

17. Waiver

All the original rights, powers and exemptions and remedies of the Company shall remain in force, notwithstanding any neglect, forbearance or delay in the enforcement thereof. The Company shall not be deemed to have waived any condition unless such waiver be in writing under the signature of the Managing Director of the Company, and any such waiver unless the contract shall be expressly stated and shall apply to and operate only in the particular transaction, dealing or matter.

18. Interpretation

- (i) These conditions of contract are entered into on behalf, and are intended to bind and ensure to the benefit of the Company hereunder and the Company's successors and assigns. The provisions of these conditions of contract including this one shall be given a large and liberal interpretation in favour of the Company and so the contra proferentum rule shall not in any case apply against or to the disadvantage of the Company.
- (ii) Should any part of these terms and conditions be declared void or unenforceable by any court of competent jurisdiction, such status shall not affect the balance of the terms and conditions which shall remain in full force and effect.

19. General

The receipt of this application must be by signature on this application form or in writing, and the above terms and conditions shall be deemed to have been agreed. No departure from these terms and conditions shall be recognised unless itemised in the Purchase Order.

Signed by the Buyer: _____

This the _____ day of _____ 20__.