

TERMS AND CONDITIONS

1. Definitions

- 1.1 "Account" shall mean the Customer's credit account.
- 1.2 "Application" shall mean the Customer's application for a Credit Facility from Ocean Concrete.
- 1.3 "Credit Facility" shall mean the arrangement for provision of credit by Ocean Concrete to the Customer.
- 1.4 "Ocean Concrete" shall mean LG Home Trading Limited (6095727) trading as Ocean Concrete or any employees of LG Home Trading Limited.
- 1.5 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, and/or any person purchasing Goods and Services from Ocean Concrete on behalf of the Customer.
- 1.6 "Goods" shall mean any product or other item supplied by Ocean Concrete to the Customer.
- 1.7 "Order" shall mean an order from a Customer for Goods and/or Services to be supplied by Ocean Concrete to the Customer.
- 1.8 "Services" shall mean any service supplied by Ocean Concrete to the Customer.
- 1.9 "Terms and Conditions" shall mean the terms and conditions recorded in this document.

2. Acceptance of Terms and Conditions

- 2.1 In the absence of any formal written acceptance, the receipt of an Order by the Customer whether verbally or in writing shall be deemed to constitute acceptance of the Terms and Conditions by the Customer.

3. Collections and Use of Information

- 3.1 The Customer agrees that any person, company, or organisation to provide Ocean Concrete with such information as Ocean Concrete may require in response to Ocean Concrete's credit enquiries. Any information obtained by Ocean Concrete for the purpose of the Application will be confined to that reasonably required by Ocean Concrete.
- 3.2 The Customer authorises Ocean Concrete to furnish any third party with details of the Application and any subsequent dealings that Ocean Concrete may have had with a Customer as a result of the Application being actioned. Any disclosure made by Ocean Concrete under this clause will be confined to that reasonably required by the third party.
- 3.3 Under the Privacy Act 2020, the Customer and any guarantor of the Customer has the right of access and correction of their personal information held by Ocean Concrete.

4. Price

- 4.1 Unless otherwise expressly stated in writing, the price of the Goods or Services shall be priced as at the date of delivery.
- 4.2 Unless any price quoted in writing is expressed to be a fixed price, Ocean Concrete reserves the right to adjust its prices at any time at its sole discretion.
- 4.3 No discounts or concessionary rates shall apply to Accounts in respect of which there are any overdue moneys.

5. Tax

- 5.1 Unless otherwise stated, all prices are exclusive of goods and services tax.

6. Payment

- 6.1 Except where Goods or Services are charged to an Account, payment is due on the date(s) determined by Ocean Concrete, which may be:
 - 6.1.1 On the placing of an Order; or
 - 6.1.2 Before delivery of the Goods or performance of the Services (as applicable).If no such payment is made, Ocean Concrete shall not be obliged to deliver the Goods or perform the Services.
- 6.2 Any credit granted to the Customer by Ocean Concrete shall be on the basis that the price shall be paid in full no later than the 20th day of the month following delivery.
- 6.3 Payment shall be made by the Customer on the 20th day of the month following that in which the concrete is delivered.
- 6.4 Ocean Concrete reserve the right to waive discounts on overdue accounts. Overdue accounts may be re-invoiced at "list" price and penalty interest charged in accordance with Clause 8.
- 6.5 Prices are based on payment by electronic funds transfer clear of bank charges. If payment is made by other means such as a cheque or credit card, then bank charges may be passed on to the Customer.
- 6.6 If Ocean Concrete allows payment of debtors accounts by credit card or other means of money transfer or electronic payment the Customer will comply with Ocean Concrete's procedures and charges for doing so and will not withdraw any authority for charging, transferring or debiting on less than one month's notice.

7. Limitation of Credit Facility

- 7.1 Notwithstanding Ocean Concrete having processed or approved the Application or having previously granted credit and without prejudice to any other of its rights, Ocean Concrete shall be entitled to withhold delivery until payment has been made or it considers the customer's credit worthiness to be satisfactory. Credit shall be revocable by Ocean Concrete at any time prior to delivery.
- 7.2 Ocean Concrete may in its sole discretion, at any time and without needing to provide a reason or notice to the Customer and/or any guarantor of the Customer, and without prejudice to any right it has in law or equity:
 - 7.2.1 Elect whether to grant or withhold credit to the Customer; and/or
 - 7.2.2 Increase or decrease the Customer's credit limit or the credit term.

8. Interest on Overdue Moneys

- 8.1 Without prejudice to any other of its rights, Ocean Concrete shall be entitled to charge interest at the rate of 2% per month on all overdue moneys. Interest shall compound monthly on the 20th day of each month.

9. Default

- 9.1 If the Customer breaches any of these Terms and fails to remedy that breach within 7 days after receiving notice to remedy from Ocean Concrete, Ocean Concrete may (without prejudicing its other rights or remedies) forthwith suspend or terminate the Account without notice to the Customer.
- 9.2 The total amount owing by the Customer to Ocean Concrete, including default interest, shall become immediately payable if:
 - 9.2.1 The Customer fails to make any payment on the due date.
 - 9.2.2 The Customer is otherwise in breach of any of these Terms and Conditions.
 - 9.2.3 Upon the appointment of a liquidator or receiver of the Customer.
 - 9.2.4 Upon termination of the Credit Facility.

10. Delivery

- 10.1 Delivery shall be made at the place indicated by the Customer upon ordering and shall (subject as hereinafter provided) occur upon the discharge of the Goods from Ocean Concrete delivery vehicle (s) or completion of the Services.
- 10.2 The Customer will give Ocean Concrete reasonable notice of the time and dates of deliveries. Ocean Concrete will use its best endeavours to make such deliveries in accordance with notice given by the Customer. No claim shall be made against Ocean Concrete for failure to deliver within such dates, regardless of whether the concrete is to be pumped or otherwise and regardless of whether such failure is beyond the control of Ocean Concrete. The Customer shall accept delivery when the same is made by Ocean Concrete.
- 10.3 The Customer warrants that there will be a site manager present and that traffic control is operating to guide the delivery truck at the place of delivery.
- 10.4 Where the concrete is to be delivered to places where there is insufficient space for an 8x4 truck to maneuver, and/or to places other than on paved or metal streets, the Customer is to provide roadways or other approaches permitting the safe and unimpeded access of the trucks to points of delivery under their own power. Ocean Concrete reserves the right at its sole discretion to refuse such deliveries in the event that such roadways or approaches are not provided to the satisfaction of Ocean Concrete. Such a refusal shall not constitute a breach of these Terms and Conditions.
- 10.5 If the Customer orders deliveries to places where there is insufficient space for an 8x4 truck to maneuver, to places other than on paved or metal streets, and/or to beyond the kerb line, the Customer hereby assumes and accepts absolute liability for damage to footpath, kerbs and other property and shall indemnify Ocean Concrete for the same regardless of whom the property belongs to. The absolute liability of the Customer shall extend to and include any damage occasioned to Ocean Concrete's trucks and equipment.
- 10.6 The Customer will be charged for all concrete which has been ordered and is unable to be accepted by the Customer unless cancellation of the order is received prior to the batching of the concrete.
- 10.7 Ocean Concrete may charge the Customer transportation and disposal expenses and may in addition recover from the Customer all additional costs, charges and expenses incurred by Ocean Concrete as a result of failure, refusal or inability on the part of the Customer to take or accept delivery.
- 10.8 Ocean Concrete shall be entitled to charge waiting time at their current rate on that period of time beyond ten minutes per cubic metre the vehicle is on or at site to discharge the Goods.
- 10.9 Ocean Concrete shall be entitled to charge an additional amount to be determined by Ocean Concrete for deliveries made before 6:00 am or after 5:00 pm on weekdays, before 7:00 am or after 11:00 am on Saturday and at any time on Sundays and Statutory holidays.
- 10.10 A small load fee may be charged for any load 3 m³ or less.

11. Cancellations

- 11.1 The Customer is not entitled to cancel an Order unless such cancellation is mutually agreed to by Ocean Concrete in writing. Ocean Concrete may be entitled to agree to the cancellation but subject to any conditions Ocean Concrete deems to be appropriate including but not limited to charging any cancellation and/or restocking fees.
- 11.2 In the Case of made-to-order Goods:
 - 11.2.1 Ocean Concrete may require the Customer to make a full upfront payment for the Goods or to pay a substantial deposit before Ocean Concrete commences manufacture of the Goods and the Customer is liable to pay for the full amount of Goods ordered, whether or not the Customer takes delivery of all such Goods; and

- 11.2.2 The Customer shall pay all costs associated with any additional production runs where the Customer requires more Goods than those first ordered.

12. Liability

- 12.1 Unless expressly stated to the contrary, all Goods supplied will be produced in accordance with the requirement of N.Z.S. 3104, 1991 or subsequent amendments and it shall be the Customer's responsibility to ensure that the Goods (as regards mix, strength, consistency and otherwise) are fit for the purpose for which they are intended.
- 12.2 Details of the mix delivered will be given on the delivery docket and must be checked by the Customer at the time of delivery for compliance with the job specifications. The Customer shall be deemed to accept the mix delivered upon pouring of the concrete commencing. Ocean Concrete shall be under no obligation to replace the load if the check has not been made before the pouring commences. Ocean Concrete shall be under no liability whatsoever for any incorrect mix.
- 12.3 Ocean Concrete accepts no responsibility whatsoever for the slump, strength or quality of any concrete to which it has added any other material or which has been added by any other party or at the Customer's request. The Customer accepts and acknowledges that Ocean Concrete has no control over the handling or placing of the concrete after unloading and accordingly Ocean Concrete does not guarantee or warrant the finished work in which the concrete will be used.
- 12.4 All prices and quotes are based upon the plastic and unhardened volume at the discharge from the delivery truck. Any claim for alleged short delivery of concrete must be made in writing quoting invoice numbers within 7 days of delivery, the Customer shall be deemed to have waived all such claims if the same are not made within 7 days of delivery.
- 12.5 The specified compressive strength at 28 days as defined in N.Z.S.3104 1991 and acceptance is based upon the conditions therein.
- 12.6 Ocean Concrete will not recognise results from tests conducted by the Customer upon concrete unless the concrete is sampled from the discharge from the delivery truck and tested according to N.Z.S.3112 1986.

13. Unauthorised Use of Account

- 13.1 The Customer shall be liable for any indebtedness arising from the unauthorised use of the account provided that authorisation came from an employee, contractor, or agent of the Customer.

14. Reservation of Title

- 14.1 The Customer acknowledges that they are in possession of any Goods supplied by Ocean Concrete, solely as bailee for Ocean Concrete until such times as full price thereof is paid to Ocean Concrete together with the full price of any other Goods subject of any other contract with Ocean Concrete.
- 14.2 Until such times as the Customer becomes the owner of the Goods they will however practicable store them on their premises separately from their own Goods or those of any other person and in a manner which makes them readily identifiable as the goods of Ocean Concrete.
- 14.3 The Customer's right to possession of the Goods shall cease if they, not being a company, commits an act of bankruptcy or if they, being a company, does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to make application for the appointment of a liquidator of a company. Ocean Concrete may for the purpose of recovery of its Goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
- 14.4 Subject to the terms hereof the Customer is licensed by Ocean Concrete to process the said Goods in such a fashion as they may wish and/or incorporate them in or with any other product or products subject to the express condition that the new product or products or any other chattel whatsoever containing any part of the said Goods shall be separately stored and marked so as to be identifiable as being made from or with the goods the property of Ocean Concrete.
- 14.5 If the Customer on-sells the Goods or any product or chattel made or with the Goods which the Customer has not received in full and the Customer has not received the proceeds of any such sale he will, if called upon to do so by Ocean Concrete, within seven days thereof assign to Ocean Concrete all rights against the person or entity to whom the Customer has supplied the Goods or any product or chattel made from or with the Goods.

15. The Personal Property Securities Act 1999 ("PPSA")

- 15.1 As security for:
 - 15.1.1 The payment of all amounts of any nature which the Customer (whether alone, or jointly or jointly and severally with any other person) is, or may at any time become, liable (whether actually or contingently) to pay to Ocean Concrete (whether alone, or jointly or jointly and severally with any other person); and
 - 15.1.2 The performance by the Customer of all the Customer's other obligations to Ocean Concrete at any time,the Customer grants to Ocean Concrete a security interest in all the Goods supplied by Ocean Concrete to the Customer presently, and at any time in the future.
- 15.2 The Customer:
 - 15.2.1 Agrees that Ocean Concrete may register a Financing Statement in the Personal Property Securities Register to protect their security interest under clause 15.1;
 - 15.2.2 Agrees that it shall pay to Ocean Concrete promptly on request the cost of registering the Financing Statement and the costs of enforcing or attempting to enforce the security agreement against either it and/or any other party;
 - 15.2.3 Agrees that nothing in Sections 114(1)(a), 133 134 of the PPSA will apply to this agreement, or the security under this agreement;
 - 15.2.4 Waives the Customer's right to do any of the following:
 - (a) object to Ocean Concrete's proposal to retain any Personal Property under Section 121 of the PPSA;
 - (b) not have Goods damaged when Ocean Concrete removes an accession under Section 125 of the PPSA;
 - (c) receive notice of the removal of an accession under Section 129 of the PPSA;
 - (d) receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the security interest created by this agreement.
 - 15.2.5 Agrees to notify Ocean Concrete if the Customer changes its name not less than 7 days before the change takes effect
 - 15.2.6 Agrees to, at Ocean Concrete's request, promptly execute any documents, provide all necessary information and documents, and do anything else required by Ocean Concrete to ensure Ocean Concrete's security interest may be perfected under the PPSA.

16. Cost of Collection

- 16.1 The Customer shall be immediately liable for all costs of collection and legal fees (including on a solicitor-client basis) incurred by Ocean Concrete in the recovery or attempted recovery of any overdue amounts.

17. Variation of Terms and Conditions

- 17.1 Ocean Concrete may, in its sole discretion, vary these Terms and Conditions from time to time by notifying the Customer in writing by email or post, and by use thereafter by the Customer of the Credit Facility, or by the Customer doing so. The Customer shall be bound by the latest version of these Terms and Conditions (as so varied) in respect of the supply of any Goods and Services by Ocean Concrete to the Customer.

18. Termination

- 18.1 In addition to any other of Ocean Concrete's right of termination provided herein or at law, Ocean Concrete shall have the right to terminate the Credit Facility at any time without advance notice but no such termination shall release the Customer from any moneys owing or from liability for any previous breach of the Terms and Conditions.
- 18.2 Ocean Concrete shall not be liable for any loss (including but not limited to consequential loss) suffered by the Customer as a result of the termination of the Credit Facility.

19. Consumer Guarantees Act

- 19.1 The Customer acknowledges and agrees that where the Goods and Services supplied by Ocean Concrete are being purchased by a Customer which is in trade and/or purchased by a Customer for business purposes the provisions of the Consumer Guarantees Act 1993 do not apply.

20. Personal Guarantee of Company Directors or Trustees

- 20.1 If the Customer is a company or trust, in consideration of Ocean Concrete agreeing to provide Goods and Services and/or grant credit to the Customer at their request, the director(s) or trustee(s) signing the Application or any contract with Ocean Concrete are deemed to also have signed the Application or the contract in their personal capacity and jointly and severally personally undertake as principal debtors to Ocean Concrete the payment of any and all monies now or hereafter owed by the Customer to Ocean Concrete and indemnify Ocean Concrete against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations owed to Ocean Concrete pursuant to the Application and these Terms and Conditions. The signatories and Customer shall be jointly and severally liable under these Terms and Conditions and for payment of all sums due hereunder.

21. Copyright

- 21.1 Copyright in all drawings, specifications and other technical information provided by Ocean Concrete in connection with the contract for the supply of Goods or Services are vested in Ocean Concrete.

22. Miscellaneous

- 22.1 Ocean Concrete shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 22.2 If any provision of these Terms and Conditions or any other contract between the Customer and Ocean Concrete shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.3 These Terms and Conditions and any other contract between the Customer and Ocean Concrete shall be construed in accordance with and be governed by the laws of New Zealand, and Ocean Concrete and the Customer submit to the non-exclusive jurisdiction of the New Zealand Courts.
- 22.4 Reference to the singular includes a reference to the plural and vice versa.