

# MARTIN BLACK CONCRETE CONSTRUCTION LTD TERMS & CONDITIONS OF TRADE

## 1 - DEFINITIONS

- 1.1 "Supplier" means MARTIN BLACK CONCRETE CONSTRUCTION LTD and any company which is directly or indirectly a subsidiary of MARTIN BLACK CONCRETE CONSTRUCTION LTD and any duly authorised agent.
- 1.2 "Client" means the person, authorised agent or legal entity described in the application, or stated on the invoice or order form, buying goods and/or services from MARTIN BLACK CONCRETE CONSTRUCTION LTD.
- 1.3 "Goods" has the same meaning as section 2 of the Sale of Goods Act 1908 and is any goods provided by the supplier to the client.
- 1.4 "Services" shall mean all services supplied by the supplier to the client and includes any recommendations or advice.
- 1.5 "Price" shall mean the purchase price of the goods and services.

## 2 - ACCEPTANCE

- 2.1 Any instructions received by the supplier from the client for the supply of goods shall constitute acceptance of the terms and conditions contained herein.
- 2.2 No agent or representative of the supplier is permitted to make any such agreements, representations, conditions or warranties not expressly confirmed by the supplier in writing.

## 3 - PRIVACY ACT 1993

- 3.1 The client permits the supplier to collect, retain and use any information concerning the client, for the purpose of assessing the client's credit worthiness, to enforce any rights under this contract, or the marketing of any goods & services provided by the supplier to any other party.
- 3.2 The client permits the supplier to disclose information obtained to any person for the purposes set out in clause 3.1.

## 4 - PAYMENT TERMS

- 4.1 Once goods are ordered payment shall be made for goods according to the terms and conditions stated herein whether or not the goods have been delivered and this contract cannot be cancelled except where allowed at law.
- 4.2 Payment for goods and services shall be made in full within 7 days from date of invoice. A deposit of 60% is required on quotes over \$5000, with progress payments as agreed. Account holders are required to make payment in full by the 20th day of the month following date of invoice.
- 4.3 Interest at the rate of 2.5% per month or part thereof may be charged on any amount owing after the due date.
- 4.4 Any disbursements, expenses and legal costs incurred by the supplier for default in payment shall be paid by the client, including any debt collection fees, court costs or solicitor's fees.
- 4.5 An administration fee of the greater amount of \$50.00 or 10% of the amount overdue will be payable 30 days after due date and the supplier reserves the right to terminate future supply.
- 4.6 Payment will be accepted by cash, cheque and electronic banking or by any other method as agreed in writing by the supplier.
- 4.7 Payment may be made by instalments if agreed in writing by the supplier.

## 5 - PRICE

- 5.1 Prices unless otherwise stated, do not include goods and services tax, other taxes, levies or tariffs, freight or insurance charges which, if applicable, will be an extra charge to the client.
- 5.2 Price will be specified on the invoice or quotation and will be the current price at time of delivery.

## 6 - RISK AND DELIVERY

- 6.1 The goods remain at the supplier's risk until the delivery to the client, but when title passes to the client the goods are at the clients risk no matter if delivery has been made or not.
- 6.2 Delivery of goods shall be deemed complete when the supplier gives possession of the goods for delivery to the client, or possession of the goods is given to a general carrier, for delivery to the client.
- 6.3 Where the supplier delivers goods to the client by installments and the supplier fails to deliver one or more installments, the client shall not have the right to recant the contract.
- 6.4 The supplier shall not be liable to the client for damage or loss due to failure by the supplier to deliver the goods promptly or at all.

## 7 - RETENTION OF TITLE

- 7.1 Title in the goods passes to the client when the client has made payment in full for all goods supplied by the supplier.
- 7.2 The client gives necessary authority to the supplier to enter any premises occupied by the client, at any reasonable time, to remove any goods not paid for in full by the client. The supplier shall not be liable for damages, costs or expenses or any other losses suffered by the client as a result of this action.

## 8 - LIMITATION OF LIABILITY

- 8.1 The supplier shall not be liable for any loss of profits, or any consequential indirect loss, or damage of any kind arising directly or indirectly from any breach of the supplier's obligation under this contract or in tort.
- 8.2 Where the supplier is liable to the client, the maximum cost of any liability shall not exceed the value of the goods or services provided by the supplier to the client.

## 10 - CONSUMER GUARANTEES ACT 1993

- 10.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the client acquires goods or services from the supplier for the purposes of a business.
- 10.2 If the client on sells the goods to a third party, the client shall indemnify the supplier for any losses incurred due to third party claims against the supplier.

## 9 - FORCE MAJEURE

- 9.1 The supplier shall not be liable for failure or delay to perform its obligations if the delay or failure is beyond its control.
- 9.2 Neither party will be liable to the other for any breach of this agreement by any extraordinary occurrences which are beyond the reasonable control of the party in

question. The supplier is not liable for any cracks caused by adverse weather and/or natural acts of God.

## 11 - UNDERGROUND LOCATIONS

- 11.1 Prior to MBCC commencing works, the Client must advise MBCC of the exact location of all underground services on the site. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, and any other services that may be on site.
- 11.2 Whilst MBCC will take all care to avoid damage to any underground services the Client agrees to indemnify MBCC of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.

## 12 - JURISDICTION

- 12.1 The contract shall in all respects be deemed to be a contract made in New Zealand and the validity, construction and performance of the contract shall be governed by New Zealand law.

## 13 - CANCELLATION

- 13.1 The supplier may cancel these terms and conditions or cancel delivery of goods and services at any time before the goods are delivered by giving written notice. The supplier shall not be liable for any loss or damage arising from such cancellation.
- 13.2 The client may cancel delivery of goods at the supplier's sole discretion and will be liable for any costs incurred by the supplier.

## 14 - ASSIGNMENT

- 14.1 The client shall not assign all or any of its rights or obligations under this contract without the written consent of the supplier.

## 15 - SECURITY INTEREST / PERSONAL PROPERTY SECURITIES ACT 1999

- 15.1 The client grants the supplier:
  - (a) A purchase money security interest ('PMSI') in all goods supplied and the proceeds of sale from goods supplied; and
  - (b) A security interest ('Security Interest') over all present and after-acquired property of the client as security for all amounts owing by the client to the supplier from time to time.
- 15.2 The client acknowledges the supplier may register the PMSI and Security Interest on the Personal Property Securities Register. At the request of the supplier, the client agrees to cooperate and promptly execute any further documentation that may be required from time to time to enable the PMSI and Security Interest to effectively attach, be perfected, and enforced by the supplier.
- 15.3 The client waives its rights to receive a verification statement in respect of any financing statement registered on the Personal Property Securities Register in respect of the security interest created by these terms.
- 15.4 The client hereby waives its rights contained in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131, and 132 of the PPSA.

## 16 - WARRANTY

- 16.1 For goods not manufactured by the supplier the warranty shall be the current warranty provided by the manufacturer of the goods. The supplier shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.
- 16.2 Any fault in workmanship will lead to the client notifying the supplier in writing within 30 days.

## 17 - NON WAIVER

- 17.1 Failure by the supplier to enforce any of the terms & conditions contained in this contract shall not be deemed to be a waiver of any of the rights the supplier has in this contract and is not liable for any indirect loss or expense to the client.

## 18 - PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 18.1 If the client is a company or trust, the director(s) or trustee(s) agree, in consideration for the supplier agreeing to supply goods and credit to the client at their request, that in their personal capacity and jointly and severally personally undertake as principal debtors to the supplier, the payment of any and all monies now or hereafter owed by the client to the supplier and indemnify the supplier against non-payment by the client. Any personal liability hereto shall not exclude the client in any way whatsoever from the liabilities and obligations contained in this contract. The individual and client shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

## 19 - CONSTRUCTION CONTRACTS ACT 2002

- 19.1 This clause constitutes agreement by the supplier and the client on all of the mechanisms referred to in section 14 of the Construction Contracts Act 2002.
- 19.2 As part of any invoice (where applicable) the supplier may serve a "payment claim" on the client as that term is defined in the Construction Contracts Act 2002.
- 19.3 Where the supplier submits a payment claim the client may respond to the payment claim by providing a "payment schedule", as that term is defined in the Construction Contracts Act 2002. The payment schedule must be provided within 20 days of the date of receipt of the payment claim.
- 19.4 If the client does not respond to a payment claim by providing a payment schedule within 20 days of the date of the invoice then the client becomes liable to pay the claimed amount in the payment claim. If a payment schedule is provided before the expiry of the agreed period then the client becomes liable to pay the scheduled amount in the payment schedule to the supplier provided however that this does not in any way restrict or limit the supplier's right to refer to dispute resolution under these terms and conditions, or under the Construction Contracts Act 2002, or by any other means available to the supplier, any disputed part of the payment claim as set out in the payment schedule.
- 19.5 Unless otherwise agreed, where the supplier serves a payment claim, the client will pay the amount it becomes liable to pay under this clause within 20 days of the date of the payment claim.

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### 20 - MISCELLANEOUS

20.1 If anything in this agreement is unenforceable, illegal or void it is severed and the rest of this agreement remains in force.

20.2 The client may not claim any counter claim or set-off against any payments due by it to the supplier.

20.3 Under no circumstances shall the liability of the supplier exceed the price of the goods in the event of a breach of this contract.

20.4 The supplier may license or sub-contract all or any part of its rights and obligations without the client's consent.

20.5 The supplier reserves the right to review and change these terms and conditions at any time and will notify the client of this in writing at which time the changes will take effect.