

TERMS AND CONDITIONS

1. Definitions

- 1.1. "Bridgeman" shall mean Bridgeman Concrete Ltd.
- 1.2. "Contract" is as defined in clause 2.2.
- 1.3. "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing Goods from Bridgeman.
- 1.4. "Goods" shall mean any product or other item or services supplied by Bridgeman to the Customer.
- 1.5. "Guarantor" means any person who has guaranteed or is guaranteeing the Customer's obligations under the Contract.
- 1.6. "Loss" means loss, liability, damage, claims, expense or cost of any nature or kind and however arising.

2. Acceptance of Terms and Conditions

- 2.1. Any instruction received by Bridgeman from the Customer whether orally or in writing constitutes a binding contract only when Bridgeman confirms (orally or in writing) that it accepts the instructions, and the Customer is deemed to have accepted these Terms and Conditions which are incorporated into the Contract. To the extent these Terms and Conditions are at odds with the Customer's order or instructions, these Terms and Conditions will prevail.
- 2.2. Unless otherwise expressly agreed in writing by Bridgeman, the contract for Goods comprises these Terms and Conditions, and any relevant quotation issued by Bridgeman to the Customer or order instructions received (collectively, the "Contract"). The Contract constitutes the entire agreement between the parties and unless expressly otherwise stated in the Contract supersedes and replaces any previous written or oral negotiations, submissions, representations, warranties, undertakings, agreements understandings, Customer instructions or arrangements.

3. Collections and Use of Information

- 3.1. The Customer and Guarantor authorise Bridgeman to collect, retain use, and authorises any person, organisation or other entity to provide Bridgeman with, such information as Bridgeman may require for Bridgeman's credit enquiries and assessment of the Customer and Guarantor's financial standing. Any information obtained by Bridgeman under this clause will be confined to that reasonably required by Bridgeman to assess the Customer's and/or Guarantor's financial standing, creditworthiness or for the purpose of enforcing its rights under the Contract.
- 3.2. The Customer and Guarantor authorise Bridgeman to furnish any third party with details of any credit account application, any personal information obtained under clause 3.1, and any subsequent dealings that Bridgeman may have had with a Customer as a result of the application being actioned. Any disclosure made by Bridgeman under this clause will be confined to that reasonably required by the third party to assess the Customer's and/or Guarantor's creditworthiness for the purpose of enforcing Bridgeman's contractual rights and/or to actually enforce or attempt to enforce the same.
- 3.3. Where the Customer and/or Guarantor are individuals, the authorities under this clause are authorities or consents for the purposes of the Privacy Act 2020, and the Customer and the Guarantor have the right of access to and correction of their personal information held by Bridgeman. Our privacy policy, which contains information on how we collect and handle any personal information, can be viewed at: <https://www.bridgeman.co.nz/privacy-policy>.

4. Price

- 4.1. All prices stated shall be plus goods and services tax (GST) and any other taxes and/or duties which are payable by the Customer.
- 4.2. Unless otherwise expressly stated in writing, the price of the Goods shall be priced as at the date of delivery.
- 4.3. Unless any price quoted in writing is expressed to be a fixed price, Bridgeman reserves the right to adjust its prices at any time and from time to time.
- 4.4. No discounts or concessionary rates otherwise agreed by Bridgeman shall apply to accounts in respect of which there are any overdue moneys.

5. Payment

- 5.1. Bridgeman shall be entitled to issue invoices as regularly as it deems appropriate. The due date for payment of any invoice is the 20th of the month following delivery.
- 5.2. Any credit granted shall be on the basis that the price shall be paid in full no later than the 20th day of the month following delivery and payment shall be made without any set-off or deduction of any kind.
- 5.3. Bridgeman reserves the right to waive discounts and concessionary rates otherwise agreed on overdue accounts. Overdue accounts may be re-invoiced at "list" price and penalty interest charged in accordance with clause 7.

6. Limitation of Credit Facility

- 6.1. Notwithstanding Bridgeman having processed or approved a credit account application or having previously granted credit and without prejudice to any other of its rights, Bridgeman shall be entitled (without prior notice) to withhold delivery until payment has been made or it considers the Customer's credit worthiness to be satisfactory. In the event of such withholding, Bridgeman is not liable for any delay or Loss suffered by the Customer, or any person claiming through the Customer. Credit shall be revocable by Bridgeman at any time prior to delivery.

7. Interest on Overdue Moneys

- 7.1. Without prejudice to any other of its rights, Bridgeman 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, and is payable by the Customer from the day following the due date of such money, up to and including the date on which payment is made (interest will accrue both before and after judgment).

8. Default

- 8.1. The Customer is in default and the total amount owing by the Customer to Bridgeman, including any default interest, shall become immediately payable if:
 - 8.1.1. The Customer fails to make any payment on the due date.
 - 8.1.2. The Customer abandons the place for delivery or does or causes to be done or permits or suffers any act or thing which prejudices or endangers the safety or condition of Goods supplied or Bridgeman's rights in those Goods.
 - 8.1.3. Any Goods in the possession of the Customer are materially damaged due to an act or omission of the Customer (or any person or entity for whom/which is between Bridgeman and the Customer, the Customer is responsible) while any sum due from the Customer to Bridgeman remains unpaid.
 - 8.1.4. Any Goods are seized by any other creditor of the Customer or another creditor intimates that it intends to seize Goods, prior to title transferring to the Customer.
 - 8.1.5. The Customer, in writing or by conduct, informs Bridgeman, or Bridgeman reasonably concludes from the Customer's conduct, that the Customer no longer intends to be bound by the Contract.
 - 8.1.6. The Customer is otherwise in breach of the Contract.
 - 8.1.7. The Customer being a natural person dies or commits an act of bankruptcy, or if not a natural person 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, or upon the appointment of the official assignee, or a liquidator, receiver, statutory manager or administrator.
 - 8.1.8. The Customer's credit facility is terminated.

9. Delivery

- 9.1. Risk in the Goods passes to the Customer on delivery under this clause.
- 9.2. Delivery shall be made at the place indicated by the Customer upon ordering and shall (subject as hereinafter provided) occur upon the discharge of concrete from Bridgeman's delivery vehicle (s).
- 9.3. The Customer will give Bridgeman reasonable notice of the time and rate of deliveries. Bridgeman will use its best endeavours to make such deliveries in accordance with notice given by the Customer. No claim shall be made against Bridgeman for failure to deliver within such times or

rates, regardless of whether the concrete is to be pumped or otherwise and regardless of whether such failure is beyond the control of Bridgeman. The Customer shall accept delivery when the same is made by Bridgeman.

- 9.4. Where the concrete is to be delivered 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 point/s of delivery under their own power. Bridgeman 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 Bridgeman. Such a refusal shall not constitute a breach of the Contract. If the Customer orders delivery beyond the kerb line, the Customer hereby assumes and accepts absolute liability for damage to footpaths, kerbs and other property and shall indemnify Bridgeman 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 Bridgeman's trucks and equipment.
- 9.5. 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.
- 9.6. Bridgeman may charge the Customer transportation and disposal expenses and may in addition recover from the Customer all additional costs, charges and expenses incurred by Bridgeman as a result of failure, refusal or inability to take or accept delivery.
- 9.7. Bridgeman shall be entitled to charge waiting time at its current rate (per cubic metre) on that period of time beyond ten minutes that its vehicle is on or at the site nominated by the Customer to deliver the Goods.
- 9.8. Bridgeman shall be entitled to make an additional charge of an amount to be determined by it for deliveries made before 6:00am or after 5:00pm on weekdays, before 7:00am or after 11:00am on Saturdays and at any time on Sundays and statutory holidays.

10. Liability

- 10.1. Except to the extent that the law prevents Bridgeman from excluding liability and as expressly provided for in clause 10.10, Bridgeman will not be liable for any Loss (including consequential loss or lost profit or business) whether suffered or incurred by the Customer and/or Guarantor or any other person and whether in contract, or tort (including in negligence), or otherwise and whether such Loss arises directly or indirectly from the Goods provided by Bridgeman to the Customer.
- 10.2. Unless expressly stated to the contrary in the Contract, all concrete supplied will be produced in accordance with the requirements of NZS. 3104, 1991 or subsequent amendments and it shall be the Customer's responsibility to ensure that the concrete (as regards mix, strength, consistency and otherwise) is fit for the purpose for which it is intended.
- 10.3. 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 specification. The Customer shall be deemed to accept the mix delivered upon pouring of the concrete commencing. Bridgeman shall be under no obligation to replace the load if this check has not been made before pouring commences. Bridgeman shall be under no liability whatsoever for any incorrect mix.
- 10.4. Bridgeman has no responsibility whatsoever for the slump, strength or quality of any concrete to which water or other material has been added by any other party or at the Customer's request. The Customer accepts and acknowledges that Bridgeman has no control over the handling or placing of the concrete after unloading and accordingly Bridgeman does not guarantee or warrant the finished work in which the concrete will be used.
- 10.5. Bridgeman accepts no responsibility for any claim relating to a defect in colour unless it can be shown by an independent assessment carried out by a professionally qualified assessor approved by Bridgeman (which assessment shall be the responsibility and at the cost of the Customer) that such defect is solely due to a manufacturing error on the part of Bridgeman.
- 10.6. 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.
- 10.7. The specified Compressive strength at 28 days as defined in N.Z.S. 3104 1991 and acceptance is based upon the conditions therein.
- 10.8. Bridgeman 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 NZS 3112 1986.
- 10.9. Where the Customer is in trade, the Goods are acquired in trade, and it is fair and reasonable pursuant to s 43 of the Consumer Guarantees Act 1993 and s 5D of the Fair Trading Act 1986, the parties agree that:
 - 10.9.1. The provisions of the Consumer Guarantees Act 1993 do not apply;
 - 10.9.2. Sections 9, 12A and s 13 of the Fair Trading Act 1986 will not apply to Bridgeman.
- 10.10. To the extent that Bridgeman is liable to the Customer for any reason for any Loss, Bridgeman's liability in contract or tort (including negligence) or otherwise and irrespective of whether Loss arises directly or indirectly from the Goods provided, is limited in each case and in the aggregate to the lesser of: replacement of the affected Goods; and the price of the affected Goods, provided that Bridgeman is not liable for any Loss for which the Customer has not made a claim to Bridgeman within 7 calendar days of the earlier of the relevant delivery and the relevant order being made (in the case of no delivery).

11. Unauthorised Use of Account

- 11.1. The Customer shall be liable for any indebtedness arising from the unauthorised use of the credit account with Bridgeman, and/or for any Contract formed with Bridgeman, provided that the authorisation came from an ostensible employee, servant or agent of the Customer.

12. Reservation of Title

- 12.1. The Customer acknowledges that it will be in possession of any Goods supplied by Bridgeman, solely as bailee for Bridgeman until such time as the full price for the Goods is paid to Bridgeman together with the full price of any other goods the subject of any other contract with Bridgeman.
- 12.2. Until such time as the Customer becomes the owner of the Goods he will wherever practicable store them on his premises separately from his own goods or those of any other person and in a manner which makes them readily identifiable as the goods of Bridgeman.
- 12.3. Subject to the terms hereof the Customer is licensed by Bridgeman to process the Goods in such a fashion as he 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 Goods shall be separately stored and marked so as to be identifiable as being made from or with the Goods the property of Bridgeman.
- 12.4. If Bridgeman has given prior written consent of a sale of a product/chattel into which Good/s have been processed/incorporated (for which title has not transferred to the Customer), and the Customer has not received the proceeds of any such sale he will, if called upon to do so by Bridgeman, within seven days thereof assign to Bridgeman all rights against the person or persons to whom he has supplied any produce or chattel made from or with Bridgeman's Goods.

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

- 13.1. Terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA.
- 13.2. Title in any Goods passes to the Customer only when the Customer has made payment in full of all sums due to Bridgeman on any account whatsoever (whether the account is held alone by the Customer or jointly with any other person or entity). Until all sums due to Bridgeman have been paid in full, the Customer acknowledges and agrees that for the purposes of the PPSA, Bridgeman has a security interest in those purchased Goods.
- 13.3. The Customer will promptly execute any documents required for Bridgeman to perfect its security interest under the PPSA and authorises Bridgeman to sign any such document as its attorney.
- 13.4. Save for the security interest and any lien rights in favour of Bridgeman, the Customer will grant no security interest or lien over supplied Goods.
- 13.5. In relation to the registration of financing statements on the register, the Customer undertakes to:
 - 13.5.1. Promptly sign any further documents and/or provide any further information (which information the Customer warrants is complete, accurate, and up-to-date in all respects) which Bridgeman may reasonably require to enable registration of a financing statement or financing changing statement on the register;
 - 13.5.2. Pay to Bridgeman promptly on request the cost of registering the financing statement

or financing change statement, and without limiting clause 14 the costs (on a solicitor-client basis) of enforcing or attempting to enforce Bridgeman's interest against it and/or any other person / entity;

- 13.5.3. Give Bridgeman not less than 7 days prior written notice of any proposed change in the Customer's name and/or any other change in its details (including, but not limited to, changes in the Customer's address, facsimile number, trading name and/or business practice); and
- 13.5.4. Give Bridgeman full permission to do a complete search of the register at any time about the Customer.
- 13.6. If Goods are attached, fixed or incorporated into, or otherwise processed, or dealt with in any way causing them to become accessions, processed or commingled goods as part of any property of the Customer, title in the Goods and the security interest in such Goods remains with Bridgeman until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be a part of or constituent of any new property, title to such new property is deemed to be assigned to Bridgeman as security for the full satisfaction by the Customer of the full amount owing between Bridgeman and the Customer. The Customer has an obligation to not resell or part with possession of any Goods sold to it by the Customer, or property of the Customer to which Goods have been attached, fixed, incorporated or otherwise mixed, until they have been paid for, unless with the prior written consent of Bridgeman.
- 13.7. To the extent permitted by law, the Customer waives all its rights under Part 9 of the PPSA including, without limitation, any rights it may have under ss 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA. The Customer further agrees that where Bridgeman has rights in addition to those under Part 9 of the PPSA, those rights will continue to apply. The Customer waives its right to receive a copy of any verification statement, financing statement or financing change statement.

14. Costs

- 14.1. The Customer shall be immediately liable for all costs incurred by Bridgeman (including legal fees on a solicitor-client basis, debt collection charges, expenses and disbursements) for any steps taken under clause 16 and/or otherwise in relation to non-payment or any default by the Customer under this Contract, or Bridgeman attempting to enforce any right under the Contract.

15. Variation of Terms And Conditions

- 15.1. Bridgeman reserves the right to amend these Terms and Conditions at any time and from time to time by updating the same on its website <https://www.bridgeman.co.nz/> wwhich amended terms will bind the Customer for future Contracts.

16. Termination

- 16.1. In addition to any other of Bridgeman's right of termination provided herein or at law, both Bridgeman and the Customer shall have the right to terminate any credit facility to which these Terms and Conditions apply on giving not less than three working days' notice in writing.
- 16.2. Bridgeman may terminate the Contract (and any credit facility) immediately upon written notice if the Customer is in default.
- 16.3. Termination of the Contract (and/or any credit facility) does not release the Customer from any liability for any breach, non-observance or non-performance of any of its obligations contained or implied from the Contract.
- 16.4. In the event that Bridgeman terminates the Contract then, without limiting any of Bridgeman's other rights and remedies, the Customer gives irrevocable authority to Bridgeman to enter any premises occupied by the Customer or on which any Goods for which title has not transferred to the Customer are situated to remove and repossess those Goods and any other property which has been supplied by Bridgeman. Bridgeman is not liable for any Loss incurred by the Customer or any third party as a result of this action, or in contract or in tort or otherwise in any way whatsoever (unless by statute such liability cannot be excluded). Without limitation, for repossessed Goods which Bridgeman had sold to the Customer, Bridgeman may either resell those repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain those repossessed Goods and credit the Customer's account with the invoice value less such sum as Bridgeman reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 16.5. The Customer indemnifies Bridgeman on demand for any Loss arising by Bridgeman exercising its rights under this clause.

17. Personal Guarantee of Company Directors or Trustees

- 17.1. If the Customer is a company or trust, in any addition to any requirements on a credit account application form executed by the Customer (by which, without limitation, the director(s) or trustee(s) signing the application and/or these Terms and Conditions, in consideration of Bridgeman agreeing to supply goods and grant credit to the Customer at their request, also sign in their personal capacity and jointly and severally personally undertake as principal debtors to Bridgeman the payment of any and all monies now or hereafter owed by the Customer to Bridgeman and indemnify Bridgeman against non-payment by the Customer), Bridgeman may at any time require the Customer to procure, at the Customer's cost, a personal guarantee in a form and from guarantor(s) to Bridgeman's reasonable satisfaction. Without incurring any liability, Bridgeman may suspend performance of any or all of its obligations under the Contract until such personal guarantee(s) is provided to its reasonable satisfaction, and require the Customer to pay all Losses incurred by Bridgeman as a result of such suspension.
- 17.2. Any personal liability of a Guarantor shall not exclude the Customer in any way whatsoever from its liabilities and obligations. The Guarantor(s) and Customer shall be jointly and severally liable under the Contract and for payment of all sums due hereunder.

18. Copyright

- 18.1. Copyright in all drawings, specifications and other technical information provided by Bridgeman in connection with the Contract are vested in Bridgeman.

19. Dispute resolution

- 19.1. Any dispute or difference arising out of or in connection with this Contract, or the subject matter of this Contract, including any question about its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the Building Disputes Tribunal. However this clause does not affect the parties' rights under the Construction Contracts Act 2002, or Bridgeman's right to enforce non-payment in court including by liquidation or bankruptcy proceedings.

20. Miscellaneous

- 20.1. Without limiting clause 9.3, Bridgeman shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 20.2. The Customer may not assign or transfer all or any of its rights or obligations under the Contract without the prior written consent of Bridgeman.
- 20.3. Neither party will be considered to have waived or released any of its rights under the Contract except by agreement in writing between the parties.
- 20.4. If any provision of this Contract 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

Customer Signature:

(I have read and understand these terms and conditions)



PERSONAL GUARANTEE

Executed further to a Credit Account Application (to which Terms and Conditions are appended) or contract for the purchase of goods / materials from Bridgeman Concrete Ltd ("Bridgeman") entered into by [redacted] ("Customer")

In consideration of Bridgeman agreeing to supply goods / materials to the Customer identified above at my/our request:

1. I/We unconditionally and irrevocably guarantee to Bridgeman the due and punctual payment by the Customer of all moneys which the Customer (whether alone or with any other person) is now or at any time after the date of this guarantee becomes liable to pay to Bridgeman in accordance with any agreement between Bridgeman and the Customer or on any account or on any basis whatsoever including without limitation money due, interest, fees, costs, charges, expenses or damages and in addition thereto any like amount (whether the Customer is legally liable for it or not) that Bridgeman has at any time reasonably expected or relied upon receiving from the Customer as and when such amounts become due and payable by the Customer.
2. I/We agree to be deemed as principal debtor for all accounts held by the Customer with Bridgeman.
3. If the Customer fails to pay any money payable to Bridgeman on the due date for payment, then on demand I/we will immediately provide Bridgeman with an executed and registrable memorandum of mortgage over all real property owned by me/us (for the purpose of security all money owing from time to time by the Customer to Bridgeman). That mortgage will be in the form of the All Obligations form produced by the Auckland District Law Society and approved by the Registrar General of Land under number 2018/4346 with a priority amount not less than double the then outstanding funds due and owing to Bridgeman. I/we also undertake to complete any Authority and Instruction (A&I) form that is necessary to register that mortgage and to instruct me/our solicitor or other conveyancing practitioner to take whatever step is necessary to register that mortgage.
4. I/We acknowledge that Bridgeman is entitled to register a caveat or similar charge against the title to my/our real property in circumstances where Bridgeman is entitled to demand a registrable memorandum of mortgage.
5. I/We irrevocably appoint Bridgeman (and its director/s) to be my/our attorney for the purpose of giving and executing a registrable memorandum of mortgage in Bridgeman's favour under clause 3.
6. I/We will ensure that any existing mortgagee is aware of and does not oppose Bridgeman's rights under clauses 3 to 5 above.
7. I/We agree that this guarantee shall be a continuing guarantee and shall not be discharged by any settlement or payment of account and that this guarantee is both joint and several. For the avoidance of doubt, my/our liability under this guarantee shall not be affected if for any reason whatsoever this guarantee is not binding or enforceable on any one of us, including without limitation, by reason of any release or discharge of any one of us under this guarantee.
8. I/We agree that my/our liability under this guarantee shall not be discharged or otherwise affected by:
 - a. the granting of time, credit or other concession to the Customer;
 - b. any alteration whatsoever to any contract for the supply of goods and/or materials by Bridgeman to the Customer; or
 - c. any other act, omission or event which but for this provision might discharge or otherwise affect my/our obligations under this guarantee or any powers or remedies of Bridgeman under this guarantee or at law.
9. I/We confirm that I/we have been advised by Bridgeman that I/we should seek legal advice before signing this guarantee.
10. I/We understand that Bridgeman may at any time assign or transfer to any other person (whether or not acting as its security agent) all or any part of its rights, remedies and obligations under this guarantee and any related or ancillary document without my/our consent. Each assignee or transferee will have the same rights and remedies against the Customer as Bridgeman has under this guarantee and any related or ancillary document.

Privacy Act Statement

I/We authorise Bridgeman to make credit reference and other enquiries and to collect, retain and use any personal information about me/us from any person as may be required for the purposes of assessing my/our financial standing and creditworthiness in relation to this guarantee I/we authorise any person to disclose to Bridgeman any personal information for that purpose. I/We authorise Bridgeman to disclose personal information about me/us to any credit rating/reporting agencies and to any other person as may be necessary or desirable to enable Bridgeman to enforce or attempt to enforce its rights under this guarantee. I/We understand that I/we have the right to access and request the correction of any personal information which Bridgeman holds about me/us.

EXECUTED AS A DEED:

Name of Guarantor: Signature of Guarantor:

Name of **Witness**: Signature of **Witness**: Date:

Name of Guarantor: Signature of Guarantor:

Name of **Witness**: Signature of **Witness**: Date:

Name of Guarantor: Signature of Guarantor:

Name of **Witness**: Signature of **Witness**: Date:

Please note – Witness MUST be independent and MUST NOT be a party to the guarantee

[Note: insert additional execution spaces as required for the number of guarantors]