

## STEVENSON TERMS OF TRADE

### 1. Definitions

In these Terms:

"Account" means the trade credit account established in the name of the Customer by Stevenson.

"Goods" means goods provided and/or manufactured by Stevenson.

"PPSA" means the Personal Property Securities Act 1999.

"Order" means an agreement between Stevenson and the Customer for Stevenson to supply Goods and/or Services to the Customer.

"Quote" means a written offer from Stevenson to the Customer to supply Goods and/or Services for a specified price subject to the terms and conditions of such offer.

"Services" means any services performed by Stevenson.

"Application" means the Application for Trade Credit Account attached to these Terms.

"Credit Limit" means the dollar amount of credit to be made available to the Customer by Stevenson under the Account. "Credit Term" means the term determined by Stevenson over which the Account will remain open.

"Customer" means the Customer named in the Application and where the Customer comprises two or more persons, means those persons jointly and severally.

"Stevenson" means those companies comprising the Stevenson Construction Materials Limited group of companies including Stevenson Concrete Limited, Stevenson Resources Limited,

Stevenson Laboratory Limited together with any other subsidiary and/or related company of Stevenson Group Limited from time to time.

"Terms of Trade Credit" means the terms of trade credit entered into between Stevenson and the Customer and which are available on [www.stevenson.co.nz](http://www.stevenson.co.nz).

### 2. Orders, Pricing, Quotes and Estimates

- 2.1 Stevenson may decline or cancel in whole or in part, any Order in its sole discretion.
- 2.2 The price of Goods and Services is as specified in Stevenson's price list (as amended from time to time), or in an Order or accepted Quote, as applicable.
- 2.3 Unless otherwise stated, prices stated do not include GST and are ex Stevenson's yard or manufacturing plant.
- 2.4 These Terms of Trade apply to all Goods or Services supplied by Stevenson including those supplied pursuant to a Quote. A Customer's acceptance of a Quote constitutes an agreement to purchase Goods or Services on these Terms.
- 2.5 A Quote may be withdrawn or varied by Stevenson before it has been accepted in writing by the Customer.
- 2.6 All Quotes are based on rates and charges in effect at the date of the relevant Quote. Any increase in rates or charges, (including without limitation sub-contracted labour, materials and fuel) shall result in an equivalent increase in the quoted price.
- 2.7 An estimate as to price or quantity is not binding on Stevenson.
- 2.8 Where a Quote includes an estimate of quantities and the actual quantity supplied is materially different from that estimated, Stevenson reserves the right to revise the quoted price.
- 2.9 Where a Customer purchases Goods from a Stevenson quarry then the quantity of Goods supplied shall be determined by the measurement of those Goods across the weighbridge at a Stevenson quarry.
- 2.10 Where the Customer purchases Goods with a credit card and at the time of payment the quantity of the Goods to be sold is an estimate, then the Customer agrees that Stevenson may hold the Customer's credit card details on file until the quantity of Goods sold is determined and at that time process a debit or credit to the Customer's credit card to reflect the actual purchase price of the Goods sold.

### 3. Use of Accounts

- 3.1 Stevenson shall determine the Credit Limit and Credit Term for the Account and will notify the Customer of such. The Customer shall not at any time allow the balance of its Account to exceed the Credit Limit.
- 3.2 We may in our sole discretion, at any time and without reason or notice to you and/ or any Guarantor, and without prejudice to any other right it has in law or equity;
  - (a) Elect whether to grant credit to the Customer; and
  - (b) Increase or decrease the amount of credit supplied to you, If credit is terminated, then all monies owed by the Customer to Stevenson will become immediately due and owing.
- 3.3 Goods may be charged to the Account in person or by telephone. Where the Application states that order numbers are not required, Stevenson may require the person charging the Goods to give their name.
- 3.4 The Customer shall be liable for all indebtedness arising from any use of the Account by any person who purports to be an employee, agent or representative of the Customer.
- 3.5 Stevenson reserves the right to set off any balance owing by Stevenson to the Customer against their outstanding Debtor balance.

### 4. Payments, Discounts and Rebates

- 4.1 Except where goods or services are charged to a Trade Credit Account, payment is due on the placing of the Order.

- 4.2 All Goods charged to the Account and any interest due on the Account shall be paid in full no later than the 20th of the month following the date of the relevant invoice.
- 4.3 Stevenson shall be entitled to charge interest at 15 % per annum on all overdue amounts from the date payment was due until the date of actual payment.
- 4.4 All payments must be made by way of cash, cheque or bank transfer, free of any deductions, set off counterclaim or condition of any kind. Payment of any amount due occurs only when cleared funds are deposited into Stevenson's bank account.
- 4.5 Payments received by Stevenson shall be applied firstly in payment of interest and any costs incurred in debt recovery and then in reduction of principal.
- 4.6 Payments received without remittance advice will be applied firstly to the oldest balance owing by the Customer.
- 4.7 Stevenson may withhold any credit due to the Customer and apply that credit against any amount owing under the Account.
- 4.8 If the Customer disputes any item charged to the Account, it must notify Stevenson immediately, and pay the undisputed portion of the Account balance by the due date for payment.
- 4.9 Payment for Goods and/or Services charged to a Trade Credit Account must be made in accordance with Stevenson's Terms of Trade Credit.
- 4.10 Where the Customer receives a volume based discount on Goods and the Customer fails to purchase the total volume of such Goods, Stevenson reserves the right to withdraw such discount.
- 4.11 Stevenson may agree to supply a Customer on a cash sales basis. In such case, payment must be made before the Goods are unloaded. Stevenson has the right to direct the driver to leave the site without discharge of the load.

### 5. Default

- 5.1 If the Customer breaches any of these Terms or the Terms of Trade and fails to remedy that breach within 7 days after receiving notice to remedy from Stevenson. Stevenson may (without prejudicing its other rights or remedies) forthwith suspend or terminate the Account without notice to the Customer.
- 5.2 All amounts owing in respect of the Account shall become immediately due and payable to Stevenson without the need for notice if:
  - 5.2.1 Stevenson suspends or terminates the Account in accordance with clause 4 1 above,
  - 5.2.2 Any information contained in the Application proves to have been false or misleading when made;
  - 5.2.3 The Customer enters into a composition with its creditors, becomes insolvent within the meaning of the Insolvency Act 1967, or fails to satisfy the solvency test within the meaning of the Companies Act 1993, is declared bankrupt, goes into liquidation or a receiver, or a receiver and manager, or statutory receiver is appointed in respect of it or if any event analogous in nature has occurred under the laws of any relevant jurisdiction; or
  - 5.2.4 The Customer ceases, or threatens to cease, to carry on any material part of its business.

### 6. Security for Payment

- 6.1 The Customer grants to Stevenson a security interest in the Goods and in any proceeds arising from the sale of the Goods to secure the obligations of the Customer to pay the purchase price for the Goods, and any other obligations by the Customer to Stevenson under these Terms or the Terms of Trade Credit (together the "Obligations") as and when the same become due.
- 6.2 The Customer grants to Stevenson a lien over any of the Customer's equipment upon which Services are performed in order to secure the obligations of the Customer to pay for such Services and any other Obligations as and when the same become due.
- 6.3 The Customer agrees that if the Customer is in breach of any of its Obligations:
  - (a) The Customer will, upon receiving a written request from Stevenson and at its own cost and expense, promptly deliver all or any of the Goods to Stevenson at such place as Stevenson directs;
  - (b) Stevenson may (and the Customer grants Stevenson a licence to), at any time without giving notice either itself or through an authorised agent, enter into any place where the Goods are located and remove the Goods, if the Customer fails to deliver the Goods as required under this clause;
  - (c) Stevenson may sell all or any of the Goods without giving prior notice of the sale to the Customer (and to that end, nothing in s114(1)(a) of the PPSA shall apply to these Terms); and
  - (d) if Stevenson proposes, pursuant to s120 of the PPSA to take all or any of the Goods in satisfaction of the Obligations, the Customer waives its right to require Stevenson to sell the Goods and agrees that notwithstanding s120(1) of the PPSA, the Customer shall remain liable to Stevenson for the difference between the market value of the Goods at the time it is first able to be sold by Stevenson free from all rights and interests of the Customer and other persons pursuant to s123(1) of the PPSA and the amount of the Obligations which are in default.

- 6.4 The Customer:

- (a) agrees that nothing in s117(1)(c) of the PPSA will apply to these Terms, and
- (b) waives (to the extent applicable) the Customer's right under the PPSA:
- (i) to receive a verification statement pursuant to s 148 and a statement of account under s 116;
  - (ii) to recover a surplus under s119;
  - (iii) to receive notice of Stevenson's proposal to retain collateral under s120(2) and to object to that proposal under s121;
  - (iv) not to have Goods damaged when Stevenson removes an accession under s125 and not to be reimbursed for any such damage under s126;
  - (v) to refuse permission to refuse an accession under s127;
  - (vi) to receive notice of the removal of an accession under s129;
  - (vii) to apply to the Court for an order concerning the removal of an accession under s131;
  - (viii) to redeem collateral under s132;
  - (ix) to reinstate a security agreement under s133 and 134; and shall immediately notify Stevenson of any change in the Customer's name, address or contact person details, to enable Stevenson to register a financing change statement if required. In the absence of such notification, the address held by Stevenson is deemed to be the Customer's current address for such purpose.
- 7 Account Closure**
- 7.1 The Customer may close the Account at any time by giving written notice to that effect to Stevenson, and paying off any outstanding Account balance
- 7.2 Stevenson may close the Account by giving notice to the Customer. The Customer must pay any outstanding Amount balance by the 20th of the month following the date of closure of the Account (unless the Customer is in default of these Terms or the Terms of Trade, in which case the outstanding Account balance is payable immediately).
- 8 Indemnity**
- 8.1 The Customer shall Indemnify Stevenson against all claims, penalties, costs, expenses, damages and liability, including legal fees, and debt recovery costs arising out of or connected with or resulting from a breach by the Customer of these Terms.
- 9 Variation of terms**
- 9.1 Stevenson may, in its sole discretion, vary these Terms or the Terms of Trade from time to time
- 10 Assignment**
- 10.1 Stevenson may at any time assign or transfer any of its rights and obligations under these Terms (including the right to receive payment) to any other person.
- 10.2 The Customer may not assign or transfer any of its rights or obligations in respect of the Account.
- 10.3 A change of control in respect of the Customer shall be deemed to constitute an assignment for the purposes of paragraph (b) of this clause. A "change of control" means any direct or indirect change in control or management of the Customer, or a direct or indirect change in the legal or beneficial ownership of the Customer, or a change in the legal form of the Customer, whether by a single event or a series of related events.
- 11 Waiver**
- 11.1 Stevenson's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Stevenson's right to exercise or enforce such right or any other right in the future.
- 12 Privacy Act**
- 12.1 Stevenson may not be able to process this application unless all the information requested is provided.
- 12.2 The Customer authorises Stevenson to collect and/or provide information relating to the Customer to credit reference agencies referees and other bodies as Stevenson considers necessary for the purposes of credit assessment and debt collection in relation to the Customer's Account and for marketing purposes
- 12.3 Any personal information may be held by Stevenson for as long as the Customer continues as a customer of Stevenson or to owe on the Account
- 12.4 The Customer has the right to access and correct any personal information held by Stevenson.
- 12.5 The Customer is obliged to update the Customer's contract details if such details change.
- 13 Consumer Guarantees Act 1993**
- 13.1 Where Goods or Services are being supplied for the purposes of a business, the Customer agrees that the Consumer Guarantees Act 1993 will not apply.
- 13.2 Where the Customer purchases Goods for re-supply, the Customer's terms of trade must contain an equivalent provision to clause 5.1.
- 14 Warranties**
- 14.1 All statutory, express or implied warranties by Stevenson including, without limitation, the implied warranties of merchantability and fitness for any particular purpose are expressly excluded (to the extent permitted by law).
- 14.2 Colour and texture variations may occur in Goods and from Samples due to:
- (a) The use of natural materials in the manufacturing process;
  - (b) normal manufacturing tolerances and processes; and
  - (c) weather.
- The Customer agrees that such variations do not constitute a product defect and Stevenson shall not be liable for any loss or damage suffered by the Customer as a result of such variations.
- 14.3 Quotes are prepared in accordance with information provided to Stevenson by the Customer and Stevenson will not be liable nor will it be bound by the Quote where:
- (a) such information is inaccurate or any information omitted; and/or
  - (b) the Customer makes any variations which result in the work being different from that quoted for.
- 14.4 To the extent allowable by law, Stevenson gives no warranty in respect of Goods manufactured by others.
- 15 Limitation of liability**
- 15.1 The liability of Stevenson in respect of all claims for loss, damage or injury arising from breach of any of Stevenson's obligations under this agreement or from any act or omission of Stevenson is limited, in each case, to the lesser of:
- (a) replacement or repair of the affected Goods, or re-supply of the Services;
  - (b) payment of the actual cost of replacing or repairing the affected Goods, or re-supplying the Services; and
  - (c) the price of the affected Goods or Services
- 15.2 Stevenson shall not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of or in connection with the supply of Goods or Services by Stevenson, except as set out in clause 7.1.
- 15.3 No action arising out of the supply of Goods or Services by Stevenson, regardless of form, may be brought more than six months after the Customer becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the action.
- 16 Intellectual Property**
- 16.1 All intellectual property rights in the Goods or arising out of the performance of the Services are and shall remain the property of Stevenson.
- 16.2 The Customer warrants that any design or drawing provided by it does not infringe any intellectual property rights of any other person.
- 17 Delivery**
- 17.1 Delivery of Goods shall be deemed to occur at the point specified in an Order or Quote, or if nothing is so specified, then:
- (a) Concrete— when Goods are discharged from the delivery truck agitator;
  - (b) Aggregates— when the Customer takes the Goods across the weighbridge out of the quarry; and
  - (c) otherwise, when the Goods arrive at the address specified by the Customer (whether or not the Customer is present to acknowledge receipt), or when the Customer takes possession of the Goods, whichever occurs first.
- 17.2 Risk in the Goods passes to the Customer on delivery under clause 9.1.
- 17.3 In relation to concrete delivery, the Customer assumes responsibility for the placing, pumping and handling of the concrete from the point of discharge from the agitator.
- 17.4 Stevenson may deliver Goods by instalments. If the Customer fails to pay for an instalment on the due date Stevenson may suspend deliveries of the other instalments.
- 17.5 The Customer shall pay all freight and cartage charges including any additional costs or expenses incurred by Stevenson in delivering the Goods to the address requested by the Customer (including charges for waiting time, unloading equipment, labour or delivery outside of normal business hours).
- 17.6 Where Stevenson is to deliver the Goods, the Customer must:
- (a) ensure Stevenson has reasonable all-weather access to the site, to enable Stevenson to deliver the Goods safely;
  - (b) obtain all necessary resource and other consents from the relevant local authority and inform Stevenson of all matters relating to such consents;
  - (c) locate, mark and advise Stevenson of all gas pipes, water pipes, sewerage lines, drainage lines, telephone cabling and other utilities that are on, or near, or adjacent to the delivery point, and of any actual or possible subsidence, slip, erosion, flooding or any other thing that might constitute a hazard on the land where Goods are to be delivered; and

- (d) Indemnify Stevenson against any costs, claims and damages incurred in the delivery of the Goods including any cleaning, repairing damage to the site or delivery equipment. Returning the delivery vehicle to the road and making good any damage to the road or footpath, provided Stevenson has acted with reasonable care and skill.
- 17.7 The Customer assumes all liability for damages to footpaths, kerbs, drains or other property for any deliveries beyond the kerb line and is responsible for any salvage charges incurred in returning the vehicle to the roadway. The Customer is responsible for the removal of any mud, clay etc from the delivery truck wheels and for the removal of mud, clay etc tracked on footpaths, roads etc by the trucks.
- 17.8 The Customer must make any claims for short delivery within 48 hours of delivery of Goods by Stevenson, and must state the date of delivery of the Goods and the delivery docket number.

## **18 Readymixed Concrete**

- 18.1 All Orders for readymixed concrete products must be confirmed by 10.00am the day prior to delivery and if such confirmation is not received Stevenson reserves the right to cancel the Order. Cancellation by a Customer of a previously confirmed order (after 10.00am the day prior to delivery) may incur a \$10 per m3 cancellation charge if batching has not commenced, or if the batching has commenced or was booked to commence in the next hour, Stevenson will charge the quoted load rate.
- 18.2 Where an Order is cancelled under clause 10.1 above or a Customer wishes to postpone an order, then a new booking time may be allocated by Stevenson at its sole discretion. Upon arrival at the Customer's site, Stevenson concrete trucks will wait on site for up to 10 minutes per m3 of readymix concrete being delivered. After such time Stevenson may charge the Customer additional charges or leave the site (even if the load has not been fully unloaded). The Customer will remain liable for the load cost plus any applicable disposal costs.
- 18.3 Unless otherwise agreed in writing between the Supplier and the Customer, the Supplier is not liable for the quality or performance of any concrete, either in the freshly mixed or hardened state, if the mix proportions have been altered in any way by the addition of water, admixtures, or other materials by, or on the instruction of, the Customer or its agent.
- 18.4 Any sampling or testing of the readymixed concrete carried out by the Customer must be done strictly in accordance with New Zealand Standard 3112 – Specification for Method of Test for Concrete.
- 18.5 The delivery docket will set out the specifications of the Goods ordered by the Customer. It is the responsibility of the Customer to check that such specifications are correct prior to the discharge of the Goods from the Supplier's truck.
- 18.6 Stevenson will use all reasonable efforts to ensure that deliveries are made when requested by the Customer but delays may occur and Stevenson accepts no liability for this.
- 18.7 Any concrete ordered by the Customer that is found to be in excess of their requirements cannot be returned for a credit. If Stevenson agrees to take away excess concrete, it may also charge for the disposal of such concrete.
- 18.8 A small load fee may be charged for any load 3 m3 or less.

## **19 Returns and Cancellations**

- 19.1 Goods which do not comply with the warranties in clause 6.1(a) or (b), or which are damaged before delivery to the Customer, may be returned for replacement or credit by quoting the date of delivery and the delivery docket numbers or invoice number provided that:
- (a) The Goods are returned to Stevenson at Stevenson's cost, or Stevenson is requested to uplift the Goods, within 48 hours of delivery; and
- (b) The Goods are in their original condition.
- 19.2 The Customer is not entitled to cancel an order without the written agreement of Stevenson where:
- (a) manufacture of made to order Goods has commenced; and/or
- (b) Such order comprises goods manufactured by a third party.
- 19.4 In the case of made-to-order Goods:
- (a) Stevenson may require the Customer to make a full upfront payment for the Goods or to pay a substantial deposit before Stevenson 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
- (b) The Customer shall pay all costs associated with any additional production runs where the Customer requires more Goods than those first ordered.

## **20 Taxes**

Unless otherwise stated, all prices are exclusive of Goods and Services Tax.

## **21 Hours**

Unless otherwise agreed between the parties, Stevenson will supply the Goods and/or perform the Services during normal working hours.

Any costs attributable to Stevenson being required by the Customer to work outside such hours shall be payable by the Customer.

## **22 Force Majeure**

No claim or liability will arise against Stevenson under these Terms or any Order or Quote, if and to the extent that Stevenson's failure or omission to carry out or observe any provisions of these Terms or any Order or Quote arises by reason of Force Majeure. "Force Majeure" means any event outside the reasonable control of Stevenson and includes, without limitation, fires or other casualties or accidents, power outages, acts of God, strikes and lockouts, severe weather conditions, delay in supply or materials or unavailability of materials, war or other violence, or the introduction of any law, order, regulation, demand or requirement of any governmental agency.

## **23 Variation of terms**

- 23.1 Stevenson may, in its sole discretion, vary these Terms of Trade from time to time.
- 23.2 The latest version of these terms of trade can be found at [www.stevenson.co.nz](http://www.stevenson.co.nz).

## **24 Miscellaneous**

- 24.1 Stevenson's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Stevenson's right to exercise or enforce such right or any other right in the future.
- 24.2 Any provision of these Terms that is held to be invalid or unenforceable for any reason shall be severed from, and shall not affect the remaining provisions of, these Terms.