

CSP Pacific
A Fletcher Concrete & Infrastructure Limited business
CONDITIONS OF SALE

The following terms will be incorporated into every contract between Fletcher Concrete & Infrastructure Limited (CSP) and the Customer for the supply by CSP of goods or services (both of which are referred to as materials) unless specifically excluded in writing and annexed hereto. No variation of these terms will be binding upon CSP unless made in writing. In the event of inconsistency between these terms and the terms of any quotation or other agreement these terms will take precedence.

1. REPRESENTATIONS AND WARRANTIES

- (a) Any representation, undertaking or warranty made by CSP or any agent or representative of CSP unless recorded in writing and annexed hereto are of no effect and will not apply to this contract or to any contract collateral to this contract.
- (b) All warranties and conditions implied by law (including any warranties as to suitability of the materials for the use of which they will be put) are excluded from this contract and will not apply to it.
- (c) It is the Customer's obligation to satisfy itself that materials supplied are suitable for the purpose to which the Customer wishes to use them and CSP does not warrant that the materials are suitable for any particular purpose.
- (d) The Customer acknowledges that it has acquired the materials for the purposes of a business and that the Consumer Guarantees Act 1993 will not apply to the supply of the materials by CSP to it.
- (e) Where CSP issues a producer statement in relation to materials CSP does not warrant the accuracy of the statements contained in that producer statement and that producer statement is issued subject to the limitations of liability contained in these terms.

2. PAYMENT

- (a) Payment is to be made in full (without set off or deduction) by the 20th of the month following delivery.
- (b) Receipt of any cheque or other bill of exchange will not comprise payment until the same has been honoured or cleared.
- (c) If the Customer fails to make payment by the due date, it will be liable to pay to CSP by way of liquidated damages interest at a rate of 4% per annum above the current bank overdraft rate charged by CSP's bankers for the period during which it remains unpaid calculated on a daily basis. A letter or other evidence from a recognised bank carrying on business in New Zealand to the effect it is CSP's Banker and stating the current overdraft rate applicable to CSP for the relevant period will (subject to manifest error) be conclusive evidence of that rate during that period.
- (d) The Customer must also pay any expenses including legal costs incurred by CSP as a consequence of the Customer's default.

3. DEFAULT

If the Customer fails to apply any amount owing on the due date or commits any other default under this contract and any such default continues for 7 days then:

- (a) All amounts payable by the Customer will become due and payable and CSP may enforce payment of the balance of the purchase price and interest payable under clause 2(c) notwithstanding that delivery of the materials has not been effected and that but for this clause payment would not then be due;
- (b) CSP will be entitled to refuse to deliver any further materials to the Customer under this contract or any other contract until any default on the part of the Customer is remedied;
- (c) CSP may retake possession of any materials provided by it to the Customer and for that purpose enter the premises where they may be situated;
- (d) CSP may be written notice to the Customer cancel this contract; and any rights exercised by CSP pursuant to this clause will not terminate the Customer's liabilities under the contract or to pay damages for any breach of it.

4. DELIVERY

- (a) CSP will (unless otherwise stated) deliver the materials by a carrier of its choice to an area at or alongside the site complying with paragraph (d) below. Where the Customer nominates the use of other services or carriers, any additional costs arising beyond CSP's normal costs will be borne by the Customer.
- (b) Where small consignments incur additional cost or delivery is specified to a destination other than the Customer's quoted point of delivery, any additional freight costs will be borne by the Customer.
- (c) Truck turn around time of 60 minutes has been allowed in this contract and any costs due to time over this period at the site will be paid by the Customer.
- (d) The Customer will provide at its expense safe hard roading suitable for use by usual road transport to deliver materials to the site or to an area alongside the site with sufficient clear hard space at all times for unloading and stacking and unless otherwise specified will supply all necessary cranes and other means of unloading. Should safe delivery not be possible through failure of the Customer to comply with this provision, any additional expenses incurred by CSP in effecting delivery will be paid by the Customer.
- (e) Any time or date for delivery given by CSP is intended only as an estimate and CSP will not be liable for the consequences of delay however arising and the Customer acknowledges that CSP will not accept any liability for any claims or losses from its failure to meet the delivery date. Delayed delivery will not invalidate this contract or subject CSP to any penalty and the Customer will accept the materials when delivered and pay the price prevailing at the date of delivery notwithstanding any such delay.
- (f) Where CSP is dependent upon other manufacturers or suppliers to provide materials or services, CSP is under no liability to the

Customer for the failure of the manufacturer or supplier to provide the materials.

- (g) When the materials are available and due for delivery by CSP and the Customer fails to take or accept the same when required to do so under this contract for the purpose of clause 2(a) delivery will be deemed to have been made on the date CSP was willing and able to effect delivery.

5. OWNERSHIP AND RISK

- (a) Notwithstanding that title in the materials may remain with CSP, the risk in respect of the materials will pass to the Customer from the time of removal from CSP's premises or deemed delivery under clause 4(g) and the Customer must insure the materials for its and CSP's respective interests.
- (b) Ownership of the materials will not pass (and the Customer upon receipt of the same will be bailee only) until the Customer has paid to CSP the purchase price and all other sums owing in respect of the materials and in respect of any other goods or services supplied to the Customer by CSP.
- (c) Until the ownership of the materials has passed to the Customer it will not be entitled to sell or deliver possession of the materials to others.
- (d) The Customer irrevocably authorises CSP, its agents and servants for so long as title to the materials remains with CSP, to search for and remove the materials and for that purpose to enter into any premises where they may be found using such force as is necessary. The Customer will indemnify CSP against any cost and liabilities that may arise as a result of the entry by CSP into any premises or the seizure by CSP of any materials under this clause.

6. RETURN OF MATERIALS

- (a) No claims for alleged defective materials (including damage in transit) will be recognised unless made in writing and received by CSP within seven days after delivery. CSP reserves the right to inspect the materials and to remedy defects in respect of the materials on the site, but otherwise materials accepted as defective by CSP will be returned to CSP at the Customer's expense, at the original point of commencement of delivery.
- (b) Other than as provided in paragraph (a) above the Customer may not return or refuse delivery of any materials purchased from CSP.

7. LIMITATION OF LIABILITY

CSP's liability under this contract or any contract collateral hereto is limited to replacing (or at the election of CSP repairing) any defective materials to the entire exclusion of any other remedy which, but for this clause, the Customer might have and CSP will be under no liability for any damage, injury direct or consequential or other loss or loss of profits or costs, charges and expenses on the part of the Customer or any other person other than to repair or replace as mentioned above. CSP will not be liable to the Customer if for any reason beyond CSP's control it is not able to deliver or supply any of the materials.

8. PPSA

- (a) The Customer acknowledges that it grants a security interest (as defined in the PPSA) in all present and after acquired materials as security for its obligations to CSP. The Customer must do all things including executing all documents that CSP requires to provide the Customer with a first ranking security interest in the materials.
- (b) The Customer waives the right to the right to receive a copy of the verification statement under the PPSA and agrees that it will have none of the rights under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA. Where CSP has rights in addition to those in Part 9 of the PPSA the Customer agrees that those rights will continue to apply and in particular, will not be limited by section 109 of the PPSA.
- (c) The Customer agrees to indemnify CSP for any cost CSP incurs in registering, maintaining and for enforcing the security interest created by these terms.
- (d) The Customer must immediately notify CSP if it changes its name.

9. GENERAL

- (a) The Customer agrees that (except as provided in these terms) these terms represent the entire agreement between the Customer and CSP.
- (b) The Customer agrees that the following terms used in these terms will have the following meanings:
 - (i) "Customer" means the person named as Customer in the attached credit application or invoice.
 - (ii) "materials" means all lighting columns, roadside crash barriers and cushions, crash attenuators, massbloc, multiplate culverts products, parts and materials and any other products or materials supplied or to be supplied by CSP to the Customer and includes all products, parts and materials referred to in any invoice issued by CSP to the Customer at any time and from time to time and includes services (design charge, freight, handling charge, installation) wherever applicable;
 - (iii) "PPSA" means the Personal Property Securities Act 1999 (and where the context permits any regulations under that Act);
 - (iv) "security interest" has the meaning in the PPSA.