

South Taranaki Quarries Limited Conditions of Sale

- 1) **Sale/Price:** All quoted prices are based on costs at the date of quotation. All costs of freight, labour, taxes, duties and levies shall be to the cost of the customer, except to the extent that such costs are expressly included in a quotation given by 'South Taranaki Quarries Ltd'. Any increase in the costs of goods, services, freight, labour, taxes, duties and levies between the date of quotation and date of dispatch of goods or supply of services shall be to the cost of the customer. All prices are quoted in NZ dollars exclusive of GST. In addition to the quoted price, the customer must pay GST and any other duties, levies or taxes in respect of all goods and services supplied.
- 2) **Authorisations:** It is the customer's risk & responsibility to obtain every necessary or prudent authorisation (including licences, permits, and consents) to buy, possess, use or resell any goods.
- 3) **Payment:** The parties agreement on payment is:
 - a) Where payment is on credit then payment is due by the 20th of the month following the date of delivery.
 - b) 'South Taranaki Quarries Ltd' may impose a credit limit at its discretion and alter the credit limit without notice. Where the credit limit is exceeded, 'South Taranaki Quarries Ltd' may refuse to supply goods to the customer.
 - c) Payment of all amounts owing by the customer shall be made free of any counterclaim, set off, deduction or other claim what so ever.
- 4) **Alteration of Rights:** The customer acknowledges that 'South Taranaki Quarries Ltd' supplies the customer on condition that all payments made to and received by 'South Taranaki Quarries Ltd' from the customer are valid and made in the ordinary course of business. Any payments are agreed to be received in good faith and in the reasonably held belief that the payments are valid. The customer acknowledges that 'South Taranaki Quarries Ltd' may by accepting payment from the customer, have altered its position in reliance on the validity of that payment.
- 5) **Delivery:** The parties agreement on delivery is:
 - a) That in addition to the price, the customer must pay for the delivery of the goods, unless otherwise agreed.
 - b) All claims for errors or short delivery must be made within seven (7) days of delivery:
 - c) If 'South Taranaki Quarries Ltd' is organising delivery it is entitled to deliver the goods between 7.00am and 8.00pm on any day, which is not a public holiday.
 - d) Goods are deemed to have been delivered when delivered to the delivery site or possession of the goods is taken by the customer. If the customer or a representative is not present at the delivery site, then the goods will be deemed to have been delivered in any event:
 - e) Any periods or times quoted for delivery are to be regarded as estimates and while 'South Taranaki Quarries Ltd' will make reasonable endeavours to keep such periods or times, no guarantee is given and 'South Taranaki Quarries Ltd' will have no responsibility for any loss or damage resulting from delay. Delay due to circumstances outside the control of 'South Taranaki Quarries Ltd' shall not entitle the customer to cancel any order or refuse to accept delivery.
- 6) **Ownership:** Ownership of the goods remains with 'South Taranaki Quarries Ltd' and does not pass to the customer until the customer pays the amount owing and any other monies owing by the customer to 'South Taranaki Quarries Ltd' from time to time, whether in relation to this contract or any other contract or on any other account whatsoever ('customer's indebtedness'). If the customer re-sells the goods at any time the customer shall do so on behalf of 'South Taranaki Quarries Ltd' and shall forthwith account to 'South Taranaki Quarries Ltd' for the price of such goods notwithstanding that at such re-sale the period of credit allowed to the customer by 'South Taranaki Quarries Ltd' may not have expired.
- 7) **Use:** While ownership of the goods remains with 'South Taranaki Quarries Ltd':
 - a) The customer must store them separately and clearly identify them as belonging to 'South Taranaki Quarries Ltd'.
 - b) The customer irrevocably grants 'South Taranaki Quarries Ltd' the right to enter the premises where the goods are stored and remove them, without being responsible for any damage caused in doing so. The customer shall indemnify 'South Taranaki Quarries Ltd' in respect of any costs or liability incurred or arising out of recovery of the goods. 'South Taranaki Quarries Ltd' may resell any of the goods and apply the proceeds of the sale in reduction of the customer's indebtedness.
 - c) The customer must advise 'South Taranaki Quarries Ltd' immediately of any event of default or any action by third parties (including any creditor) affecting 'South Taranaki Quarries Ltd's' interest in the goods.
- 8) **Application:** 'South Taranaki Quarries Ltd' may apply any payments received from or on behalf of the customer in reduction of the customer's indebtedness as 'South Taranaki Quarries Ltd' see fit.
- 9) **Security Interest:** The customer acknowledges and agrees by agreeing to and/or accepting these terms and conditions of trade that it grants a purchase money security interest ('Security Interest') as defined under the Personal Property Securities Act 1999 ('Act') to 'South Taranaki Quarries Ltd' in the goods. Until ownership of the goods passes, the customer:
 - a) waives its rights under the Act:
 - i) to receive a copy of any verification statement, financing change statement or any notice that 'South Taranaki Quarries Ltd' intends to sell the goods or to retain the goods on enforcement of its Security Interest granted to 'South Taranaki Quarries Ltd' under these terms, unless that notice is required under the Act and cannot be excluded;

- ii) to object to a proposal by 'South Taranaki Quarries Ltd' to retain the goods in satisfaction of any obligation owed by the customer to 'South Taranaki Quarries Ltd';
 - iii) to receive a statement of account on sale of the goods; and
 - iv) to redeem the goods.
 - b) will not give (or allow any person to give) to 'South Taranaki Quarries Ltd' a written demand requiring 'South Taranaki Quarries Ltd' to register a financing change statement under the Act or enter into (to allow any other person to enter into) the Personal Properties Securities Register, under the Act, a financing change statement under the Act.
- 10) The customer acknowledges that it has received value as at the date of first delivery of the goods and has not agreed to postpone the time for attachment of the Security Interest granted to 'South Taranaki Quarries Ltd' under these terms. The customer agrees to execute such documents and to do such further acts as may be required by 'South Taranaki Quarries Ltd' to register the Security Interest granted to 'South Taranaki Quarries Ltd' under these terms and also to ensure that any Security Interest under these terms is enforceable, perfected and otherwise effective, so that it has the priority required by 'South Taranaki Quarries Ltd'. The customer further agrees to execute such other documents as may be required by 'South Taranaki Quarries Ltd' for any other related or indirectly related purpose and agrees further that it unconditionally and irrevocably appoints 'South Taranaki Quarries Ltd' as its attorney for such purposes in the event that the customer fails, delays or declines to execute such documents or do such further acts.
- 11) **Risk:** Risk in the good supplied by 'South Taranaki Quarries Ltd' to the customer will pass when the good are deemed to be delivered in accordance with clause 5. If any good is damaged or destroyed prior to risk passing to the customer, 'South Taranaki Quarries Ltd' may promptly repair the goods or cancel this contract in respect of that good without penalty or compensation to the customer.
- 12) **Failure to Comply:** If payment in full of any amount under this contract is not made when due, or the customer breaches any of its other obligations to 'South Taranaki Quarries Ltd', or an event of default occurs then 'South Taranaki Quarries Ltd' may without prejudice to and in addition to any other rights or remedies exercise all or any of the following:
- a) Delay delivery of any good until the matter is resolved to 'South Taranaki Quarries Ltd' satisfaction;
 - b) Suspend or cancel (in whole or part) this contract by written notice to the customer;
 - c) Recover from the customer, or deduct from or set-off against any amount 'South Taranaki Quarries Ltd' may owe the customer, amounts for any damage, loss or cost (including legal costs on a solicitor/client basis) to 'South Taranaki Quarries Ltd' relating to the non-performance by the customer;
 - d) Charge, and the customer must pay, interest at the rate of 18% per annum calculated on a daily basis until the customer's indebtedness is paid in full; and/or
 - e) By notice to the customer require that all the customer's indebtedness, whether or not due, is paid immediately and such amount will then become immediately due and payable.
- 13) **Force majeure** A party is not liable for any failure or delay in performing an obligation in this document if it is due to a cause reasonably beyond the control of that party and that party has used its best endeavours to perform on time despite the cause.
- 14) **'South Taranaki Quarries Ltd's' limited liability** 'South Taranaki Quarries Limited' shall not have any liability or responsibility to the customer for any loss, damage or injury, whether arising in contract, tort, equity or otherwise, which does not flow directly or naturally (i.e. in the ordinary course of things) from a breach of this Agreement. 'South Taranaki Quarries Limited' shall not have any liability for any consequential loss of business or profits or other indirect loss. 'South Taranaki Quarries Limited' shall only be liable for losses (excluding loss of business or profits) which flow directly or naturally from a breach of this Agreement up to a maximum of the price paid by the customer for the goods and/or services supplied under this contract. All warranties, terms and conditions (including, without limitation, warranties and conditions as to fitness for purpose and merchantability), whether express or implied by statute, common law or otherwise, are excluded to the extent permitted by law.
- 15) **Customer indemnity:** The customer will indemnify 'South Taranaki Quarries Ltd' for any physical, direct and indirect damage, loss or cost (including legal costs on a solicitor/client basis) to South Taranaki Quarries Ltd or any other person, and will protect 'South Taranaki Quarries Ltd' from any claim or proceedings against 'South Taranaki Quarries Ltd', to the extent caused or contributed to by the customer or by a good after risk or title has passed to the customer.
- 16) **Use of Information:** The customer agrees that 'South Taranaki Quarries Ltd' and any members of 'South Taranaki Quarries Ltd' Group of companies may use information about the customer and obtain to use in their business, any information from the customer or any other person. The customer consents to any person providing 'South Taranaki Quarries Ltd' with such information and the customer must notify 'South Taranaki Quarries Ltd' of any change in circumstances that may affect the accuracy of the information provided by the customer to the 'South Taranaki Quarries Ltd' Group.
- 17) **No assignment:** the customer may not directly or indirectly assign to any person any of its benefits or burdens in respect of this contract but 'South Taranaki Quarries Ltd' may.
- 18) **Survival:** Each provision in this contract survives to the extent unfulfilled, and remains enforceable and does not merge on performance of another provision.
- 19) **Waiver:** No delay or failure to act is a waiver. No waiver is effective unless it is in writing. A waiver of a breach is not a waiver of any other breach.

- 20) **Reliance:** 'South Taranaki Quarries Ltd' may rely on any plans, specifications, information or quality and/or standard of any manufactured product used by the customer and has no liability whatever for loss or damage caused or contributed to by any act of the customer.
- 21) **Entire agreement:** This is an entire agreement. The customer acknowledges that any representatives, statements or options made or expressed are not relied upon by the customer in entering into this contract.
- 22) **Consumers:** Where the customer is a "Consumer" and acquires any goods, or holds themselves out as acquiring goods, for the purposes of a "Business" (as those terms are defined in the Consumer Guarantees Act 1993) then to the extent permissible 'South Taranaki Quarries Ltd' and the customer agree that Act is hereby excluded. Otherwise, where the customer is a consumer this contract is to be read subject to the terms of that Act.
- 23) **Interpretation:** In this contract, unless the context otherwise requires or specifically otherwise stated:
- a) 'South Taranaki Quarries Ltd' means 'South Taranaki Quarries Ltd' and/or any other entity or person (or their successors or assigns) authorised by them (whether previously, now or in the future) to trade under the name 'South Taranaki Quarries'.
 - b) "Amount owing" means the price charged by 'South Taranaki Quarries Ltd' for the goods, and any other sums which 'South Taranaki Quarries Ltd' is entitled to charge under this contract.
 - c) An "Event of Default" means an event where the customer fails to comply with this contract or any other contract with 'South Taranaki Quarries Ltd'; or the customer commits an act of bankruptcy; or the customer enters into any composition or arrangement with its creditors; or if the customer is a company the customer has done or does anything which would make it liable to be put into liquidation; or a resolution is or has been passed or an application is or has been made for the liquidation of the customer; or a receiver or statutory or official manager is or has been appointed over all or any of the customers assets.
 - d) "Goods" include any product, equipment, material or other item sold by 'South Taranaki Quarries Ltd' whether under this contract or not.
 - e) If the customer comprises more than one person, each of those person's liability is joint and several.
 - f) Reference to a party or a person includes any form of entity and their respective successors, assigns and representatives.