

TO BE COMPLETED BY APPLICANTS Please complete all sections and read the Terms and Conditions of Trade

DATE: **REF No:**.....

CUSTOMER'S TRADE NAME:

CUSTOMER'S FULL or LEGAL NAME:

PHONE: **MOBILE:**

EMAIL:

BILLING ADDRESS: **PHYSICAL ADDRESS:**

.....

.....**POSTCODE:** **POSTCODE:**

COMMERCIAL CUSTOMERS ONLY

Company Number:

Requested Credit Limit **Date Established:**

Contact 1 **Contact 2**

Position: **Position:**.....

Phone: **Phone:**

DETAILS OF OWNER (if Sole Trader), PARTNER (if Patnership) OR DIRECTORS (if Company)

Full Name: **Full Name:**

HOME ADDRESS: **HOME ADDRESS:**

.....

.....**POSTCODE:** **POSTCODE:**

Home Phone: **Home Phone:**

TRADE REFERENCES:

Business Name 1: **Business Name 2:**

Address or A/C No: **Address or A/C No:**

Phone: **Phone:**

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understood the TERMS AND CONDITIONS OF TRADE (overleaf) of HR Cement Limited which form part of, and are intended to be read in conjunction with the Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director or a shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.***

SIGNED (SELLER) **SIGNED (CUSTOMER)**

Name: **Name:**

Position: **Position:**.....

WITNESS TO CUSTOMER SIGNATURE: ID:..... **DOB:**

Signed: **Name:** **Date:**

HR CEMENT LIMITED TERMS AND CONDITIONS

1. Definitions
 - 1.1 "HR Cement Limited" shall mean HR Cement Limited or HR Cement Limited employees.
 - 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from HR Cement Limited.
 - 1.3 "Goods" shall mean any product or other item or services supplied by HR Cement Limited to the Customer.
2. Acceptance of Terms and Conditions
 - 2.1 In the absence of any formal written acceptance, the receipt of an order by the customer whether verbal or in writing shall be deemed to constitute acceptance of these terms and conditions.
3. Collections and Use of Information
 - 3.1 The customer authorises any person, Company or organisation to provide HR Cement Limited with such information as HR Cement Limited may require in response to HR Cement Limited's credit enquiries. Any information obtained by HR Cement Limited under this clause will be confined to that reasonably required by HR Cement Limited.
 - 3.2 The customer authorises HR Cement Limited to furnish any third party with details of this application and any subsequent dealings that HR Cement Limited may have had with a customer as a result of the application being acted on. Any disclosure made by HR Cement Limited under this clause will be confined to that reasonably required by the third party.
 - 3.3 Under the Privacy Act 1993 the customer and the guarantor have the right of access to and correction of their personal information held by HR Cement Limited.
4. Price
 - 4.1 Unless otherwise expressly stated in writing, the price of the goods shall be priced as at the date of delivery.
 - 4.2 Unless any price quoted in writing is expressed to be a fixed price, HR Cement Limited reserves the right to adjust its prices at any time and from time to time.
 - 4.3 No discounts or concessionary rates shall apply to accounts in respect of which there are any overdue moneys.
5. Payment
 - 5.1 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
 - 5.2 HR Cement Limited reserve the right to waive discounts 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 HR Cement Limited having processed or approved the application or having previously granted credit and without prejudice to any other of its rights, HR Cement Limited shall be entitled to withhold delivery until payment has been made or it considers the customer's credit worthiness to be satisfactory. Credit shall be revocable by HR Cement Limited at any time prior to delivery.
7. Interest on Overdue Moneys
 - 7.1 Without prejudice to any other of its rights, HR Cement Limited 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.
8. Default
 - 8.1 The total amount owing by the customer to HR Cement Limited, including 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 is otherwise in breach of any of these terms and conditions.
 - 8.1.3 Upon the appointment of a liquidator or receiver.
 - 8.1.4 Upon termination of this credit facility or any agreement reached pursuant to it under clause 17.
9. Delivery
 - 9.1 Delivery shall be made at the place indicated by the customer upon ordering and shall (subject as hereinafter provided) occur upon the discharge of cement from HR Cement Limited's delivery vehicle (s).
 - 9.2 The customer will give HR Cement Limited reasonable notice of the time and rate of deliveries. HR Cement Limited will use its best endeavours to make such deliveries in accordance with notice given by the customer. No claim shall be made against HR Cement Limited for failure to deliver within such times or rates, and regardless of whether such failure is beyond the control of HR Cement Limited. The customer shall accept delivery when the same is made by HR Cement Limited.
 - 9.3 Where the cement 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 points of delivery under their own power. HR Cement Limited 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 HR Cement Limited. Such a refusal shall not constitute a breach of these terms and conditions. If the customer orders deliveries beyond the kerb line, the customer hereby assumes and accepts absolute liability for damage to footpaths, kerbs and other property and shall indemnify HR Cement Limited 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 HR Cement Limited's trucks and equipment.
 - 9.4 The customer will be charged for all cement which has been ordered and is unable to be accepted by the customer unless cancellation of the order is received prior to the loading of the tanker or truck.
 - 9.5 HR Cement Limited may charge the customer transportation and disposal expenses and may in addition recover from the customer all additional costs, charges and expenses incurred by HR Cement Limited as a result of failure, refusal or inability to take or accept delivery.
 - 9.6 HR Cement Limited shall be entitled to charge waiting time at their current rate on that period of time beyond 2 minutes per tonne of discharge.
 - 9.7 HR Cement Limited shall be entitled to make an additional charge of an amount to be determined by the company for deliveries made before 6:00 am or after 5:00 pm on weekdays, before 7:00 am or after 11:00 am on Saturdays and at any time on Sundays and statutory holidays.
10. Liability
 - 10.1 Unless expressly stated to the contrary in the contract, all cement supplied will be produced in accordance with the requirement of N.Z.S. 3122, 2009 or subsequent amendments and it shall be the Customer's responsibility to ensure that the cement is fit for the purpose for which it is intended.
 - 10.2 Details of the product 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 product delivered upon dispatch commencing. HR Cement Limited shall be under no obligation to replace the load if this check has not been made before dispatch commences. HR Cement Limited shall be under no liability whatsoever for any incorrect product.
 - 10.3 The customer accepts and acknowledges that HR Cement Limited has no control over the handling of the cement after unloading and accordingly HR Cement Limited does not guarantee or warrant the finished work in which the cement will be used.
 - 10.4 HR Cement Limited 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 HR Cement Limited (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 HR Cement Limited.
 - 10.5 All prices and quotes are based upon a certified weighbridge weight of cement. Any claim for alleged short delivery of cement 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.
11. Unauthorised Use of Account
 - 11.1 The Customer shall be liable for any indebtedness arising from the unauthorised use of the account provided that the authorisation came from a servant or agent of the Customer.
12. Reservation of Title
 - 12.1 The Customer acknowledges that he is in possession of any goods supplied by HR Cement Limited, solely as bailee for HR Cement Limited until such time as full price thereof is paid to HR Cement Limited together with the full price of any other goods the subject of any other contract of HR Cement Limited.
 - 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 HR Cement Limited.
 - 12.3 The Customer's right to possession of the goods shall cease if he, not being a company, commits an available act of bankruptcy or if he, being a company, 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 of a company. HR Cement Limited may for the purpose of recovery of its goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
 - 12.4 Subject to the terms hereof the Customer is licensed by HR Cement Limited to process the said 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 said goods shall be separately stored and marked so as to be identifiable as being made from or with the goods the property of HR Cement Limited.
 - 12.5 If the Customer has not received the proceeds of any such sale he will, if called upon to do so by HR Cement Limited, within seven days thereof assign to HR Cement Limited all rights against the person or persons to whom he has supplied any produce or chattel made from or with HR Cement Limited's goods.
13. The Personal Property Securities Act 1999 ("PPSA")
 - 13.1 As security for:
 - 13.1.1 The payment of all amounts of any nature which the Customer (whether alone, or jointly or jointly and severally with any other person) is, or may at any time become, liable (whether actually or contingently) to pay to HR Cement Limited (whether alone, or jointly or jointly and severally with any other person); and
 - 13.1.2 The performance by the Customer of all the Customer's other obligations to HR Cement Limited at any time; the Customer grants to HR Cement Limited a security interest in all the goods supplied by HR Cement Limited to the Customer presently, and at any time in the future.
 - 13.2 The Customer:
 - 13.2.1 Agrees that HR Cement Limited shall register a Financing Statement in the Personal property Securities Register to protect their security interest under clause 13.1;
 - 13.2.2 Agrees that it shall pay to HR Cement Limited promptly on request the cost of registering the Financing Statement and the costs of enforcing or attempting to enforce the security agreement against either it and/or any other party;
 - 13.2.3 Agrees that nothing in Sections 114(1)(a), 133 and 134 of the PPSA will apply to this agreement, or the security under this agreement.
 - 13.2.4 Waives the Customer's right to do any of the following:
 - (i) object to HR Cement Limited's proposal to retain any Personal Property under Section 121 of the PPSA; (ii) not have goods damaged when HR Cement Limited removes an accession under Section 125 of the PPSA;
 - (iii) receive notice of the removal of an accession under Section 129 of the PPSA;
 - (iv) receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the security interest created by this agreement.
 - 13.2.5 Agrees to notify HR Cement Limited if the Customer changes its name not less than 7 days before the change takes effect;
 - 13.2.6 Agrees to, at HR Cement Limited's request, promptly execute any documents, provide all necessary information and documents, and do anything else required by HR Cement Limited to ensure HR Cement Limited's security interest may be perfected under the PPSA.
14. Costs of Collection
 - 14.1 The Customer shall be immediately liable for all costs of collection and legal fees incurred by HR Cement Limited in the recovery or attempted recovery of any overdue amounts.
15. Variation of Terms and Conditions
 - 15.1 HR Cement Limited reserves the right to amend these terms and conditions at any time and from time to time by giving to the Customer notice in writing and use thereafter by the Customer of this account shall constitute acceptance of any such amendments.
16. Termination
 - 16.1 In addition to any other of HR Cement Limited's right of termination provided herein or at law, both HR Cement Limited and the Customer shall have the right to terminate this credit facility on giving not less than three working days' notice in writing but no such termination shall release the Customer from any moneys owing or from liability for any previous breach of these terms and conditions.
17. Consumer Guarantees Act
 - 17.1 The parties acknowledge that where the goods supplied under this agreement are being purchased for business purposes the provisions of the Consumer Guarantees Act 1993 do not apply.
18. Personal Guarantee of Company Directors or Trustees
 - 18.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration of HR Cement Limited agreeing to supply goods and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to HR Cement Limited the payment of any and all monies now or hereafter owed by the Customer to HR Cement Limited and indemnify HR Cement Limited against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.
19. Copyright
 - 19.1 Copyright in all drawings, specifications and other technical information provided by HR Cement Limited in connection with the contract are vested in HR Cement Limited.
20. Miscellaneous
 - 20.1 HR Cement Limited 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 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.
 - 20.6 HR Cement Limited will not recognise results from tests conducted by the customer upon cement unless the cement is sampled from the discharge from the delivery truck and tested according to N.Z.S. 3122 2009.