

TERMS OF TRADE

1. **What is the purpose of this agreement?**
- 1.1 This agreement sets out the terms that apply to the relationship between you and your agent(s) and/or principal(s) ("you" and "your") and **Industrial Minerals (N.Z.) Limited** and our agent(s) ("we", "us" and "our").
2. **What information about you can we collect?**
- 2.1 You agree to provide us with and allow us to use all information necessary to give effect to this agreement and the provision of our products and performance of our services.
- 2.2 Unless your consent is withdrawn in writing, you agree to the disclosure of information:
 - to give effect to the provision of our products and performance of our services;
 - to enforce our obligations under this agreement or any additional agreement;
 - when authorised by you or required by law;
 - to assess credit worthiness; and
 - to market any of our products and services.
- 2.3 We will comply with the Privacy Act 1993. We will not use your information unless we have reasonably ensured it is accurate, complete, relevant and not misleading. If we give your information to another entity we will do everything reasonably within our power to prevent unauthorised use or disclosure of your information. You may access your information and ask us to correct any mistakes.
3. **What are our products and services?**
- 3.1 "Product(s)" and "service(s)" means and includes without limitation:
 - minerals, materials, machines, equipment, components, systems, parts, units, fixtures, fittings and accessories (whether separate, attached to something or the subject of our services) supplied by us;
 - importing, exporting, supply, distribution and delivery; and
 - agency fees, charges and out of pocket expenses incurred by us,identifiable either in any document or record issued by either party (all of which are deemed to be incorporated into and form part of this agreement) or as ours by marking or manner of storage.
4. **What is the price?**
- 4.1 The price is the cost of the products and services as agreed between you and us from time to time subject to GST and out of pocket expenses such as freight. If no price is stated, the price will be the standard amount at which that we provide the products and services at the time of your request. The price is subject to reasonable change due to variations to the products and services to be provided or circumstances beyond our control.
5. **What happens when we give you a quote?**
- 5.1 If we give you a quote for products and services:
 - the quote will be valid for thirty (30) days and exclusive of GST, unless stated otherwise;
 - you will be responsible for increased costs resulting from any subsequent changes to the quote due to any inadequate or inaccurate information, request/requirement for additional products and services or variations;
 - we may withdraw the quote at any time prior to your acceptance of the same; and
 - we may alter the quote due to circumstances beyond our control or clerical or computer error.
6. **When and how do you pay us?**
- 6.1 You agree to pay us in full and without set-off, deduction, counterclaim or retention:
 - on or before the 20th day of the month following the date of our invoice, unless otherwise agreed or required;
 - a storage fee charged for products held by us on your behalf;
 - interest on any amount you owe after the due date at 2.5% per month or part month;
 - expenses incurred as a result of enforcing any of our rights contained in this agreement including PPSR registration, debt collection and legal fees; and
 - a deposit may be required.
- 6.2 You agree to us allocating or reallocating any payment received from you towards any invoice. If no allocation is made then it is deemed to be in such a way that preserves the maximum value of our purchase money security interest in the products.
- 6.3 If you will pay for the products and services by credit card, we may require a retention of the value of the products and services and deduct the same from your card. All payments by credit card will incur a surcharge of 3% of the value of the invoice.
- 6.4 Each pallet delivered to you will be invoiced at our standard rate at the time of delivery. You will receive a credit for the pallet at the original invoice value which will be issued only upon receipt of the pallet and upon proof of delivery to us or our carrier. Full credit for each pallet is subject to:
 - the pallet being in good condition and not having been subject to abuse, neglect, misuse, accident or work by a unauthorised third party; and
 - you being responsible for the cost of freight of the pallets unless our contracted carriers are used and the return is accompanied by a consignment note endorsed 'at the carrier's convenience'.
7. **What warranties and limitations apply?**
- 7.1 Manufacturers' and third party warranties (where applicable).
- 7.2 If you are in trade and/or are a business, you agree that the parties contract out of the Fair Trading Act 1986 and Consumer Guarantees Act 1993 and Contract and Commercial Law Act 2017 to the extent permissible by law.
- 7.3 Samples shown to you may differ provided products supplied to you.
- 7.4 We are not liable for delay or failure to perform our obligations if the cause is beyond our reasonable control, such as importation delays.
- 7.5 Our advice in respect of use of the products is given in good faith. We have no liability whatsoever for the advice or results in connection with the products and all advice is accepted at your sole risk.
- 7.6 You are solely responsible for and warrant that you have ensured and/or will ensure:
 - that sites subject to our products and services comply with all relevant health and safety requirements;
 - safe and adequate access to any site for delivery of the products - we may refuse to deliver to any site if in our opinion delivery would be unsuitable or unsafe;
 - that the products are not used for any purpose for which they are not suitable;
 - that all necessary skill and care is used in handling and using the products; and
 - the return of containers when they are supplied to your site or specified destination - any demurrage or detention charges incurred will be payable in full by you.If you do not meet these obligations adequately, any and all loss, damage and/or costs will be your sole responsibility.
- 7.7 Subject to applicable insurance and 7.1-7.6, if we are deemed liable for loss or damage of any kind, however arising including from provision of products and services to you, including consequential loss, whether suffered or incurred by you or another person or entity and whether in contract tort or otherwise, our total liability is limited to the value of products and services provided to you.
8. **What if you wish to make a claim in relation to our products and services?**
- 8.1 Products cannot be returned unless due to fault/defect. A restocking fee equal to 20% of the value of any restocked products may apply.
- 8.2 For claims unrelated to warranty such as incorrect or short supply, you must notify us within seventy-two (72) hours of delivery/pick up.
- 8.3 Subject to 8.4, for claims under warranty you must:
 - notify us within in writing within seven (7) days of the fault/defect becoming apparent;
 - obtain any relevant details required by us to make the warranty claim;
 - provide original proof of purchase and reasonable evidence of the original date of supply and a written description of the fault/defect;
 - send the products to us at your cost in the original packaging or packed in a manner approved by us.
- 8.4 Warranty does not cover:
 - replacement or repair of products due to normal wear and tear or lack of maintenance;
 - damage due to accident, misuse, negligent, abuse or fire;
 - overloading or transport damage;
 - products not returned in original packaging or in accordance with our requirements within the warranty period;
 - products subject to unauthorised alteration, modification or substitution;
 - products that have not been used in accordance with our or manufacturer's instructions;
- malfunction due to faulty installation or operation;
- products with the serial number or model number removed or defaced; and
- products not used with the purpose for which they were reasonably intended.
- 8.5 Any products that are the subject of a claim cannot be destroyed or removed from the premises until we have inspected the same or waived our right to do so in writing.
9. **When will the products and services be provided?**
- 9.1 We will use our best endeavours to deliver the products and services at the time agreed between you and us; however, the time of delivery is not an essential term of this agreement and if you fail to accept delivery then the products will be deemed to be delivered at the agreed time. We may partially deliver products listed in one order and if we fail to deliver an instalment that failure will not give rise to a right of cancellation.
- 9.2 Delivery is complete when we give the products to you, give the products to a third party carrier, or leave the products at the delivery site or your premises.
- 9.3 We are responsible and assume risk for the products until delivery in accordance with 9.2, pick up by you or the passing of ownership in accordance with 10.1, whichever comes first. The products are at your risk after delivery and if the products are not yet paid for, you will insure the same at full replacement value until ownership passes in accordance with 10.1.
10. **What ownership and security rights do we have?**
- 10.1 We retain ownership of and hold a security interest in all products until you have paid us in full for all products and services provided to you. While we retain ownership, you will store all products in such a way that our interests are protected and they can be identified as provided by us.
- 10.2 You agree that we hold security interest in all of your present and after acquired property connected with products and services provided to you, and:
 - authorise us to register a financing statement and charge on the Personal Property Securities Register, and provide all information and signatures necessary to effect the same;
 - will not register a financing charge or statement or charge demand in respect of products without our prior written consent;
 - waive your entitlement under s 148 of the Personal Property Securities Act 1999 (PPSA) to receive a copy of a verification statement where we have registered our interest;
 - that both parties contract out of s 114(1)(a), 133 and 134 of the PPSA;
 - waive your rights as listed under s 107(2) of the PPSA; and
 - give us seven (7) days prior written notice of any proposed change in your name or details such as contact information.
- 10.3 Where applicable, we own all existing and new intellectual property rights connected to the products and services.
11. **What if you want to vary an order?**
- 11.1 All orders are subject to these terms and conditions and no order may be varied unless both parties agree to the variation in writing. If we have reasonably relied on your original instructions then you may be responsible for payment of the price of the original products and services.
12. **When can a party cancel this agreement?**
- 12.1 Subject to 12.2-12.5, either party may cancel this agreement at any time by giving fourteen (14) days prior written notice.
- 12.2 We have the right by seven (7) days prior written notice to suspend or cancel wholly or in part this or any agreement for the provision of products and services and/or close your credit account, if you default by:
 - failing to pay or indicating you will not pay any sum owing by the due date;
 - any of your creditors seizing or indicating they will seize any products provided to you;
 - products in your possession becoming materially damaged while any amount remains unpaid;
 - being bankrupted, insolvent, under statutory management or put into liquidation;
 - a receiver being appointed over or a landlord possessing any of your assets;
 - a court judgment entered against you remaining unsatisfied for seven (7) days;
 - breaching the terms of this agreement; and
 - an adverse material change in your financial position.
- 12.3 If you default we may exercise a lien against any products in our possession.
- 12.4 You agree that if you default and the default is not remedied within seven (7) days, we may enter any premises occupied by you to inspect or retrieve any products. You will provide reasonable access to such premises and do all things necessary to give effect to our obligations. We may re-sell any products and credit the net sale proceeds to your account for the invoice value less adjustment for the condition of the products.
- 12.5 Cancellation under 12.1 or cancellation or suspension under 12.2 will not affect either party's claim for any amount due at the time of cancellation or suspension, damages for any breach of obligations under this agreement and any other legal rights either party may have. Upon cancellation of this agreement any amount owed by you for products and services provided up to and including the date of cancellation will become immediately payable and current orders will terminate.
13. **Does a personal guarantee apply?**
- 13.1 If you are a director of a company or the trustee of a trust:
 - in exchange for us agreeing to supply products and services and/or grant credit to the company or the trust, you also sign this agreement in your personal capacity, and jointly and severally personally undertake as principal debtors, to pay everything that the company or trust owes us, and to indemnify us against non-payment and/or default; and
 - any personal liability of you as director or trustee will not exclude the company or trust from the liabilities and obligations contained in this agreement.
- 13.2 A guarantee provided under 13.1 will continue to apply notwithstanding changes to these terms of trade in accordance with 14.9 and/or prior dealings.
14. **What else is agreed?**
- 14.1 All orders for products to be supplied by us are subject to our acceptance. All orders and acceptance of the same are subject to these terms of trade.
- 14.2 We may outsource (contract out) part of the work required to perform our services, you agree to pay for all amounts due in connection with the same.
- 14.3 A failure by either party to enforce any of the terms of this agreement will not be deemed to be a waiver of any of the rights or obligations under this agreement.
- 14.4 Neither party may assign or transfer their rights or obligations under this agreement to any other party without our prior written consent.
- 14.5 If any of these terms are determined to be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining terms will not be affected.
- 14.6 This agreement supersedes all prior agreements, representations and warranties. Any instructions we receive from you and all arrangements between the parties are subject to these terms.
- 14.7 If a dispute arises between the parties either party must notify the other in writing within seven (7) days of the dispute arising and we may suspend our services after such notification. The parties will endeavour to resolve the dispute by negotiation within seven (7) days of receiving notice. If the parties cannot resolve the dispute then each party will have the right to refer the dispute for mediation or arbitration at any time. The arbitration will be undertaken in accordance with the Arbitration Act 1996. The presence of a dispute will not affect either party's claim for any amount due, damages for any breach of obligations under this agreement and any other legal rights either party may have.
- 14.8 Documentation related to this agreement may be served on you by email and both parties accept correspondence by email.
- 14.9 We will notify you of any changes to these terms and publish the same on our website - continued provision of products and services will be subject to your signed or written acceptance of the same. All other variations must be mutually agreed in writing.
- 14.10 This agreement is governed by the laws of New Zealand.