

TERMS OF TRADE

1. General

1.1 These terms of trade (**Terms**) govern all of the supplies of products by MBP (NZ) LTD (**we, us**) to you, our customer (**you, customer**). These Terms will replace any other terms and conditions contained in any document used by you and purporting to have contractual effect, and your acceptance of any products from us indicates your continuing acceptance of these Terms. These Terms replace any earlier terms agreed between us.

1.2 All references to products in these Terms refer to all goods, products and/or consumables sold, supplied, leased, rented, bailed, consigned or otherwise made available by us from time to time including, without limitation, all "Mapei" and "Polyglass" branded product in the nature of adhesives, grouts, silicone, sealant, polyurethanes, epoxies, liquids, acoustic matting, waterproofing membranes and marketing merchandise.

2. Acceptance, price and payment

2.1 No binding sale contract will exist until your order has been accepted by us. Once your order has been accepted, it may only be cancelled with written consent by us.

2.2 The price for the products will be the price that we specify at the time you place your order with us (**Price**). Delivery costs, such as packaging and postage will be charged separately to the Price as will GST and other taxes and duties relating to the supply of the products.

2.3 Except for orders made pursuant to clause 3, to which the provisions of clause 3 apply instead of the provisions of this clause 2.3:

2.3.1 we will issue an invoice to you for the products either at the time of delivery of those products or at the end of each month in respect of all products delivered during that month.

2.3.2 you must pay all of our invoices in full without set off or deduction by the 20th day of the month following the date of our invoice.

2.4 If you have overdue accounts with us, we may:

2.4.1 Charge interest at a rate of 1.5% per month on those overdue accounts;

2.4.2 Suspend the supply of products to you; and

2.4.3 Take any other action that we consider necessary to recover overdue accounts.

2.5 You shall indemnify us from and against any liability, loss, damage, costs or expenses (including legal costs and expenses on a full indemnity basis) suffered or incurred by us arising out of any breach of your payment obligations under these Terms and any such costs may be added to the amount due by you, (including without limitation all dishonour fees, debt collection, collection agency costs and legal costs on a solicitor/client basis).

2.6 Where you have a credit account with us, we may set a credit limit on that account.

3. Indent Orders

3.1 This clause applies to orders for product imported on request such as container-loads of products which you place with us (**Indent Orders**).

3.2 Where an Indent Order is placed for non-standard items not stocked by us in the normal course of business, you shall pay the Price in full upon receipt of our confirmation of your order. Indent Orders for non-standard items may not be cancelled.

3.3 Where an Indent Order is placed for standard items stocked by us in the normal course of business, you shall pay to us a non-refundable deposit equal to 20% of the Price upon receipt of our confirmation of your order. We will issue an invoice to you for the balance of the Price at the time of delivery of the products to you and you must pay our invoice in full without set off or deduction within 7 days following the date of the invoice. Indent Orders for standard items may be cancelled, but the deposit will be retained by us to cover our costs.

3.4 Products purchased via an Indent Order cannot be returned.

4. Delivery and returns

4.1 Delivery of any products by us will be deemed to take place when the products are made available for you to collect from our premises or otherwise delivered to a location agreed between us (**Delivery**).

4.2 If we agree to arrange for the transportation of any products from our premises to your delivery address on your behalf:

4.2.1 The Delivery will be at your expense;

4.2.2 We will pack the products in such a manner as to reach the intended destination in good condition under normal conditions of transport;

4.2.3 You are solely responsible for acceptance of the products and we shall not be liable for any loss or damage to products where the products are Delivered to and left at unattended sites.

4.2.4 You will be responsible for unloading the products from the Delivery vehicle at your cost.

4.2.5 If for any reason, you are unable to take Delivery of the products at the time of Delivery, you will pay the reasonable costs incurred by us if we are required to redeliver the products.

4.3 To the extent that you are acquiring the products in trade:

4.3.1 We will not be liable to you for any loss of revenue, loss of profits or any other indirect or consequential losses or liabilities incurred by you on account of any products not being delivered on any specified date;

4.3.2 The date of Delivery on any quote or order will be indicative only;

4.3.3 We will have no responsibility for any delays in the Delivery and you will be required to accept Delivery of the products when they are tendered for Delivery.

4.4 Upon receiving the products, you are solely responsible to check the products supplied are correct and to notify us within 3 working days if the products supplied are incorrect.

4.4.1 If the products are incorrect, our return of products policy applies.

4.5 Certain products may be exchanged within 10 working days of Delivery provided that the products

are accompanied by the corresponding invoice or delivery docket and that you pay an administration charge of 15% of the Price, or \$60.00 per returned products, whichever is the greater. Non-standard and specially ordered products and products ordered pursuant to an Intend Order may not be exchanged. Money will not be refunded unless we agree otherwise in writing.

5. Risk and Ownership

5.1 All risk of loss, damage, deterioration or destruction of the products will pass to you on Delivery and you shall be responsible for insuring the products on and from Delivery.

5.2 Title to and ownership of the products shall not pass to you until you have paid in full all money owing to us (whether for the products or otherwise). Until title in the products passes to you, you must:

5.2.1 Keep the products in good condition;

5.2.2 Keep the products fully insured to their full replacement value against all risk;

5.2.3 Not encumber the products in any way;

5.2.4 Hold and keep the products separately from other property in your possession and in any manner which enables the products to be easily identifiable as products supplied by us.

5.3 If you resell the products or any of them before payment is made, you shall hold the proceeds of resale of the products or any of them in trust for us and account to us for all money owed by you to us. If you resell the products or any of them so as to create a debt owed to us, you assign all legal and equitable title to that debt to us and you irrevocably appoint us as your attorney with all powers permitted by law for the purpose of effecting any such assignment and recovery of any such debt in your name for our benefit.

5.4 We shall be entitled to repossess all products which we claim belong to us at any time without notice and for such purpose it shall be lawful for us and/or our agent to enter any premises where such products are or are believed to be and to remove such products. You indemnify us and agree to hold us harmless against any damage howsoever caused in relation to such entry and removal including consequential loss or damage to any third party or to you.

6. Personal Property Securities Act 1999

6.1 You acknowledge that:

6.1.1 these Terms constitute a security agreement which creates a security interest in favour of us in all products supplied by us to you from time to time and in the proceeds relating to that product for the purposes of the Personal Property Securities Act 1999 (PPSA) and to better secure your performance of its obligations under these Terms;

6.1.2 We hold a "security interest" in the products supplied and any proceeds from the sale of those products pursuant to section 17 of the PPSA; and

6.1.3 We may register a financing statement in respect of those products and any sale proceeds (together with any other products

and any sale proceeds of those products) in accordance with the provisions of the PPSA.

6.2 You undertake to:

6.2.1 promptly do all things, execute all documents and/or provide any information which we may reasonably require to enable us to perfect and maintain the perfection of its security interest (including by registering a financing statement);

6.2.2 give us not less than 14 days prior written notice of any proposed change in its name and/or any other change of its details;

6.2.3 immediately on request by us (and at the Dealer's expense) obtain from any third party such agreements and waivers of any security interest that third party has in respect of the product to ensure that at all times we have a first ranking security interest in the product.

6.3 You agree that the following sections of the PPSA shall not apply to these Terms or the security created by these Terms and, as between the parties, to the extent the law permits:

6.3.1 you waive your rights under the following sections of the PPSA: 114(1)(a), 116, 120(1), 120(2), 121, 125, 126, 127, 129, 131, 133, and 134; and

6.3.2 where we have rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

6.4 You further agree to waive your right to a verification statement upon registration of our security interest.

6.5 For the purposes of this clause 6, "proceeds" includes, where the context permits, any proceeds for purposes of the PPSA, and the terms "security interest", "perfection", "verification statement" and "financing statement" each have the meaning given to those terms in the PPSA.

7. Limitation of Liability

7.1 The provisions of this clause 7 shall be read subject to any express manufacturers' warranty or product warranty that we expressly give to you, and any assurance, condition or warranty that is implied by law and cannot be excluded. Nothing in these Terms, including in this clause 7, is intended to modify or negate a consumer's rights and remedies under the Consumer Guarantees Act 1993.

7.2 Except as set out in any express manufacturers' warranty or product warranty and any non-excludable warranty implied by law:

7.2.1 we will not be liable for any losses or damages incurred by you or any third party in relation to the products or these Terms (including, without limitation, damage to property);

7.2.2 we do not give any condition, warranty or representation (express or implied) in respect of the products; and

7.2.3 we expressly exclude all warranties, descriptions, representations and conditions whether implied by law, trade, custom or otherwise (including warranties under Part 3 of the Contract and Commercial Law Act 2017).

- 7.3 If any of our products fail to comply with any such assurance, condition or warranty expressly given or implied by law (where it cannot be excluded), then our sole liability will be to, at our option, either replace or repair that product at our cost, unless otherwise required by law.
- 7.4 You acknowledge that where you are acquiring the products in trade that the provisions of the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply.
- 7.5 Notwithstanding any other provision of these Terms, to the maximum extent permitted by law, we exclude all liability for any loss of profits, indirect loss, special loss, or consequential loss.
- 7.6 For the purposes of any claim against us, as defined by the Limitation Act 2010, whether in contract, tort, equity or otherwise, arising out of our supply of products to you, the Limitation Act shall be modified so that any claim must be filed within 12 months after the date of the act or omission on which the claim is based. Further, the "late knowledge" provisions in sections 11(2), 11(3), 14 and 32(2) shall not apply. The 12-month time period applies whether or not loss or damage has become apparent, or has been suffered, within that time period.
- 8. Our actions regarding the products**
- 8.1 Where expressly agreed with you in writing, we may supervise the preparation of our products to ensure that the preparation meets our specifications. However, we are not responsible for any failure to apply the product in accordance with any relevant specifications, standards, regulation or similar, and nor are we responsible for the use of the product in inappropriate circumstances or on inappropriate (or inappropriately prepared) surfaces. We are not responsible or liable for the workmanship of the applicator of the product or the use of the product in inappropriate circumstances or surfaces, regardless of whether or not our representatives are present at the time of application. Any guidance our representatives provide during their supervision will not modify any express manufacturers' warranty or product warranty relating to our products.
- 8.2 We may also provide you or your agents or contractors with information about our products to assist you (and them) in assessing which products to use. That information is provided on a non-reliance basis. You remain responsible for determining whether or not to use our products and which products to use, and we take no responsibility or liability for assessment of whether our products are appropriate for use in your particular circumstances and whether they meet the relevant building and other regulatory requirements.
- 8.3 Subject to any liability we may have under the Consumer Guarantees Act 1993, our liability (whether in contract, tort or otherwise) arising from any of our actions regarding our products (including the supervision of any preparation of our products and the provision of any information about our products) will be limited to the total value of Mapei products to which that supervision or information relates, as reasonably determined by us.
- 9. Your Responsibilities**
- 9.1 You shall comply with all relevant laws and any instructions provided by us relating to the use and operation of the products and shall indemnify us and keep us indemnified and our agents from and against any and all loss, liability, damage, fee, costs (including legal costs on a solicitor/client basis), expense, suit, claim, demand, judgment and prosecution arising directly or indirectly out of or in connection with the personal injury or death, or loss of property to any person as a result of your incorrect use or operation of the products.
- 10. The Privacy Act 2020**
- 10.1 You consent to us, our financiers, discounters and any of our related companies (as defined in the Companies Act 1993) collecting, using and holding your personal information and disclosing that information to third parties (including any credit enforcement agency) in connection with credit management and control purposes.
- 10.2 You consent to the credit enforcement agency releasing your private information to us, our financiers, discounters and any of our related companies and authorise us to produce these Terms as evidence that you have given your consent if required.
- 10.3 You acknowledge that your failure to provide any information that we request in respect of any application for credit may mean that we may be unable to process such application.
- 10.4 You may request in writing to access any of the personal information that we hold about you or request that we make corrections to the same.
- 10.5 To avoid doubt, the provisions of this clause 10 are also applicable as between us and any Guarantors and the Guarantors give the same consent as that referred to in this clause.
- 11. Assignment**
- 11.1 The benefit of any warranties conferred by us on you are personal to you and are not assignable unless agreed by us in writing.
- 12. Termination**
- 12.1 For the purposes of this clause 12, a "Termination Event" means the customer refusing to accept any of the products; or a petition for the winding up of the customer being presented or a resolution for winding up passed or the customer going into liquidation; or the customer being adjudged bankrupt or committing an act of bankruptcy; or the customer breaching any term of these Terms; or where the products are in our opinion "at risk"; or the customer making an assignment for the benefit of creditors or entering into a composition, agreement or arrangement with some or all of its creditors; or an extraordinary event occurring or a material change affecting the affairs or financial conditions of the customer occurring, which event or change gives us grounds to conclude that the customer may not, or may not be able to perform or observe its obligations under these Terms.
- 12.2 Upon the occurrence of any Termination Event, we may undertake one or more of the following:

- 12.2.1 cancel all outstanding orders with the customer;
- 12.2.2 enter into any premises where the products supplied by it are located, repossess and sell such products;
- 12.2.3 retain all monies paid to us;
- 12.2.4 require that all monies invoiced to the customer become immediately due and payable;
- 12.2.5 suspend further deliveries to the customer;
- 12.2.6 exercise its rights under any guarantee or other security granted in favour of us in connection with the products; or
- 12.2.7 recover from the customer any loss of profits arising from such termination.
- 13. Governing Law**
- 13.1 These Terms are governed by the laws of New Zealand.
- 14. Entire Agreement**
- 14.1 These Terms record the entire understanding and agreement of the parties relating to the matters dealt with in these Terms. This agreement supersedes all previous understandings or agreements (whether written, oral or both) between the parties relating to these matters.
- 15. Force Majeure**
- 15.1 Neither party (**First Party**) will be liable for any act, omission or failure by it under these Terms if that act, omission or failure results directly from an event or circumstances beyond the reasonable control of the First Party, which circumstances include (but are not limited to), act of God; epidemic or pandemic; strike, lock-out or other industrial disturbance; terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration; act of public enemy, or declared or undeclared war or threat of war; or governmental or regional or local authority restraint, legislation or by law (each, a **Force Majeure Event**), provided that:
- 15.1.1 whenever the First Party becomes aware that such a result has occurred or is likely to occur, the First Party will notify the other party by written notice accordingly;
- 15.1.2 each party will continue to use its reasonable endeavours to perform its obligations as required under these Terms;
- 15.1.3 neither party will be deemed to have accepted any liability to pay or share any extra costs which may be incurred by the other party in complying with this clause 15 or otherwise resulting from such act, omission or failure.
- 15.2 Both parties agree that lack of funds or authority or power on the part of the First Party under these Terms will not constitute a Force Majeure Event.
- 16. Amendment**
- 16.1 We reserve the right to amend these Terms at any time with reasonable notice. By placing an order with us after the effective date of the proposed amendments to these Terms, you agree that you will be deemed to have accepted those amendments. Each Guarantor agrees that by the customer placing an order with us after the effective date of the proposed amendments to these Terms, the Guarantor agrees that it will be deemed to have accepted those amendments.
- 16.2 No amendment to these Terms will be effective unless it is in writing.
- 17. Statutory References**
- 17.1 References to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by law, regulation, order, statutory instrument, determination or subordinate legislation made under it.
- 18. Electronic Transactions**
- 18.1 By signing this Account Application Form, each party consents to this form (or any counterpart of it) being executed in electronic form and being electronically signed in accordance with sections 222 to 227 of the Contract and Commercial Law Act 2017 (as applicable).
- 19. Guarantee and Indemnity**
- 19.1 In consideration of us providing products to the customer (including the customer's successors and assigns) at the request of each guarantor named on the Account Application Form (**Guarantor**), the Guarantor unconditionally and irrevocably:
- 19.1.1 guarantees to us as principal obligor, and not merely as a surety, by way of a continuing obligation, the due and punctual compliance by the customer with each of the customer's obligations, including the payment of all amounts payable by the customer under, or in connection with, these Terms (**Guaranteed Money**);
- 19.1.2 indemnifies us from and against any liability of, loss incurred or sustained by, and claim against us, directly and indirectly arising by reason of any obligation of the customer being or becoming void, voidable or unenforceable, or the customer failing to pay any of the Guaranteed Money, or to perform any obligation under, these Terms; and
- 19.1.3 undertakes that if the customer defaults in the due and punctual payment of any of the Guaranteed Money, the Guarantor will pay that money to us on demand.
- 19.2 The Guarantor:
- 19.2.1 agrees that the Guarantor's liability as guarantor and indemnifier shall not be released, prejudiced or affected by any release or delay or other indulgence given by us to you or any other thing which may have released the Guarantor if the Guarantor had been merely a surety;
- 19.2.2 agrees that as between the Guarantor and us, we may treat the Guarantor as the customer and we shall be under no obligation to take proceedings against the customer before taking proceedings against the customer or exhaust any of our rights, powers or remedies against the customer before pursuing or enforcing this guarantee and indemnity against the Guarantor;
- 19.2.3 agrees that the obligations of the Guarantor under this guarantee and indemnity shall

MBP (NZ) LTD TERMS OF TRADE

remain in force until all Guaranteed Money has been paid and until all other obligations imposed on the customer have been complied with. Such obligations shall not be reduced or affected by the death, bankruptcy, insolvency, liquidation or dissolution (or any event analogous to the foregoing events) of the customer or the Guarantor or either of them;

- 19.2.4 undertakes not to claim in the liquidation of the customer in competition with us; and
 - 19.2.5 undertakes not to exercise any right of subrogation or contribution, require marshalling, or claim the benefit of any security now or in the future held by us; and
 - 19.2.6 authorises to claim in the customer's liquidation for all debts owing to the Guarantor.
- 19.3 If there is more than one Guarantor, their liability under this guarantee and indemnity shall be joint and several.