



# READY MIX CONCRETE

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# TERMS AND CONDITIONS

## 1. Definitions

- 1.1 "ECOMAX RMC" shall mean ECOMAX RMC Concrete / ECOMAX RMC Readymix or ECOMAX RMC 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 ECOMAX RMC.
- 1.3 "Goods" shall mean any product or other item or services supplied by ECOMAX RMC 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 ECOMAX RMC with such information as ECOMAX RMC may require in response to ECOMAX RMC's credit enquiries. Any information obtained by ECOMAX RMC under this clause will be confined to that reasonably required by ECOMAX RMC.
- 3.2 The customer authorises ECOMAX RMC to furnish any third party with details of this application and any subsequent dealings that ECOMAX RMC may have had with a customer as a result of the application being actioned. Any disclosure made by ECOMAX RMC 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 ECOMAX RMC.

## 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, ECOMAX RMC 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 ECOMAX RMC 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 ECOMAX RMC having processed or approved the application or having previously granted credit and without prejudice to any other of its rights, ECOMAX RMC 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 ECOMAX RMC at any time prior to delivery.

## 7. Interest on Overdue Moneys

- 7.1 Without prejudice to any other of its rights, ECOMAX RMC 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 ECOMAX RMC, 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 concrete from ECOMAX RMC's delivery vehicle (s).
- 9.2 The customer will give ECOMAX RMC reasonable notice of the time and rate of deliveries. ECOMAX RMC will use its best endeavours to make such deliveries in accordance with notice given by the customer. No claim shall be made against ECOMAX RMC for failure to deliver within such times or rates, regardless of whether the concrete is to be pumped or otherwise and regardless of whether such failure is beyond the control of ECOMAX RMC. The customer shall accept delivery when the same is made by ECOMAX RMC.
- 9.3 Where the concrete 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. ECOMAX RMC 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 ECOMAX RMC. 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 ECOMAX RMC 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 ECOMAX RMC's trucks and equipment.

- 9.4 The customer will be charged for all concrete which has been ordered and is unable to be accepted by the customer unless cancellation of the order is received prior to the batching of the concrete.
- 9.5 ECOMAX RMC may charge the customer transportation and disposal expenses and may in addition recover from the customer all additional costs, charges and expenses incurred by ECOMAX RMC as a result of failure, refusal or inability to take or accept delivery.
- 9.6 ECOMAX RMC shall be entitled to charge waiting time at their current rate on that period of time beyond ten minutes per cubic metre the vehicle is on or at site to discharge the goods.
- 9.7 ECOMAX RMC shall be entitled to make an additional charge of an amount to be determined by the company for deliveries made before 6:00am or after 5:00pm on weekdays, before 7:00am or after 11:00am 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 concrete supplied will be produced in accordance with the requirement of N.Z.S. 3104, 1991 or subsequent amendments and it shall be the Customer's responsibility to ensure that the concrete (as regards mix, strength, consistency and otherwise) are fit for the purpose for which they are intended.
- 10.2 Details of the mix 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 mix delivered upon pouring of the concrete commencing. ECOMAX RMC shall be under no obligation to replace the load if this check has not been made before pouring commences. ECOMAX RMC shall be under no liability whatsoever for any incorrect mix.
- 10.3 ECOMAX RMC accept no responsibility whatsoever for the slump, strength or quality of any concrete to which water or other material has been added by any other party or at the customer's request. The customer accepts and acknowledges that ECOMAX RMC has no control over the handling or placing of the concrete after unloading and accordingly ECOMAX RMC does not guarantee or warrant the finished work in which the concrete will be used.
- 10.4 ECOMAX RMC accepts no responsibility for any claim relating to a defect in colour unless it can be shown by an independent assessor approved by ECOMAX RMC (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 ECOMAX RMC.
- 10.5 All prices and quotes are based upon the plastic and unhardened volume at the discharge from the delivery truck. Any claim for alleged short delivery of concrete 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.
- 10.6 The specified Compressive strength at 28 days as defined in N.Z.S. 3104 1991 and acceptance is based upon the conditions therein.
- 10.7 ECOMAX RMC will not recognise results from tests conducted by the customer upon concrete unless the concrete is sampled from the discharge from the delivery truck and tested according to N.Z.S. 3112 1986.

## 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 ECOMAX RMC, solely as bailee for ECOMAX RMC until such time as full price thereof is paid to ECOMAX RMC together with the full price of any other goods the subject of any other contract of ECOMAX RMC.
- 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 ECOMAX RMC.
- 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. ECOMAX RMC 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 ECOMAX RMC 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 ECOMAX RMC.
- 12.5 If the Customer has not received the proceeds of any such sale he will, if called upon to do so by ECOMAX RMC, within seven days thereof assign to ECOMAX RMC all rights against the person or persons to whom he has supplied any produce or chattel made from or with ECOMAX RMC'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 ECOMAX RMC (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 ECOMAX RMC at any time; the Customer grants to ECOMAX RMC a security interest in all the goods supplied by ECOMAX RMC to the Customer presently, and at any time in the future.

## 13.2 The Customer:

- 13.2.1 Agrees that ECOMAX RMC 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 ECOMAX RMC 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 ECOMAX RMC's proposal to retain any Personal Property under Section 121 of the PPSA; (ii) not have goods damaged when ECOMAX RMC 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 ECOMAX RMC if the Customer changes its name not less than 7 days before the change takes effect;
- 13.2.6 Agrees to, at ECOMAX RMC's request, promptly execute any documents, provide all necessary information and documents, and do anything else required by ECOMAX RMC to ensure ECOMAX RMC'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 ECOMAX RMC in the recovery or attempted recovery of any overdue amounts.

## 15. Variation of Terms And Conditions

- 15.1 ECOMAX RMC 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 ECOMAX RMC's right of termination provided herein or at law, both ECOMAX RMC 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 ECOMAX RMC 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 ECOMAX RMC the payment of any and all monies now or hereafter owed by the Customer to ECOMAX RMC and indemnify ECOMAX RMC 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 ECOMAX RMC in connection with the contract are vested in ECOMAX RMC.

## 20. Miscellaneous

- 20.1 ECOMAX RMC 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

