

# ROAD RAPTER TERMS AND CONDITIONS FOR TRADE AND CREDIT ACCOUNTS

## 1. Definitions:

"Account" means the trade credit account established in the name of the customer by Road Rapter.

"Application" means the credit account application completed by the customer with agreement to these terms.

"Credit Limit" means the New Zealand Dollar amount of credit to be made available to the customer by Road Rapter under the account.

"Credit Term" means the term (or timeframe) determined by Road Rapter over which the account will remain open.

"Customer" means the customer named in the application and where the customer comprises two or more persons, means those persons jointly and severally.

"Estimate" means a written indication of price from Road Rapter to the customer to supply goods and/or services, with the final price appearing on the final payment invoice.

**"Force Majeure"** means any event outside the reasonable control of Road Rapter and includes, without limitation, fires or other casualties or accidents, power outages, acts of God, strikes and lockouts, severe weather conditions, delay in supply or materials or unavailability of materials, war or other violence, or the introduction of any law, order, regulation, demand or requirement of any governmental agency.

"Goods" means a product or products provided and/or manufactured by Road Rapter.

"Guarantor" means the guarantor(s) named in the Application attached to these Terms.

"Order" means an agreement between Road Rapter and the customer for Road Rapter to supply goods and/or services to the customer and includes verbal requests, estimates and quotes in writing.

**"PPSA"** means the Personal Property Securities Act 1999 and associated regulations, as amended from time to time. "PPSR" means the Personal Property Securities Register under the PPSA.

"Quote" means a written offer from Road Rapter to the Customer to supply Goods and/or Services for a specified price subject to the terms and conditions of such offer.

"Services" means any services performed by Road Rapter.

"Terms" means these standard terms of trade & credit, as varied by Road Rapter from time to time.

"Yard" means the location of a business's premises.

## 2. Orders, Pricing, Quotes and Estimates

**2.1.** These Terms apply to all Goods or Services supplied by Road Rapter. By making an Order the Customer acknowledges that it is aware of the contents of, and agrees to be bound by, these Terms.

**2.2.** The price of Goods and Services is as specified in Road Rapter's price list (is subject to change without notice), or in an order or quote, as applicable.

**2.3.** Unless otherwise stated, prices are exclusive of GST and are from Road Rapter's yard.

**2.4.** Road Rapter may decline or cancel, in whole or in part, any order at its sole discretion.

**2.5.** A Quote may be withdrawn or varied by Road Rapter before it has been accepted in writing by the customer.

**2.6.** All quotes are based on rates and charges in effect at the date of the relevant quote. Any increase in rates or charges, (including without limitation sub-contracted labour, materials and fuel) shall result in an equivalent increase in the quoted price.

**2.7.** An estimate as to price or quantity is not binding on Road Rapter.

**2.8.** Where a Quote includes an estimate of quantities supplied to us and the actual quantity supplied is materially different from that estimated, Road Rapter reserves the right to revise the quoted price.

**2.9.** Where a customer purchases goods from Road Rapter the quantity of goods supplied shall be determined by the measurement of those goods across a weighbridge / from loader scales / by dipping (for bulk liquids) / upon agreement with a supply docket supplied at purchase. Where this is not possible Road Rapter will make its best attempts to charge a fair and reasonable amount for the goods supplied.

### **3. Use of Account**

**3.1.** Road Rapter shall determine the credit limit and credit term for the account and will notify the customer of such. The customer shall not at any time allow the balance of its account to exceed the credit limit.

**3.2.** Road Rapter may in its sole discretion, at any time and without reason or notice to the customer and/or any guarantor, and without prejudice to any other right it has in law or equity: (a) elect whether to grant credit to the Customer; and (b) increase or decrease the Customer's Credit Limit or the Credit Term. If credit is terminated, then all amounts owed by the customer to Road Rapter will become immediately due and payable.

**3.3.** Goods may be charged to the account in person or by telephone. Where the application states that order numbers are not required, Road Rapter may require the person charging such goods to give their name.

**3.4.** The Customer shall be liable for all debts arising from any use of the account by any person who purports to be an employee, agent or representative of the customer.

**3.5.** Road Rapter reserves the right to set off any balance owing by Road Rapter to the Customer against their outstanding debt balance.

### **4. Payments, Discounts and Rebates**

**4.1.** Except where goods or services are charged to an account, payment is due on the date(s) determined by Road Rapter, which may be:

(a) on the placing of an order; or

(b) before delivery of the goods or performance of the services (as applicable). If no such payment is made, Road Rapter shall not be obliged to deliver the goods or perform the services.

**4.2.** All goods and services charged to the account and any interest due on the account shall be paid in full no later than the 20th of the month following the date of the relevant invoice.

**4.3.** Road Rapter shall be entitled to charge interest at 15% per annum on all overdue amounts from the date payment was due until the date of actual payment.

**4.4.** All payments must be made by way of cash, electronic/on-line banking, credit card (with relevant fee) or bank transfer, free of any deductions, set off counterclaim or condition of any kind. Payment of any amount due occurs only when cleared funds are deposited into Road Rapter's bank account.

**4.5.** Payments received by Road Rapter shall be applied first in payment of interest and any costs incurred in debt recovery and then in reduction of principal.

**4.6.** Payments received without remittance advice will be applied first to the oldest balance owing by the Customer.

**4.7.** Road Rapter may withhold any credit due to the Customer and apply that credit against any amount owing under the account.

**4.8.** If the Customer disputes any item charged to the account, it must notify Road Rapter immediately, and pay the undisputed portion of the account balance by the due date for payment.

**4.9.** Where the Customer receives a volume-based discount on goods and the customer fails to purchase the total volume of such goods, Road Rapter reserves the right to withdraw such discount.

## **5. Default**

**5.1.** If the Customer breaches any of these terms and fails to remedy that breach within 7 days after receiving notice to remedy from Road Rapter, Road Rapter may (without prejudicing its other rights or remedies) forthwith suspend or terminate the account without notice to the customer.

**5.2.** All amounts owing in respect of the account shall become immediately due and payable to Road Rapter without the need for notice if:

(a) Road Rapter suspends or terminates the Account in accordance with clause 5.1 above.

(b) any information contained in the application proves to have been false or misleading when made.

(c) the Customer enters a composition with its creditors, becomes insolvent within the meaning of the Insolvency Act 1967, or fails to satisfy the solvency test within the meaning of the Companies Act 1993, is declared bankrupt, goes into liquidation or a receiver, or a receiver and manager, or statutory receiver is appointed in respect of it or if any event analogous in nature has occurred under the laws of any relevant jurisdiction; or

(d) the Customer ceases, or threatens to cease, to carry on any material part of its business.

## **6. Security for Payment**

**6.1.** The customer grants to Road Rapter a security interest in the goods and in any proceeds arising from the sale of the goods to secure the obligations of the customer to pay the purchase price for the goods, and any other obligations by the customer to Road Rapter under these Terms (together the "Obligations") as and when the same become due.

**6.2.** The customer grants to Road Rapter a lien over any of the customer's equipment upon which Services are performed in order to secure the obligations of the customer to pay for such services and any other obligations as and when the same become due.

**6.3.** The customer agrees that if the customer is in breach of any of its obligations:

(a) The Customer will, upon receiving a written request from Road Rapter and at its own cost and expense, promptly deliver all or any of the Goods to Road Rapter at such place as Road Rapter directs.

(b) Road Rapter may (and the Customer grants Road Rapter a licence to), at any time without giving notice either itself or through an authorised agent, enter into any place where the Goods are located and remove the Goods, if the Customer fails to deliver the Goods as required under this clause.

(c) Road Rapter may sell all or any of the goods without giving prior notice of the sale to the customer (and to that end, nothing in section 114(1)(a) of the PPSA shall apply to these Terms). PPSA is defined in section 1 of this document. Section 114(1)(a) requires a secured party who

intends to sell collateral under section 109 to provide 10 days' notice to the debtor.

(d) If Road Rapter proposes, pursuant to s120 of the PPSA to take all or any of the goods in satisfaction of the obligations, the Customer waives its right to require Road Rapter to sell the goods and agrees that notwithstanding s120(1) of the PPSA, the customer shall remain liable to Road Rapter for the difference between the market value of the goods at the time it is first able to be sold by Road Rapter free from all rights and interests of the customer and other persons pursuant to s123(1) of the PPSA and the amount of the Obligations which are in default.

#### **6.4. The Customer agrees:**

(a) That nothing in s117(1)(c) of the PPSA will apply to these Terms.

(b) To waive (to the extent applicable) the Customer's right under the PPSA:

(i) To receive a verification statement pursuant to section 148 and a statement of account under s 116.

(ii) To recover a surplus under s119.

(iii) To receive notice of Road Rapter's proposal to retain collateral under s120(2) and to object to that proposal under s121.

(iv) Not to have Goods damaged when Road Rapter removes an accession under s125 and not to be reimbursed for any such damage under s126.

(v) To refuse permission to refuse an accession under s127.

(vi) To receive notice of the removal of an accession under s129.

(vii) To apply to the Court for an order concerning the removal of an accession under s131.

(viii) To redeem collateral under s132.

(ix) To reinstate a security agreement under s133 and 134.

(x) Shall immediately notify Road Rapter of any change in the customer's name, address or contact person details, to enable Road Rapter to register a financing change statement on the PPSR if required. In the absence of such notification, the address held by Road Rapter is deemed to be the customer's current address for such purpose.

### **7. Account Closure**

**7.1.** The Customer may close the account at any time by giving written notice to that effect to Road Rapter and paying off any outstanding account balance.

**7.2.** Road Rapter may close the account by giving notice to the customer. The customer must pay any outstanding amount balance by the 20th of the month following the date of closure of the account (unless the customer is in default of these terms, in which case the outstanding account balance is payable immediately).

### **8. Indemnity**

**8.1.** The customer shall indemnify Road Rapter against all claims, penalties, costs, expenses, damages and liability, including legal fees, and debt recovery costs arising out of or connected with or resulting from a breach by the customer of these terms.

### **9. Assignment**

**9.1.** Road Rapter may at any time assign, transfer or sub-contract any of its rights and obligations under these terms (including the right to receive payment) to any other person.

**9.2.** The customer may not assign or transfer any of its rights or obligations in respect of the Account.

**9.3.** A change of control in respect of the customer shall be deemed to constitute an assignment for the purposes of clause 9.2. A "change of control" means any direct or indirect change in

control or management of the customer, or a direct or indirect change in the legal or beneficial ownership of the customer, or a change in the legal form of the customer, whether by a single event or a series of related events.

## **10. Waiver**

**10.1.** Road Rapter's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Road Rapter's right to exercise or enforce such right or any other right in the future.

## **11. Privacy Act**

**11.1.** Road Rapter may not be able to process this application unless all the information requested is provided.

**11.2.** The customer authorises Road Rapter to collect and/or provide information relating to the customer to credit reference agencies referees and other bodies as Road Rapter considers necessary for the purposes of credit assessment and debt collection in relation to the customer's account and for marketing purposes.

**11.3.** Any personal information may be held by Road Rapter for as long as the Customer continues as a customer of Road Rapter or to owe on the Account.

**11.4.** The customer has the right to access and correct any personal information held by Road Rapter.

**11.5.** The customer is obliged to update the customer's contact details if such details change.

## **12. Consumer Guarantees Act 1993**

**12.1.** Where goods or services are supplied to the customer for the purposes of a business, then, to the maximum extent permitted by law, the Customer agrees that:

(a) the provisions of the Consumer Guarantees Act 1993 do not apply to the Goods or Services; and

(b) sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply to the obligations of the parties under these Terms.

**12.2.** Where the Customer purchases Goods for re-supply, the Customer's terms of trade must contain an equivalent provision to clause 12.1.

## **13. Warranties**

**13.1.** To the maximum extent permitted by law, all statutory, express or implied warranties by Road Rapter including, without limitation, the implied warranties of merchantability and fitness for any particular purpose are expressly excluded, and Road Rapter gives no warranty in respect of goods manufactured by others.

**13.2.** Colour and texture variations may occur in Goods and from samples due to:

(a) the use of natural materials in the manufacturing process.

(b) normal manufacturing tolerances and processes.

(c) weather.

The Customer agrees that such variations do not constitute a product defect and Road Rapter shall not be liable for any loss or damage suffered by the Customer as a result of such variations.

**13.3.** Quotes are prepared in accordance with information provided to Road Rapter by the customer and Road Rapter will not be liable nor will it be bound by the quote where:

(a) such information is inaccurate, or any information is omitted; and/or

(b) the Customer makes any variations which result in the work being different from that quoted for.

## **14. Limitation of liability**

**14.1.** To the maximum extent permitted by law, the liability of Road Rapter in respect of all claims for loss, damage or injury arising from breach of any of Road Rapter's obligations under this agreement, for breach of statutory duty or from any act or omission of Road Rapter is limited, in each case, to the lesser of:

- (a) Replacement or repair of the affected Goods, or re-supply of the Services.
- (b) Payment of the actual cost of replacing or repairing the affected goods or re-supplying the services.
- (c) The price of the affected goods or services.

**14.2.** To the maximum extent permitted by law, Road Rapter shall not be liable for any direct or indirect loss or damage including without limitation; loss of profits or savings or for any indirect or consequential loss or damage, however caused, arising out of or in connection with the supply of Goods or Services by Road Rapter, in offence (including negligence), for breach of statutory duty or otherwise, except as set out in clause 14.1.

**14.3.** No action or claim arising out of the supply of Goods or Services by Road Rapter, regardless of form, may be brought more than one month after the Customer becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the action or claim.

## **15. Intellectual Property**

**15.1.** The Customer acknowledges that all intellectual property rights in the Goods or arising out of the performance of the Services are and shall remain the property of Road Rapter.

**15.2.** The Customer warrants that any design or drawing provided by it does not infringe any intellectual property rights of any other person.

## **16. Delivery**

**16.1.** Delivery of goods shall be deemed to occur at the point specified in an order or quote, or if nothing is so specified, then when:

- (a) Goods are discharged from the delivery truck
- (b) Goods and Materials – when the Customer takes the Goods / Materials out of the yard or signs the supply docket whichever comes first.
- (c) Otherwise – when the Goods arrive at the address specified by the Customer (whether or not the Customer is present to acknowledge receipt), or when the Customer takes physical possession of the Goods, whichever occurs first.

**16.2.** Risk in the Goods passes to the Customer at the time of delivery under clause 16.1.

**16.3.** Full legal and equitable ownership of, and title to, the goods pass to the customer at the time of delivery or at the time at which the customer makes full payment to Road Rapter under the relevant order, whichever occurs later. Road Rapter retains full ownership of and title to all Goods until that time.

**16.4.** In relation to asphalt delivery, the customer shall ensure that the goods are discharged immediately and assumes responsibility for the placing and handling of the asphalt from the point of discharge from the equipment. Notwithstanding the provisions of clause 6.1 regarding the rights of Road Rapter to sale proceeds, until the ownership in the goods has passed to the customer, the customer shall not be entitled to sell or deliver possession of the goods to any other person.

**16.5.** Road Rapter may deliver goods by instalments. If the Customer fails to pay for an instalment on the due date Road Rapter may suspend deliveries of the other instalments.

**16.6.** The Customer shall pay all freight and cartage charges including any additional costs or expenses incurred by Road Rapter in delivering the Goods to the address requested by the customer (including charges for waiting time, unloading equipment, labour or delivery outside of normal business hours).

**16.7.** Where Road Rapter is to deliver the goods, the customer must:

(a) Ensure Road Rapter has reasonable all-weather access to the site, to enable Road Rapter to deliver the Goods safely.

(b) Obtain all necessary resource and other consents from the relevant local authority and inform Road Rapter of all matters relating to such consents.

(c) Ensure safe clearance from overhead powerlines, safe batters and clearances from edge of slopes, safe haul roads and segregation of pedestrians from vehicular traffic and any permits required to comply.

(d) Locate, mark and advise Road Rapter of all gas pipes, water pipes, sewerage lines, drainage lines, telephone cabling and other utilities that are on, or near, or adjacent to the delivery point, and of any actual or possible subsidence, slip, erosion, flooding or any other thing that might constitute a hazard on the land where goods are to be delivered, including site induction where required.

(e) Indemnify Road Rapter against any costs, claims and damages incurred in the delivery of the goods including any cleaning, repairing damage to the site or delivery equipment, returning the delivery vehicle to the road and making good any damage to the road or footpath, provided Road Rapter has acted with reasonable care and skill.

**16.8.** The Customer assumes all liability for damages to footpaths, kerbs, drains or other property for any deliveries beyond the kerb line and is responsible for any salvage charges incurred in returning the vehicle to the roadway. The Customer is responsible for the removal of any mud, clay etc from the delivery truck wheels and for the removal of mud, clay etc tracked or on footpaths, roads etc by the trucks.

**16.9.** The Customer must make any claims for a shortfall in the Goods delivered within 48 hours of delivery of such Goods by Road Rapter and must state the date of delivery of the goods and the delivery docket number (where applicable).

**16.10.** While at any delivery point, both Road Rapter and the Customer will, and will ensure that all their respective employees, contractors and agents will, always comply with:

16.10.1. all relevant policies and procedures relating to the delivery point including those relating to health and safety, and environmental and risk management.

16.10.2. all relevant legislation and regulations in force including, the Health and Safety at Work Act 2015 and the Resource Management Act 1991; and 16.10.3. any lawful safety instructions or reasonable directions given by any person in charge of or exercising control in relation to the delivery point from time to time.

## **17. Cancellations**

**17.1.** The Customer is not entitled to cancel an Order without the written agreement of Road Rapter where: (a) manufacture of made to order Goods has commenced; and/or (b) such Order comprises goods manufactured by a third party.

**17.2.** In the case of made-to-order Goods:

(a) Road Rapter may require the Customer to make a full upfront payment for the Goods or to pay a substantial deposit before Road Rapter commences manufacture of the Goods, and the Customer is liable to pay for the full amount of Goods ordered, whether or not the Customer takes delivery of all such Goods.

(b) the Customer shall pay all costs associated with any additional production runs where the Customer requires more Goods than those first ordered.

## **18. Taxes**

**18.1.** Unless otherwise stated, all prices are exclusive of goods and services tax.

## **19. Hours**

**19.1.** Unless otherwise agreed between the parties, Road Rapter will supply the Goods and/or perform the Services during normal working hours (being 0600 to 1800hrs Monday to Friday and 0600 to 1200hrs Saturday, excluding Sundays and any public holidays in Tauranga).

**19.2.** Any costs attributable to Road Rapter being required by the Customer to work outside such hours or on Sundays or public holidays in Auckland shall be payable by the Customer.

## **20. Force Majeure**

**20.1.** No claim or liability will arise against Road Rapter under these terms or any order or quote, if and to the extent that Road Rapter's failure or omission to carry out or observe any provisions of these terms or any order or quote arises by reason of Force Majeure.

## **21. Variation of terms**

**21.1.** Road Rapter may, in its sole discretion, vary these terms from time to time, and the customer shall be bound by these terms (as so varied) in respect of the supply of any goods or Services by Road Rapter to the customer.

**21.2.** The latest version of these Terms can be found at [www.RoadRapter.co.nz](http://www.RoadRapter.co.nz), At the footer of the page by following the link titled T&Cs For Trade and Credit Accounts.

## **22. Miscellaneous**

**22.1.** Road Rapter's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Road Rapter's right to exercise or enforce such right or any other right in the future.

**22.2.** Any provision of these Terms that is held to be invalid or unenforceable for any reason shall be severed from, and shall not affect the remaining provisions of, these Terms.

**22.3.** These Terms and the application for credit account to which these terms of trade relate shall be construed in accordance with and be governed by the laws of New Zealand, and Road Rapter and the Customer submit to the non-exclusive jurisdiction of the New Zealand.