

1. DEFINITIONS

- 1.1 "Amount owing" shall mean the price of the goods plus all costs, damages, charges, insurance charges, repairs, expenses, disbursements and penalties for which you are liable to pay us.
- 1.2 "Atlas" "we" "us" or "our" shall mean Atlas Resources Ltd, Atlas Concrete Ltd, Atlas Tilt Slab Ltd, Atlas Quarries Ltd, Mt Rex Shipping Ltd, Kaipara Metals Ltd or any associated division, company, agent or employee.
- 1.3 "CCA" shall mean the Construction Contracts Act 2002 and its amendments.
- 1.4 "Construction Work" shall have the same meaning as the CCA.
- 1.5 "Customer", "You" or "Your" shall mean the purchaser of any good or service from us and shall include any representative, agent or employee.
- 1.6 "Default" includes you or any Guarantor:
 - (a) Being unable to pay your debts as they fall due; or
 - (b) failing to comply with these Terms or any other agreement with us; or
 - (c) having an application made (or resolution passed) for a receiver, liquidator, administrator or other statutory manager to be appointed; or
 - (d) Being convicted of a criminal offence; or
 - (e) Doing any act that in our opinion causes or threatens the risk, safety, condition or safekeeping of any Goods we supply to you;
 - (f) ceasing to carry on business or suffering a material adverse change which in our opinion changes your financial position or creditworthiness;
 - (g) Indicating by notice or conduct that you no longer intend to comply with your obligations under any agreement with us.
- 1.7 "Goods" means all goods, parts, chattels and services supplied or manufactured by us to you and include "consumer goods", "inventory" and "equipment" as defined by the Personal Property Securities Act 1999.
- 1.8 "Guarantors" shall mean all signatories who have signed our credit account application form.
- 1.9 "PPSA" shall mean the Personal Property Securities Act 1999
- 1.10 "Quote" or "Quotation" shall include any offer or tender and any drawings or specifications listed therein.

2. CUSTOMERS AUTHORITY

- 2.1 You warrant that:
 - (a) You are either the Customer or the authorised agent of the Customer; or
 - (b) You are authorised to accept and are accepting these terms not only personally but as agent for and on behalf of the Customer.
- 2.2 You shall not assign all or any of your rights or obligations under this contract unless we agree specifically in writing. You shall advise us of any alteration to your entity structure and/or of any revocation of an agent's authority to purchase. Until such written confirmation is received and specifically accepted by us in writing, you shall remain liable for any amount owing and our conduct shall not be deemed acceptance or affirmation of any assignment or revocation.

3. ACCEPTANCE AND GENERAL

- 3.1 All goods are supplied on the basis of these terms and conditions ("terms") and any order received by us from you and/or use of your credit account with us (if any) shall constitute acceptance of these terms.
- 3.2 Unless otherwise expressly agreed in writing by us, these terms:
 - (a) may be amended by us from time to time; &
 - (b) in conjunction with our quote express the entire understanding and agreement between you and us; &
 - (b) shall prevail in the event of any conflict between these terms and the provisions of any document used by you including but not limited to any invitation to tender, conditions of purchase, subcontract or head contract conditions or any other agreement with us.
- 3.3 The benefits and obligations of the terms of this contract shall be governed by New Zealand law except to the extent expressly negated or varied by these terms. If any of these terms is held to be unenforceable, that term will be severed to the extent that it is invalid (and no further) and the remaining terms shall remain binding.
- 3.4 All the rights and remedies under this agreement shall remain in full force notwithstanding any neglect, forbearance or delay in enforcement by us.
- 3.5 Any notice provided by us to you or any guarantor, including notification of any alterations of these terms, shall be deemed to be delivered and received by you:
 - (a) Immediately if sent to your last known fax or email address; or
 - (b) three days after posting to your last known mailing address.

4. CONSTRUCTION CONTRACTS ACT 2002 ("CCA")

- 4.1 You acknowledge that the obligations and benefits of the Construction Contracts Act 2002 shall apply in respect of any supply deemed Construction Work.
- 4.2 We shall be entitled to exercise any or all powers available to us under the Construction Contracts Act 2002 including suspension of work; adjudication; and seeking charging orders.

5. QUOTATIONS

- 5.1 Unless withdrawn in writing our quote is available for acceptance for 30 days (or any longer period stated in the quote) from the date of quotation, and thereafter is subject to confirmation. Your acceptance should be confirmed in writing prior to commencement of work, but in the absence of written acceptance, our commencement of work will be taken as your acceptance by conduct.

- 5.2 An order or letter of acceptance that contains terms or conditions in conflict with our quote or these terms and conditions will not establish a binding contract except at our sole discretion.

6. DESIGN AND PERFORMANCE

- 6.1 Unless expressly agreed otherwise we will not perform any design, design checks, engineering calculations or engineer's inspections, certifications or tests that may be required under the Building Act or otherwise.
- 6.2 You acknowledge and understand that we do not warrant or represent the suitability of any goods for your intended use. The supply of nominated or specified materials, equipment or systems does not imply a warranty as to suitability.
- 6.3 You shall (and hereby agree to) determine using your sole judgement that the goods and construction work are suitable and in a condition fit for the task intended. Concrete must be sampled and tested strictly in accordance with NZSS3112.
- 6.4 You acknowledge that there may be minor variations, within industry standards, between the goods and samples and colour indications shown to you. We may, at our discretion, supply equivalent alternative brands or models.

7. PRICE

- 7.1 Our prices are based on costs and charges at the date of supply. Cubic metres are measured in accordance with NZSS3104. Unless specifically stated otherwise, all prices are stated in New Zealand dollars.
- 7.2 Unless specifically stated as a fixed price, the price (including any quote) will be increased by the amount of any GST and other applicable taxes and duties. We may also increase the price as a result of:
 - (a) Any fluctuation affecting the cost of supply, production or delivery that occurs between our acceptance of the order and the date of delivery including fluctuations in currency exchange, prices of materials and services, labour costs and government charges or regulations.
 - (b) Any and all costs incurred as a result of your method of payment, including without limitation, any credit card costs.

8. VARIATION OF ORDERS

- 8.1 Any changes required to the work quoted, or to the work reasonably foreseeable by us at the date of quotation, shall be a variation. Variations include, without limitation, any change to the scope, quality or timing of the work, any circumstance that changes the cost of performing our work from that reasonably foreseeable at the time of quotation, or any other circumstance which is stated in these terms and conditions to be a variation, whether arising out of any oral or written instruction from you or your representative or otherwise.
- 8.2 We will advise you as soon as practicable of any change to our contract price arising out of any variation. Variations will generally be valued on the same basis or rates as corresponding original work. Where work does not directly correspond to the quotation, or cannot be performed in the most economic manner, variations may at our sole discretion be priced on the basis of time and materials (charge-up) at our normal rates and margins current at the time of performing the work.
- 8.3 Your acceptance of any variation should be confirmed in writing prior to commencement of work, but in the absence of written acceptance our commencement of the work pertaining to the variation will be taken as your acceptance by conduct.
- 8.4 We shall be entitled to be paid progressively for the reasonable value of any variation whether or not the value of it has been agreed.

9. DELIVERY AND RISK OF GOODS

- 9.1 You shall give us reasonable notice of the time and date of delivery requested. We will attempt to meet any reasonable delivery or target completion date(s) made known to us or agreed by us. In the absence of any agreed date(s), we will deliver the Goods and/or complete our work within a reasonable time. We will not be liable for liquidated or any other damages caused by delivery or completion delays.
- 9.2 Concrete trucks will not be dispatched until we are notified that any required pumps are on the job and ready for operation. We accept no responsibility for charges or delays incurred by concrete pump failures.
- 9.3 We have no responsibility to deliver any Goods to you but we may, at our discretion, elect to arrange delivery to you without liability to us and at your cost and risk. Delivery shall be deemed complete:
 - (a) If concrete, when the Goods are batched and mixed in the agitator at our depot.
 - (b) If precast Goods (such as Pods), when we give possession of the Goods to you at the kerbside or entrance of the address supplied by you.
 - (c) For all other Goods, when we give possession of the goods either to you, to a carrier for delivery to you, or as you have directed.
- 9.4 Risk in the goods (including risk of deterioration) shall pass to you at the time of delivery. For the avoidance of doubt:
 - (a) You are responsible for the placing and handling of concrete after discharge; and
 - (b) You are responsible for the goods in transit, even if we act as your agent to deliver the Goods.
- 9.5 We reserve the right to deliver the goods by installments and each installment shall be deemed to be a separate contract subject to the same conditions as the main contract. Failure by us to deliver one or more installment(s), shall not entitle you to cancel any contract relating to the Goods. If you request and we agree to a delay in delivery, risk shall pass upon the date of your request for such delay.

10. LICENCE TO ENTER AND PERFORMANCE OF WORK

- 10.1 If you ask us to enter your site to deliver our Goods, carry out our work or for any other purposes that form the matter of this contract YOU agree to:
- Provide suitable access, information, documents and facilities required by us to properly complete or co-ordinate delivery of the goods.
 - Provide or obtain all consents or other authorities required for the work, including approvals from owners, occupiers and others.
 - Provide a specific instruction if you do not wish our vehicles to enter the site.
 - Ensure that where you have agreed to provide materials or to engage other contractors to perform work, all the relevant materials or services are provided at the time agreed or within a reasonable time so as not to impede the reasonable progress of our delivery or work.
 - Ensure the discharge of the Goods shall be completed at a rate of 10 minutes per cubic metre (otherwise we shall be entitled to charge you additional time and expenses)
 - Notify us of all relevant health and safety requirements and with any site-specific safety requirements including any hazards in the workplace to which we may be exposed in working on your premises. We may refuse to perform work if at our sole discretion we are not satisfied that it can be performed safely.
 - Assume liability and indemnify us for any damage caused by us as a result of us delivering the goods or performing the work including but not limited to damage to footpaths, cable kerbs, drains and any other property.
- 10.2 Any unreasonable delay resulting from your failure to comply with the above clause shall be a variation.

11. RECEIPT AND RETURN OF GOODS OR CANCELLATION OF ORDERS

- 11.1 All Goods must be carefully checked upon receipt. You shall check all Goods (as detailed on the delivery docket) are correct in name, colour, quantity, size, mix, finish, and free from faults at the time of delivery. We will not be liable for non-complying Goods if this check is not made before discharge has commenced.
Discharge of all or part of the load denotes acceptance of the Goods.
- 11.2 Any concrete ordered by a customer that is found to be in excess of their requirements cannot be returned for a credit. Returns for Goods other than concrete will only be accepted if the Goods are not in accordance with your order and are returned within 48 hours of receipt by you. You shall afford us the opportunity to inspect the goods within a reasonable time. If you fail to comply with this provision, the goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. No claims will be accepted once goods have been converted in any way. We shall be at liberty to decline or refuse such a return as we think fit. We shall be entitled to charge a re-stocking fee for any returns we accept.
- 11.3 Goods that have been ordered but not accepted upon delivery, will be charged in full, unless cancellation of the order has been received by us prior to the batching of the concrete.
- 11.4 You may not cancel any order or part of it without our written consent. If you do so, in addition to any other rights we have, we may retain any deposit paid. You will be liable for all costs or losses (including profit and time) incurred by us as a result of you cancelling any order.
- 11.5 We may at any time and without reason or notice to you and/or any Guarantor cancel without liability, any agreement either in whole or part for the supply of goods to you. This clause shall not affect our claim against you for any Amount Owing.

12. CREDIT FACILITIES

- 12.1 We may grant or decline to grant credit to you. We may in our sole discretion, at any time and without reason or notice to you and/or any Guarantor, and without prejudice to any other right it has in law or equity:
- Increase or decrease the amount of credit supplied to you.
 - terminate or suspend any credit arrangement we have with you in which case all monies owing by you to us shall be immediately due; and
 - request additional security from you on terms satisfactory to us before proceeding further with any order.
- 12.2 You acknowledge that neither these terms nor your credit application shall be construed to be a consumer credit contract as defined by section 11 of the Credit Contracts and Consumer Finance Act 2003.

13. PAYMENT TERMS & PAYMENT VALIDITY

- 13.1 Any deposit required by us will be paid immediately on the creation of this contract and is non-refundable.
- 13.2 If the goods supplied relate to Construction Work, each invoice we supply is a Payment Claim pursuant to S20 of the Construction Contracts Act 2002.
- 13.3 All payment claims/invoices shall be payable before delivery or collection upon receipt of an invoice from us. Where credit facilities have been granted, all payment claims/invoices shall be paid no later than the 20th of the month following date of invoice.
- 13.4 You agree that
- you will not withhold payment or make any deductions against any Amount Owing without our prior written consent. If you disagree for any reason with the claimed amount, you will respond to us in writing with a payment schedule before payment is due, detailing a scheduled amount (the amount that you propose to pay) and your reasons and basis of calculation for any item in the payment claim that you do not propose to pay in full. You will pay the scheduled amount by the due date. If we disagree with your payment schedule we may refer the matter to adjudication (refer clause headed Disputes).

- We may allocate payments as we see fit notwithstanding any specific tender by you.
- You will pay all payments in good faith ensuring they are valid and made to protect the continued business relationship with us. By accepting payment from you, we alter our position in reliance on the validity of your payment by:
 - delaying our rights pursuant to the PPSA;
 - continuing to supply you (regardless of whether those Goods are paid for by you);
 - using the payment for our own purposes; and
 - if the payment is made after the due date by delaying our rights against you and any guarantor in relation to the event of default.

14. DISPUTES

- 14.1 If you dispute an invoice/payment claim you must within 15 working days of the date of the payment claim provide us with a written payment schedule which:
- Identifies the payment claim to which it relates; &
 - What you are prepared to pay ("Scheduled Amount") &
 - If the Scheduled amount is less than the claimed amount:
 - How you calculated the Scheduled Amount; and
 - Your reason(s) for the difference between the scheduled amount and the claimed amount; and
 - Your reason(s) for withholding payment.
- 14.2 If you do not respond to the payment claim by paying the claimed amount in full or providing a valid payment schedule within the stipulated timeframe you acknowledge you will become liable for the claimed amount..
- 14.3 Subject to the clause headed "Payment Terms and Payment Validity":
- Both parties will attempt to resolve any dispute arising from this contract by negotiation. Either party may at any time refer any dispute to adjudication in terms of Part 3 of the CCA, and may refer any matter that is not finally resolved by adjudication to arbitration under the Arbitration Act 1996.
 - Notwithstanding the above clause, should you fail to seek adjudication or arbitration within 14 days of notification of the dispute, we shall be entitled to enforce our rights via litigation.

15. DEFAULT

- 15.1 In the event of your default of any of these terms (and until the default is corrected):
- We may immediately suspend or terminate any credit facilities you have with us.
 - We shall be entitled to exercise any or all powers available to us under the Construction Contracts Act 2002 including our rights to suspend work and terminate the contract. You will be liable for all costs and losses including loss of profit arising out of such suspension or termination.
 - Any discounts may be disallowed and we reserve the right to withhold or refuse any warranty service until you correct the default.
 - Any Amount Owing will immediately become due and payable notwithstanding that the due date has not yet arisen.
 - We may charge you interest on the Amount Owing at the rate of 2.5% per month.
 - We may exercise our right to mortgage.
 - You shall be liable for ALL costs incurred by us in recovering the Amount Owing including debt collection agency commission and full legal costs.

16. RETENTION OF TITLE

- 16.1 Notwithstanding any period of credit or the passing of risk in the Goods supplied by us to you, ownership in any Goods supplied by us shall not pass to you until the Amount Owing has been paid in full or until you resell the Goods pursuant to the authority granted below.
- 16.2 We authorise you, in the ordinary course of the your business, to use the Goods or sell them for full consideration. This authority is revoked immediately if:
- You default in these terms and conditions; or
 - We notify you in writing that this authority is revoked.
- 16.3 Until we have been paid in full for the Goods:
- you shall hold the Goods as our agent and shall store the Goods (or any funds you receive in payment of the goods) in such a way that it is clear that they are our property and so they will not deteriorate.
 - you will immediately notify us of any action which affects our interest in the Goods.
 - the proceeds of any Goods you resell or use shall be received and held by you (in whatever form) in trust for both you and us. Our interest as beneficiary under that trust shall be that portion of the proceeds which does not exceed the Amount Owing. The balance of the proceeds (if any) shall be your beneficial interest under that trust.
- 16.4 You irrevocably give us licence without the necessity of giving any notice to enter all premises at which we on reasonable grounds believe the Goods to be stored, to inspect, remove, or repossess any goods supplied by us and not paid for by you. We shall not be liable for costs, damages or expenses or any other moneys or losses suffered by you or any third party as a result of this action. You shall indemnify us for any liability we suffer as a result of such actions.
- 16.5 We may bring an action for the Amount Owing on the Goods sold despite the fact ownership of the Goods may not have passed to you.
- 16.6 The Security Interest created under these Terms extends to the proceeds from selling the Goods and extends to any product or mass into which the Goods sold are processed or commingled and maintains its priority if the Goods become part of an accession.

PERSONAL PROPERTY SECURITIES ACT 1999

- 17.1 **Interpretation** – all section references in this clause shall mean the relevant clause in the PPSA.
- 17.2 **Security:** Upon consenting to these terms or by accepting supply from us, you acknowledge and agree that:
- you grant a security interest (by virtue of our retention of title clause) to us in all present Goods supplied by us to you (if any) and all after acquired Goods supplied by us to you (or for your account).
 - You will not allow any Goods to become an accession to any property that is not subject to the security interest granted pursuant to these terms;
 - You will ensure nothing is done or omitted to be done that might adversely affect any security interest in the Goods granted in our favour;
- 17.3 **Financing Statement:** You acknowledge, agree and undertake (as the case may be) to:
- sign any further documents and/or provide any further information (which information you warrant to be complete accurate and up to date in all respects) which we may reasonably require to register a financing statement or financing change statement on the Personal Properties Securities Register.
 - irrevocably appoint us to be your attorney to do anything which you agree to do under this agreement and anything which the attorney thinks desirable to protect the Company's interest under this agreement and you ratify anything done by the attorney under this clause
 - not register a change demand without our prior written consent, which may be given or withheld at our absolute discretion.
 - You will, upon demand, meet our costs:
 - in relation to registering a financial statement or financing change statement, or releasing any financing statement on the Personal Property Securities Register;
 - Enforcing our security interest including our legal costs on a solicitor client basis;
 - give us not less than 14 days prior written notice of any proposed change in your name, and/or any other change in your details or otherwise (including but not limited to a change in the your place of incorporation, address, location, nature of business, ownership, facsimile or phone number, or business practice);
- 17.4 **Waiver and Contract Out** – To the extent permitted by law, you and us agree to contract out of:
- Sections 114(1)(a) 133, 134 and 148 of the PPSA; and
 - The Buyer's rights referred to in sections 107(a) to (i) of the PPSA.

18. SECURITY

- 18.1 You and/or any Guarantor agree that in the event of default we shall have the right to complete and register a mortgage (on the most current Auckland District Law Society all moneys memorandum of mortgage as updated from time to time) over any property owned by You and/or any Guarantor in order to protect our rights and interest under these terms. We shall also have the right at our discretion to place a caveat on any such property for the purpose of this clause.
- 18.2 You agree to do all acts required for us to register the security and if you fail to do so within 3 working days of our request, You and/or the Guarantor hereby irrevocably appoints us as your attorney for the purpose of us exercising our rights under this clause.

19. PRIVACY ACT CONSENT & RIGHTS

- 19.1 Where you are an individual, you understand this information is being collected in accordance with the Privacy Act 1993 and that you have rights of access to and correction of personal information held by us. You agree and authorise us to obtain or divulge any information about you (including adverse information) from or to any third party (including credit reporting and debt collection agencies) in the course of our business activities including credit assessment, debt collection and direct marketing activities.

20. WARRANTIES AND MAINTENANCE

- 20.1 We do not provide any warranty that the goods are fit and suitable for the purpose for which you require them and shall not be liable if they are not. However, where goods are subject to a manufacturer's warranty, we will make the benefit of that warranty available to you.
- 20.2 All warranties are voided if you instruct us to alter the Goods in any way (including adding extra water, mixtures or other materials to concrete).
- 20.3 No guarantees, warranties, representations or agreements made on our behalf (including those implied or expressed by law) shall apply or be binding on us unless specifically made in writing by us.
- 20.4 We will notify you promptly of any defects discovered in our workmanship or materials. We will remedy any defective workmanship and at our sole discretion repair or replace any faulty material reported to us in writing within 45 days of completion of the work or any defined stage of the work, or within any longer period agreed or stated in our quotation. This warranty is in addition to any rights you may have as a consumer under the Consumer Guarantees Act 1993.

21. CONSUMER GUARANTEES ACT 1993

- 21.1 Nothing in these terms of trade excludes, limits, restricts or is intended to derogate from any right or remedy which you may have pursuant to the Consumer Guarantees Act 1993 ("the CGA"), if you are a consumer as defined in the CGA who requests the goods and services for personal use. However the guarantees contained in the CGA are expressly excluded where you acquire goods or services from us for the purposes of a business.
- 21.1 If you on sell the goods to a third party, you agree:
- Where permitted by law, to contract out of the CGA; &
 - to neither give or make any assertion or representation in relation to our goods without our prior written approval nor hold yourself out to be our agent.
 - to indemnify us for any losses incurred due to third party claims against us as Manufacturer/Importer.

22. LIMITATION AND EXCLUSION OF LIABILITY

- 22.1 All advice, recommendations and information in whatever form has been given gratuitously and without liability. Illustrations are not binding as to detail as modifications and improvements in manufacture are introduced from time to time.
- 22.2 To the maximum extent permitted by law, we shall not be liable to you or any Guarantor (or any agents or employees) whether in contract, tort, breach of statutory duty or otherwise for:
- Any minor variation in product specifications including but not limited to colour or design, which may occur from time to time; or
 - Any consequential, indirect or special loss, damage or injury; or
 - Any delays in delivery, loss of profits, revenue, business opportunity, anticipated savings, wasted overheads or damage to goodwill, regardless of whether in the circumstances it is deemed direct, indirect, consequential or special losses.
- 22.3 In any event and subject to the clause detailed above, our maximum aggregate liability to you arising out of any claim for loss or damages, however arising, shall not exceed the lesser of:
- The contract price; or
 - The value of the goods or service which are the subject of the claim.
- 22.4 Nothing in these clauses shall excuse payment of the Amount Owing as it becomes due under these terms.

23. FORCE MAJEURE

- 23.1 Without limiting any other provisions of these terms, we shall not be liable for any claims resulting from our delay or failure in the performance of any obligation or the exercise of any right as a result of a "Force Majeure" event.
- 23.2 Force Majeure means any event outside our reasonable control including acts of God, declared or undeclared war, fire, flood, storm, slide, earthquake, hurricanes, cyclones, riot, power failure, industrial action, defaults of manufacturers and suppliers, the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay, labour disputes, theft, any criminal act or other similar events beyond our control that may prevent or delay our supply of goods or services to you.
- 23.3 Nothing in this clause shall excuse payment of any Amount Owing due or which becomes due under these terms and the occurrence of a force majeure event shall not give you a right to cancel any agreement with us.

PERSONAL GUARANTEE

- 24.1 In Consideration of us supplying and continuing to supply goods and/or services to the Customer, the Guarantors jointly and severally guarantee and indemnify the due performance and observance of the Customer's obligations contained in this agreement with us including, upon demand, the payment of all Amounts Owing which is or may become due to us by the Customer.
- 24.2 The Guarantor(s) acknowledge:
- This is a continuing Guarantee; and
 - Their obligation to us is as a principal debtor; and
 - if there is more than one Guarantor, their liability shall joint and several; and
 - their liability under the Guarantee shall not be effected or discharged by the granting of time or credit to the Customer, or by the release, abandonment or waiver of any rights against the Customer, or the liquidation or bankruptcy of the Customer; and
 - this Guarantee is in addition to and not in substitution of any other guarantee or security or other rights which we may presently have or may subsequently acquire and may be enforced without the necessity of making demand or enforcing any such other guarantees, securities or rights. and
 - the Guarantee shall continue in full force until we agree to release them in writing and even if:
 - The Customer's obligations to us has been fully paid, satisfied or performed; or
 - Our conduct of the day to day operation of the Customer's credit account (including but not limited to termination of supply, granting of credit, extension of further credit, granting of time, waiver, indulgence, neglect to sue or failure to give appropriate notice) implies the Guarantors may be released from this Guarantee; or
 - We release any other party from partial or total liability.