

## Credit Account Application and Credit Agreement with CPE

Date: \_\_\_\_\_

Customer Trading Name: \_\_\_\_\_

Delivery / Business Address: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Telephone:( ) \_\_\_\_\_ Second Telephone:( ) \_\_\_\_\_

Mobile:( ) \_\_\_\_\_ Email: \_\_\_\_\_

Extra Email address: \_\_\_\_\_ Invoices/Statement Emailed Yes/No

Website: www. \_\_\_\_\_ Order Number Required Yes/No

Details Of Company: (Complete this Section only if your business is operated by a Company incorporated under the Companies Act 1993)

Legal Name of Company: \_\_\_\_\_

Registered Office Address: \_\_\_\_\_

Limited Company Number: \_\_\_\_\_ Would you like to subscribe to our marketing database Yes/No

**Personal Details:** (Complete this Section in all cases) Director(s) of Company (if any) named above OR Owner(s) of or Partners in the Customer's business are personally liable for all obligations of the Customer:

Director/Owner Full Name: \_\_\_\_\_

Residential Address: \_\_\_\_\_

Telephone:( ) \_\_\_\_\_ DOB \_\_\_\_\_

Director/Owner Full Name: \_\_\_\_\_

Residential Address: \_\_\_\_\_

Telephone:( ) \_\_\_\_\_ DOB \_\_\_\_\_

Contact Person for Accounts: Name: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Solicitors Name, Phone and Address: \_\_\_\_\_

Accountants Name, Phone and Address: \_\_\_\_\_

Bank / Branch & Account Manager: \_\_\_\_\_

Trade References: (excluding Credit Cards, Fuel Suppliers, Landlord, Power & Phone)

1. \_\_\_\_\_ Phone No: \_\_\_\_\_

2. \_\_\_\_\_ Phone No: \_\_\_\_\_

3. \_\_\_\_\_ Phone No: \_\_\_\_\_

Signature:

I/We hereby apply to open an account in the above Customer name. I/We agree that CPE's Terms and Conditions of Trade (see attached) apply at all times. I/We warrant that I/We have the authority of the Customer and the Owners/Directors named above to enter into these obligations. I/We acknowledge that I/am we/are personally responsible and liable to CPE in relation to all transactions on the above Customer's account. I/We authorise the above Bank, Accountant and Trade References to make full disclosure to CPE in connection with this application.

Name(s) of Person(s) signing application: \_\_\_\_\_

Position(s) Held \_\_\_\_\_

Signature(s) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## TERMS OF TRADE

### 1. Definitions, Interpretation, and Application

1.1 Unless inconsistent with the context the following definitions apply:

“Customer” includes the customer’s successors and personal representatives;  
“Delivery” or “*delivery date*” means the date determined under clause 4.1;

“CPE” means **Concrete Pumping Equipment NZ Limited** and its successors and assigns;  
“PPSA” means the Personal Properties Security Act 1999;  
“Terms” means these terms of Trade as amended or substituted by CPE from time to time;  
“Product” or “Products” includes everything made, done or supplied by CPE;

“Working day” has the meaning in Section 4 of the Property Law Act 2007.

1.2 References to legislation refer to that legislation as amended or substituted.

1.3 Words importing the singular number include the plural and vice versa.

1.4 Headings are inserted for convenience only and do not affect interpretation.

1.5 The Terms apply to all Products provided to or at the request of the Customer whether or not charged for.

1.6 By requesting Products from CPE the Customer agrees that the Terms prevail over any other warranties, conditions, stipulations, instructions, or provisions.

1.7 The person by whose instrumentality any order is placed or any delivery is received warrants (where not the Customer) that he or she is authorised to act on behalf of the Customer, and agrees to be jointly and severally with the Customer bound by these Terms and liable for the performance of the Customer’s obligations.

### 2. Price, Payment, Charges, and Interest

2.1 The Customer shall pay each of CPE’s invoices in full on receipt of invoice free from any deduction, counterclaim or set-off, legal or equitable. Payment must be made in full before delivery of Products can be arranged. The Customer will pay the invoice in full regardless as to whether part or all of the invoice is in dispute.

2.2 Machinery Products have additional terms and conditions specific to the type of machinery ordered. Where there is a conflict between these general terms and any specific terms the specific terms shall apply.

2.3 CPE may in its sole discretion may request that progress payments be made towards the purchase of any Products. CPE will advise you at the time of ordering if progress payments will be required and if so how many. The first progress payment shall be 20%. Any progress payments made are non-refundable.

2.4 Expenses incurred for carriage, freight, insurance, delivery, storage, travel, and other sundries plus a margin of 15% shall be added to the price and is also non-refundable.

2.5 The Customer shall have no right to object to any invoice unless the Customer gives CPE in writing full details of all objections within 5 Working Days from the date the invoice was issued.

2.6 If the Customer owes CPE any money, or becomes insolvent, commits an act of bankruptcy, has an application for liquidation started against the Customer, or has any receiver, liquidator, assignee, statutory manager or similar person appointed, or if the Customer may be or become unable to meet any of the Customer’s obligations under these terms in full, or if in the opinion of CPE any of those events is likely to occur, then in any such case, CPE from time to time (without being liable for any loss or damage) may:

- cancel or suspend all or part of the work on or delivery of Products; and/or
- retain possession of the whole or any part of the Products; and/or
- sell, scrap, or otherwise dispose of Products or any part thereof, and apply the net amount received (or incurred) by such disposal against the amount payable by the Customer.

2.7 Notwithstanding any direction by the Customer CPE may appropriate any payment towards any or all Products or any other amount due to CPE.

2.8 If any invoice remains unpaid at the end of the second month after the month of its issue there shall be added to the overdue amount:

- An administration fee being the greater of \$20.00 or 10% of the overdue amount; and

- Interest on all overdue amounts (including costs, fees and interest) at a rate of 2.5% per month or part thereof compounding monthly (both before and after judgment); and

- All expenses, disbursements, debt collection, and legal costs (on a solicitor client basis) incurred by CPE in the enforcement or attempted enforcement of any rights or collection of any money due.

### 3. Quotations and estimates

3.1 Every statement or indication of price given by CPE is deemed to be an estimate only, in respect of which CPE has no liability or responsibility to the Customer or any other person except if it is a fixed price, in writing, specifically described as a quotation, dated, and signed by CPE, and accepted by the Customer.

3.2 All quotes still contain an estimate as to freight and mounting costs as these cannot be determined until orders reach CPE’s workshop. CPE will issue the final quote with the adjustment for freight and mounting costs once the order is received into the workshop.

3.3 Unless otherwise specified, all prices exclude GST and expenses set out in clause 2.4. These charges are payable by the Customer in addition to the prices stated.

3.4 CPE may at any time before Delivery is complete withdraw any quotation notwithstanding acceptance.

3.5 Any quotation (unless withdrawn) will expire after the specified period. If no period is specified the quotation expires 10 Working Days from its date.

3.6 If the Customer requests a variation to Products and CPE agrees to comply with the variation, it will be charged on the basis set out in the quotation. If no basis is specified CPE will charge in accordance with its usual rates plus a margin of 15%.

3.7 CPE may adjust the quoted price if, before or during Delivery, CPE’s costs are affected by:

- An increase in the cost of foreign currency, freight, materials, services, or labour to CPE; or
- Any adjustment to mounting costs; or
- Any act or omission of the Customer or a third party; or
- Amendments or substitutions to legislation, regulations, codes, or standards affecting the Products; or
- Any increases in, or additional, or new, taxes, levies, royalties, surcharges, tariffs, duties, fees, tolls, or other such payments.

3.8 Any estimate that has been accepted by a Customer will be subject to adjustment and will not be finalised until arrival of the Customer’s order into the workshop and final calculation of all costs by CPE can be made. The final amount will then be issued in writing to the Customer.

### 4. Delivery, Damage, and Returns

4.1 Delivery to the Customer of each of the Products occurs on the earliest of the dates when they are:

- Available to be uplifted or received by or on behalf of the customer; or
- Given to a carrier; or
- Taken to a location identified by the Customer, whether or not complete or commissioned.

4.2 CPE has no responsibility or liability for any loss or damage arising direct indirectly or otherwise from any delay or failure in or cancellation of Delivery of all or part of the Products howsoever caused.

4.3 If the Customer requests that CPE leave goods out CPE’s premises or at any other unattended location then the Products are left at the Customers sole risk.

4.4 The time agreed for Delivery (if any) is not of the essence. Any date or time given by CPE is an estimate only.

4.5 CPE will not be liable for any loss incurred by the Customer due to the time of delivery differing from the estimated time pursuant to clause 4.4.

4.6 Any carrier of the Products shall be deemed to be the Customer’s agent.

4.7 The Customer shall be deemed to have accepted the Products as complete, compliant, and free from damage unless the Customer gives CPE in writing within 2 Working Days from Delivery full details of any alleged shortage in quantity, damage, or non-compliance. No claim for shortage in quantity, damage, or non-compliance, or any loss or damage arising therefrom can be made after that period has expired.

4.8 If notice is given under clause 4.7 the Customer shall allow CPE to fully inspect and test the Products.

4.9 Before returning any Products but after giving notice in clause 4.7 the Customer must obtain from CPE a Return Authorisation Number (RA).

The RA must be clearly stated on the shipping label and the Products must be returned to CPE within the time CPE specifies when they issue the Customer the RA.

- 4.10 CPE need not accept return of or credit any Products which are worn or altered, or in any other way not in the same condition as when delivered, or which have not been used, maintained, and stored in accordance with best practice and manufacturer's recommendations.
- 4.11 CPE may (in its discretion to be exercised only in writing as described in clause 12.6) accept Products for credit, but may charge a restocking fee of such amount as CPE may determine together with inspection costs, and any expenses calculated in accordance with clause 2.4. In such cases clause 4.9 must still be complied with.

## 5. Warranty and liability exclusions

- 5.1 Subject to clause 5.5, 5.6, 5.7 and 12.3 to the fullest extent permitted by law, all conditions, warranties, guarantees, liabilities, representations, undertakings, descriptions, and conditions as to fitness, whether implied by statute, common law, or otherwise are expressly excluded.
- 5.2 CPE has no liability in any circumstances for consequential damage however arising.
- 5.3 CPE is not bound by representations, statements, conditions, agreements, or warranties, made by CPE, or by its representatives, employees, agents, unless stipulated in writing as described in clause 12.6, and the Customer agrees that it has purchased the Products solely in reliance of the Customer's own judgment.
- 5.4 The exclusions and liabilities in this clause 5 shall extend to CPE, its agents, employees, directors, and any person or entity who is associated with any of them under any of the definitions of "associated persons" in the Income Tax Act 2007, and their respective successors and personal representatives.
- 5.5 CPE shall have no liability or responsibility for Products not manufactured or fabricated by CPE provided however that if the Customer fully indemnifies CPE against all costs and expenses incurred by CPE in obtaining (or attempting to obtain) a remedy from the manufacturer of the Products CPE will use reasonable endeavours to request such remedy for the Customer. For the avoidance of doubt the Customer acknowledges that CPE does not manufacture trucks and any truck supplied as part of a Product does not come with any warranties from CPE.
- 5.6 For Products manufactured or fabricated by CPE to written specifications provided by the Customer, CPE warrants on the conditions set out in clause 5.7 that for 10 Working Days from Delivery the Products will:
- Substantially comply with the specifications; and
  - Be free from faulty workmanship.
- 5.7 The conditions of CPE's warranty are:
- Full details of the warranty claim must be given to CPE in writing not later than 10 Working Days after delivery;
  - The price for the Products must have been paid in full;
  - The Products must not have been used other than in the way intended, or repaired, or altered without CPE's approval, and must have been used, maintained, and stored in accordance with best practice including any instructions or guidelines supplied by CPE;
  - The Products must have not been used after any defect became apparent or would have become apparent to a reasonably prudent operator or user;
  - The warranty covers only defects in the Products caused *entirely* by faulty workmanship;
  - CPE's obligation under this warranty is (at its sole discretion) to either:
    - Restore the Products to substantially comply with the Customer's written specification; or
    - Replace the Products with substantially equivalent Products.
  - The warranty covers only repair of the faulty workmanship. All other costs including any materials freight, dismantling, removal and fixing of components are for the Customer;
  - CPE may specify the place at which the repairs are to be carried out and unless otherwise agreed the Customer shall at its expense arrange for the transport of the Products to and from that place;
  - Once a claim is made in respect of the Products no further claims may be made under this warranty for those Products and no warranty is provided on repair done pursuant to this warranty.
- 5.8 Subject to clause 12.3, but despite any other Terms, if CPE has any liability to the Customer whether for breach of any of these Terms or on any other ground including (without limitation) tort, breach of contract or breach of statutory duty. The Customer's remedy is confined to monetary damages, and those damages are limited to the amount the Customer has actually paid to CPE in the calendar year in which the

liability arises for the specific part or parts of the Products in respect of which liability arises.

## 6. Risk, Ownership, Title and Possession

- 6.1 All risk in respect of the Products passes as follows:
- Where the Customer orders Machinery then risk passes on payment of CPE's invoice in full. Delivery and/or collection is at the Customers risk and the Customer must have ensured the machinery before requesting CPE to deliver or collecting the Machinery from CPE.
  - For Credit Account Customers risk passes to the Customer upon delivery and CPE shall retain title to the Products until the Customer has paid the price and all other sums owing to CPE in full.
- 6.2 Until title in the Products passes to the Customer unless expressly agreed in writing the Customer shall:
- Hold the Products as CPE's fiduciary and bailee; and
  - Keep the Products insured for full replacement with CPE's interest noted on the insurance policy (and upon request immediately supply a certificate of currency to CPE); and
  - Not alter or modify the Products in any way;
  - Follow best practice in repairing and maintaining the Products; and
  - Store the Products so they are readily identifiable as CPE's Products.
- 6.3 In addition to the rights in Section 109 of the PPSA, until title in all Products passes to the Customer, the Customer gives irrevocable authority to CPE to enter, at any time without prior notice (by force if necessary) any land or premises occupied by the Customer, or any land or premises where CPE believes the Products may be, to inspect, take possession of, and/or remove the Products or any part thereof.
- 6.4 CPE shall not be liable for any damage, expense, or any other losses incurred by the Customer as a result of action under clause 6.3 and the Customer shall fully indemnify CPE against all costs, claims, demands, and actions by third parties arising from action under that clause.

7.7 The Customer waives the rights in s.148 of the PPSA.

## 7. Personal Property Securities Act 1999

- 7.1 The Customer shall provide CPE on demand from time to time with all the information required to register a financing statement or financing change statement, and to maintain and enforce a perfected security interest in the Products supplied from time to time in accordance with the PPSA.
- 7.2 The Customer shall on demand reimburse on an indemnity basis all costs incurred by CPE:
- Involved in obtaining, maintaining, registering and enforcing a perfected security interest in respect of the Products supplied from time to time by CPE; and
  - Resulting from any application made by the Customer under Section 162 of the PPSA.
- 7.3 The Customer shall always give CPE at least 10 Working days' prior notice of all proposed changes to the Customer's details (including, but not limited to trading name, operating structure, address, telephone or facsimile number, or e-mail address) and of any proposed financing change statement or change demand.
- 7.4 On Delivery unless all amounts payable to CPE are paid in full the Customer grants CPE a security interest in the Products and their proceeds to secure the obligations of the Customer to CPE.
- 7.5 CPE may enforce the security interest (without prejudice to any other remedy) if any of the following occur:
- The Customer fails to pay any amount owing to CPE by the due date; or
  - Other than by prior agreement in writing the Customer sells, parts with possession of, leases or disposes of or otherwise deals with the Products, or does anything inconsistent with CPE's ownership of the Products prior to making full payment; or
  - The Customer becomes insolvent, commits an act of bankruptcy, has an application for liquidation started against the Customer, or if in the opinion of CPE any of those events is likely to occur, or
  - Any of the circumstances or opinions referred to in clause 2.6 exist; or
  - The Customer commits any breach of these Terms.
- 7.6 Pursuant to Section 107 of the PPSA CPE and the Customer agree:
- To contract out of Section 114(1)(a), Section 133, and Section 134 of the PPSA; and
  - To contract out of the sections referred to in Section 107(2)(a) to (i) (inclusive) of the PPSA; and
  - That the rights in Section 109 of the PPSA shall apply in addition to the rights given by clause 6.

## **8. Intellectual property**

- 8.1 Unless expressly agreed in writing all intellectual property in respect of any Product provided by CPE is, and remains at all times, the absolute property of CPE.
- 8.2 All intellectual property owned by the manufacturer of the Product, where the manufacturer is not CPE, remains the absolute property of the manufacturer and the Customer has no rights to use this unless specifically expressed in writing by CPE on behalf of the manufacturer.
- 8.3 CPE grants the Customer a licence to use CPE's intellectual property only in connection with the Products as delivered, and the Customer agrees that it shall pay a licence fee determined by CPE for all other uses (including duplication).
- 8.4 If the Products are supplied to a design or specification provided by the Customer, the Customer warrants that in supplying or carrying out the Products CPE will not infringe any trademark, patent, copyright, registered design, or any other rights of a third party, and the Customer agrees to indemnify CPE against any liability, costs, expenses and claims arising from any such infringement or alleged infringement.
- 8.5 Where CPE creates custom products for the Customer the intellectual property in the designs, documents, drawings, photographs or Products is the property of CPE.

## **9. Privacy**

- 9.1 The Customer acknowledges that the Privacy Act only applies to individuals and not to companies.
- 9.2 The Customer authorises CPE to collect, retain, disclose to any person, and otherwise use information about the Customer for the purpose of providing goods or services, obtaining credit and other references, undertaking credit management, to facilitate promotion and marketing, and to otherwise deal with for any business purpose which may (in the opinion of CPE) be incidental thereto.
- 9.3 For all information collected about the Customer pursuant to clause 9.1 the Customer (if an "individual" in terms of the Privacy Act 1993) may request:
  - (a) A copy of that information subject to paying the cost of collating and copying;
  - and
  - (b) That CPE corrects any incorrect information CPE holds about the Customer.

## **10. Assignment**

- 10.1 CPE may from time to time license, outsource, assign, novate, or subcontract all or any part of its rights and obligations under these Terms without consent of the Customer.
- 10.2 The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of CPE.

## **11. Waiver**

- 11.1 Any variation or waiver of any clause in these Terms shall not be binding unless expressed to be intended to amend these Terms, and in writing as described in clause 12.6.
- 11.2 A failure or delay in enforcing compliance with any clause of these Terms shall not be a waiver.

## **12. General**

- 12.1 If the Customer is, or holds itself out to be acquiring the Products "for the purposes of a business" in terms of the Consumer Guarantees Act 1993, then all rights in that Act are excluded.
- 12.2 In respect of any work or installation the Customer shall be solely responsible for compliance with all legal or other requirements regarding consents, safety, fencing, inspection and any government or council requirements and will indemnify CPE against any liability, costs, expenses or claims in respect thereof.
- 12.3 Nothing in these Terms takes away any statutory rights of consumers that cannot be taken away by contract.
- 12.4 The parties agree that should any circumstance occur where CPE is prevented from or impeded in the conduct of its business by one or more factors beyond its control such as (but not limited to) flood, earthquake, fire, war, terrorist attack, loss of power, ill health, strike, lockout, adverse weather, or force majeure, CPE shall not be liable for any defect, delay, increased cost, or other loss or disadvantage arising directly, indirectly, or otherwise from such factors.
- 12.5 The various provisions of these Terms are severable and if any provision is held to be invalid or unenforceable by any Court of competent jurisdiction, then such invalidity or unenforceability shall not affect the remaining provisions of these Terms.
- 12.6 These Terms constitute the parties' entire agreement as to the matters referred to herein, and (except as expressly stipulated to the contrary in writing signed by a Director or Manager of CPE) prevail over and/or supersede all other this agreements, arrangements, representations, negotiations, commitments and communications, written or oral.

12.7 The law of New Zealand governs these Terms and the Courts of New Zealand have jurisdiction.

12.8 CPE may from time to time amend or substitute all or any of these Terms. Amended terms will be supplied on the website of CPE or attached to the latest invoice issued to the Customer. Acceptance of the new terms by the Customer shall occur on payment of the invoice to which the new terms were supplied..

12.9 If the Customer wishes to negotiate the terms of sale then CPE reserve the right to obtain legal advice on those terms, the cost of which will be added to the deposit payable by the Customer to be paid on execution of the negotiated terms.

## **13. Dispute Resolution**

13.1 If a dispute arises between the parties ("the Dispute") then the disputing party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the clause 13.2.

13.2 A party claiming the Dispute must give the other party written notice specifying the nature of the Dispute. On receipt of that notice the parties shall use all reasonable endeavours to resolve the Dispute by discussion, consultation, negotiation or other informal means such as mediation. If the Dispute is not resolved within 14 days of the notice being given either party may, by giving written notice to the other party, require the Dispute to be determined by arbitration of a single arbitrator. The arbitrator shall be appointed by the parties or, failing agreement within 7 days of the notice requiring arbitration, by the President of the New Zealand Law Society on application of either party. The arbitration shall be conducted as soon as possible in the Horowhenua region and in accordance with the provisions of the Arbitration Act 1996.