

TERMS AND CONDITIONS OF SALE

1. For the purposes of interpretation:
 - “Buyer” means the person buying the Goods and its successors;
 - “Conditions” means these conditions of sale;
 - “Contract” means the contract for the sale of the Goods from CTL to the Buyer;
 - “CTL” means Construction Techniques Limited trading as BBR Contech and its successors and assigns;
 - “Goods” means the Goods listed in the Contract;
 - “Order” or “Orders” means an order or orders as detailed in clause 3 of these Conditions.
2. The Contract includes these Conditions which shall not be deemed or construed to be modified, rescinded or waived in whole or in part except by written amendment by CTL and the Buyer. All other terms and conditions are expressly excluded.
3. An Order shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to these Conditions. All Orders submitted by the Buyer to CTL shall be deemed to be accepted by CTL unless otherwise advised. An Order must be in writing and include:
 - (a) a detailed description of the Goods;
 - (b) the amount or quantity;
 - (c) the unit price as agreed by CTL;
 - (d) the location for delivery of the Goods; and
 - (e) a proposed delivery date.
4. No order which has been accepted by CTL may be cancelled by the Buyer except with CTL’s agreement in writing on terms that the Buyer shall indemnify CTL in full against all losses (including loss of profit), costs, damages, charges and expenses incurred by CTL as a result of cancellation.
5. Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer’s acceptance of these Conditions.
6. Any typographical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document issued by CTL shall be subject to correction without any liability on the part of CTL.
7. The price for the Goods shall be CTL’s quoted price. All prices exclude freight, duty, insurance and any applicable tax unless otherwise agreed.
8. CTL reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to CTL which is due to any factor beyond the control of CTL.
9. The amount due for the purchase by the Buyer of the Goods (together with any freight, duty, insurance or other taxes) shall be paid (without deduction or set off) on or before the 7th day after the date of CTL’s invoice. Time for payment shall be of the essence.
10. Payment for the Goods shall be deemed to be duly made by the Buyer only upon CTL’s receipt of cash or cleared funds amounting to the price of the Goods. Where payment for the price of the Goods is made by way of a Letter of Credit or Bill of Exchange, any costs incurred thereby shall be borne by the Buyer.
11. If the Buyer fails to make full payment on the due date or is otherwise in breach of its obligations under the Contract, then without prejudice to any other right or remedy available to CTL, CTL shall be entitled to cancel the Contract or suspend any further deliveries to the Buyer, appropriate any payment made by the Buyer to such of the Goods as CTL may think fit and charge the Buyer daily interest (both before and after any judgement) on the amount unpaid at the rate of 2% per month until payment in full is made and the Buyer shall also be liable for all of CTL’s costs and expenses (including legal costs on an indemnity basis) incurred as a result of a default by the Buyer under these Conditions and/or any Contract.
12. The quantity, quality and description of and any specification for the Goods shall be those set out in CTL’s price list for the Goods as published by CTL from time to time or noted in the Order (if accepted by CTL).
13. CTL may from time to time make changes in the quantity, quality and description of and any specification for the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for use of the Goods.
14. No representations or warranties concerning the Goods are made by CTL unless they are confirmed in writing by CTL.
15. Except where the Buyer is a consumer (as the term “consumer” is defined in the Consumer Guarantees Act 1993 (“the Act”) the guarantees contained in the Act that the Goods supplied are (a) of acceptable quality (sections 6 and 7); (b) reasonably fit for any particular purpose (section 8); (c) comply with description (section 9); (d) comply with sample (section 10); (e) reasonable as to price (section 11); and (f) that facilities for the repair of the Goods are available (section 12), do not apply.
16. CTL shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of CTL’s obligations in relation to the Goods, if the delay or failure was due to any cause beyond CTL’s reasonable control.
17. Delivery of the Goods shall be made by the Buyer delivering the Goods into the control of the Buyer’s carrier or agent or to the address specified by the Buyer where CTL is arranging delivery.
18. Any dates quoted for delivery of the Goods are approximate only. CTL shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract.
19. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract. Failure by CTL to deliver any one or more of the instalments in accordance with these Conditions shall not entitle the Buyer to treat the Contract as a whole as repudiated.
20. If the Buyer fails to take delivery of the Goods or fails to give CTL adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer’s reasonable control or by reason of CTL’s fault) then, without prejudice to any other right or remedy available to CTL, CTL shall be entitled to (a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or (b) take all steps it deems necessary to prevent the deterioration of the Goods and charge the Buyer for the reasonable costs incurred thereby; or (c) without any reference to the Buyer (i) where the Buyer fails to make full payment of the price for the Goods on the due date or is otherwise in breach of its obligations under the Contract, treat the Contract as repudiated by the Buyer and to sell the Goods at the best price readily obtainable or otherwise dispose of the Goods; or (ii) if the Buyer has made full payment of the price for the Goods on the due date but is otherwise in breach of its obligations under the Contract, sell the Goods at the best price readily obtainable or otherwise dispose of the Goods and claim any loss on resale from the Buyer. Notwithstanding the Goods being sold or disposed of at a higher price, CTL shall only be obliged to account to the Buyer for the price of the Goods under the Contract after deducting all reasonable storage and selling expenses.
21. The Buyer shall inspect the Goods on delivery and shall, within seven days of delivery, notify CTL of any alleged defect or failure to comply with description or shortage in quantity. The Buyer shall then afford CTL an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the Contract and free from any defect or damage or shortage and the Buyer shall be deemed to have accepted the Goods.
22. If the Goods are not in accordance with the Contract for any reason and the Buyer has duly given CTL notice thereof pursuant to clause 21 of these Conditions, the Buyer’s sole remedy shall be limited to CTL making good any alleged defect, shortage in quantity or failure to comply with description by replacing or effecting rectification of such Goods at CTL’s discretion or, if CTL shall elect, by refunding a proportionate part of the price for the Goods under the Contract. CTL shall not be liable for any damage caused either to the Goods or as a result of the malfunction of the Goods if the Goods are:

- (a) fitted by unqualified tradesmen;
- (b) fitted in an untradesmanlike manner;
- (c) in any way adapted for a use for which they are not specifically intended; or
- (d) added to or repaired using components not recommended or approved by CTL or the manufacturer of such components.
23. Where the Buyer rejects any Goods, the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods by CTL.
24. Risk of damage to or loss of the Goods shall pass to the Buyer (in the case of Goods to be delivered to the Buyer's agent or carrier) at the time when CTL notifies the Buyer that the Goods are available for collection, or (in the case of Goods to be delivered by CTL) at the time of delivery. The Buyer agrees that CTL shall not be liable for any loss or damage to property, costs or expenses incurred as a result of a Buyer placing an Order or being supplied Goods by CTL.
25. Notwithstanding delivery and the passing of risk in the Goods, or any provisions to the contrary, the property in the Goods shall not pass to the Buyer until CTL has received payment in full for the price of the Goods.
26. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as CTL's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected, insured and identified as CTL's property.
27. Where CTL has reasonable cause to believe that the Buyer has not strictly complied with these Conditions and, in particular, has not effected payment in accordance with clause 9 of these Conditions, or the Buyer has or will commit an act of bankruptcy or (being a company) has a receiver, liquidator or statutory manager appointed then, notwithstanding section 109 of the Personal Property Securities Act 1999 (the "PPSA"), and in addition to the rights contained in that section, CTL may recover any or all of the Goods or the mixed goods and re-sell the Goods or the mixed goods and for such purpose may at any time of the day or night enter by force if necessary upon any premises where such Goods or mixed goods are reasonably thought to be stored (and the Buyer grants to CTL an irrevocable right and authority to so recover, re-enter and re-sell).
28. In exercising its rights pursuant to clause 27 of these Conditions, CTL shall be entitled to deduct from any sale of Goods or mixed goods recovered from the Buyer all the liabilities and expenses (including legal expenses) incurred by CTL in enforcing or attempting to enforce its rights.
29. In relation to the PPSA:
- a) The Buyer grants to CTL a security interest in all present and after acquired Goods and their proceeds.
- b) On the request of CTL the Buyer shall promptly execute any documents and do anything else required by CTL to ensure that the security interest created under these Conditions constitute a first ranking perfected security interest over the Goods and their proceeds including providing any information CTL reasonably requires to complete a financing statement or a financing change statement. The Buyer waives any right to receive a copy of a verification statement under the PPSA.
- c) The Buyer will pay to CTL all costs, expenses and other charges incurred, expended or payable by CTL in relation to the filing of a financing statement or a financing change statement in connection with these terms and conditions.
- d) CTL and the Buyer also agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these Conditions.
- e) CTL and the Buyer also agree that the rights of the Buyer as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply to these Conditions.
- f) The Buyer acknowledges that it has received a copy of these Conditions and in particular that the terms contained in these Conditions constitute a security agreement for the purposes of the PPSA.
30. CTL shall be entitled to recover the price for the Goods notwithstanding that property in any of the Goods has not passed from CTL.
31. If the Buyer shall be declared bankrupt or commit an act of bankruptcy or enter into a scheme or arrangement or make any assignment for the benefit of creditors or being a Company has a receiver, liquidator or statutory manager appointed or an application for its winding up filed in any court or enters into any scheme or arrangement or assignment or composition for the benefit of creditors, or ceases or threatens to cease to carry on business, then without prejudice to any other right or remedy available to CTL, CTL shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and the price for any Goods already delivered shall become payable forthwith notwithstanding any agreement to the contrary.
32. The Buyer shall not withhold payment of any amount due to CTL by reason of any right or alleged right of set-off or counterclaim whatsoever.
33. No waiver by CTL of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the Contract.
34. If any of the terms of these Conditions or the Contract are held by a Court in New Zealand to be ineffective by virtue of non-registration, illegality or otherwise, then such term, or part of it, shall be severed from all other terms. Unenforceability of a provision of these Conditions does not affect the enforceability of any other provision of these Conditions.
35. The Buyer shall not be entitled to assign any of its rights under any Contract without the prior written consent of CTL.
36. CTL is independent of the Buyer and nothing in these Conditions or any Contract will constitute any other type of relationship between the Buyer and CTL other than as vendor and purchaser.
37. The Contract and these Conditions shall be governed by and interpreted in accordance with the laws of New Zealand and the Buyer and CTL submit to the non-exclusive jurisdiction of the Courts of New Zealand.
38. The Buyer authorises CTL to collect and hold personal information from any source CTL considers appropriate to be used for the purpose of determining credit worthiness, for communication product information by CTL, for debt collection purposes, or any other related purpose. The Buyer authorises CTL to disclose personal information held by CTL for the above purposes to any third party.
39. CTL reserves the right to amend and vary these Conditions from time to time. Notice of such variation shall be deemed to be given to a Buyer by CTL listing a notice of such variation on its website at www.contech.co.nz together with the date on which any amendment or variation becomes effective.