
Concrete Colour Solutions – Terms & Conditions of Trade

1. Definitions

- 1.1 “CCS” means NE & NM Welsh T/A Concrete Colour Solutions, its successors and assigns or any person acting on behalf of and with the authority of NE & NM Welsh T/A Concrete Colour Solutions.
- 1.2 “Customer” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by CCS to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between CCS and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with CCS’ consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and CCS.

3. Change in Control

- 3.1 The Customer shall give CCS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by CCS as a result of the Customer’s failure to comply with this clause.

4. Price and Payment

- 4.1 At CCS’ sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by CCS to the Customer; or
 - (b) CCS’ quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 CCS reserves the right to change the Price if a variation to CCS’ quotation is requested.
- 4.3 At CCS’ sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by CCS, which may be:
 - (a) the date specified on any invoice or other form as being the date for payment; or
 - (b) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by CCS.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Customer and CCS.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to CCS an amount equal to any GST CCS must pay for any supply by CCS under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. CCS’ Requirements

- 5.1 If CCS is required to replay any persons any of the monies paid by the Customer for the Goods supplied by CCS then the Goods will be deemed to have continued to be the property of CCS and the Customer will be deemed not to have paid for them, and, without limiting the generality of this condition, CCS may rely upon conditions 8 and 9.

6. Account Dockets and Sales Dockets

- 6.1 The Customer will check each sales docket recording the sale of products to the Customer and each account docket recording the delivery of CCS Goods to the Customer. Whether or not the Customer signs the sales docket recording a sale or recording a delivery to the Customer:
 - (a) a sales docket will be prima facie evidence that the Goods recorded in the docket were taken by the Customer unless the Customer queries the contents of the docket at the time of sale; and
 - (b) an account docket will be prime facie evidence that the Goods referred to in the docket, in the quantities described, were delivered to the Customer, unless the Customer notifies CCS to the contrary within twenty-four (24) hours of the date of delivery.
- 6.2 In any proceedings commenced by CCS against the Customer, seeking payment for the Goods by CCS to that Customer, the Customer shall not be entitled to raise as a defence the allegation that the Goods were not received by or delivered to the Customer, and this condition may be pleaded in absolute answer to any allegation to this effect made by the Customer.

7. Delivery of Goods

- 7.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
 - (a) the Customer or the Customer’s nominated carrier takes possession of the Goods at CCS’ address; or
 - (b) CCS (or CCS’ nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.

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- 7.2 At CCS' sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 7.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then CCS shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.4 CCS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time or date given by CCS to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and CCS will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, CCS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by CCS is sufficient evidence of CCS' rights to receive the insurance proceeds without the need for any person dealing with CCS to make further enquiries.
- 8.3 If the Customer requests CCS to leave Goods outside CCS' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

9. Title

- 9.1 CCS and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid CCS all amounts owing to CCS; and
 - (b) the Customer has met all of its other obligations to CCS.
- 9.2 Receipt by CCS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that:
 - (a) until ownership of the Goods passes to the Customer in accordance with clause 9.1 that the Customer is only a bailee of the Goods and must return the Goods to CCS on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for CCS and must pay to CCS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for CCS and must pay or deliver the proceeds to CCS on demand.
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of CCS and must sell, dispose of or return the resulting product to CCS as it so directs.
 - (e) the Customer irrevocably authorises CCS to enter any premises where CCS believes the Goods are kept and recover possession of the Goods.
 - (f) CCS may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of CCS.
 - (h) CCS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

10. Personal Property Securities Act 2009 ("PPSA")

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by CCS to the Customer.
- 10.3 The Customer undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which CCS may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, CCS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of CCS;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of CCS;

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- (e) immediately advise CCS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 CCS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by CCS, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by CCS under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

- 11.1 In consideration of CCS agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies CCS from and against all CCS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CCS' rights under this clause.
- 11.3 The Customer irrevocably appoints CCS and each director of CCS as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify CCS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow CCS to inspect the Goods.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.3 CCS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, CCS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. CCS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, CCS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If CCS is required to replace the Goods under this clause or the CCA, but is unable to do so, CCS may refund any money the Customer has paid for the Goods.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, CCS' liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by CCS at CCS' sole discretion;
 - (b) limited to any warranty to which CCS is entitled, if CCS did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
 - (b) CCS has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, CCS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by CCS;
 - (e) fair wear and tear, any accident, or act of God.
- 12.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by CCS as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges

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and agrees that CCS has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 12.10.

- 12.11 CCS may in its absolute discretion accept non-defective Goods for return in which case CCS may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 12.12 Notwithstanding anything contained in this clause if CCS is required by a law to accept a return then CCS will only accept a return on the conditions imposed by that law.

13. Intellectual Property

- 13.1 Where CCS has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of CCS.
- 13.2 The Customer warrants that all designs, specifications or instructions given to CCS will not cause CCS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify CCS against any action taken by a third party against CCS in respect of any such infringement.
- 13.3 The Customer agrees that CCS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which CCS has created for the Customer.

14. Default and Consequences of Default

- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at CCS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes CCS any money the Customer shall indemnify CCS from and against all costs and disbursements incurred by CCS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CCS' collection agency costs, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies CCS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions CCS may suspend or terminate the supply of Goods to the Customer. CCS will not be liable to the Customer for any loss or damage the Customer suffers because CCS has exercised its rights under this clause.
- 14.4 Without prejudice to CCS' other remedies at law CCS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to CCS shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to CCS becomes overdue, or in CCS' opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15. Cancellation

- 15.1 CCS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice CCS shall repay to the Customer any money paid by the Customer for the Goods. CCS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by CCS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

16. Privacy Act 1988

- 16.1 The Customer agrees for CCS to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by CCS.
- 16.2 The Customer agrees that CCS may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer.The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 16.3 The Customer consents to CCS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Customer agrees that personal credit information provided may be used and retained by CCS for the following purposes (and for other purposes as shall be agreed between the Customer and CCS or required by law from time to time):

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- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by CCS, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 16.5 CCS may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 16.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (c) advice that CCS is a current credit provider to the Customer;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of CCS, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Customer by CCS has been paid or otherwise discharged.
- 17. General**
- 17.1 The failure by CCS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect CCS' right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which CCS has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 17.3 Subject to clause 12 CCS shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by CCS of these terms and conditions (alternatively CCS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 17.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by CCS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.5 CCS may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 17.6 The Customer agrees that CCS may amend these terms and conditions at any time. If CCS makes a change to these terms and conditions, then that change will take effect from the date on which CCS notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for CCS to provide Goods to the Customer.
- 17.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.