

**TERMS AND CONDITIONS:**

These terms and conditions must be read in conjunction with the terms and conditions contained in the J Swap Contractors Ltd Credit Application Form ("Credit Application Form") which is available at the following web site: [www.jswap.co.nz](http://www.jswap.co.nz). In accepting delivery of Product in accordance with this contract the Purchaser is deemed to accept the terms and conditions contained in the Credit Application Form which may vary periodically, such change being effective from the date the new terms and conditions are published on the Seller's website. Any orders for Product made by the Purchaser after the terms and conditions have been changed will be deemed acceptance of those changes.

**FORWARD SALE CONTRACT:** This is a fixed price contract for the sale and purchase of an agreed quantity of Product for delivery at a future date and it requires the Purchaser to pay for the Product on the terms and conditions of this agreement based on the price of the Product fixed under this agreement. The parties agree that they may enter into this Forward Sale Contract agreement verbally and such agreement is immediately binding on the parties. The Seller will email the Forward Sale Contract to the Purchaser. The Purchaser shall have until the close of business (6pm) on that same day to reply to the email canceling the Contract. If no such reply is received by the Seller then the Purchaser is deemed to have accepted the Forward Sale Contract terms and conditions.

**DELIVERY:** The price for delivery of the Product is not fixed and is subject to change by the Seller. The Seller will endeavour to give the Purchaser three months notice of a change in the delivery price. The Purchaser shall request and take delivery of the Product in quantities that are approximately equivalent to the capacity of the delivery vehicle, and that equate more or less to equal monthly amounts over the term of the contract (termed "an even spread"). The Purchaser must in any event take delivery of the Total Quantity by the Contract Finish date. The Seller will endeavour to accommodate the Purchaser's requests for delivery quantities that are not approximately equivalent to the capacity of the delivery vehicle, and/or are not more or less equal monthly amounts over the term of the contract. In all cases, delivery is subject to availability of the Product to the Seller. Delivery quantities of less than 10 tonne will be made at the Seller's option.

**PAYMENT:** Payment is due on the 20th day of the month following the month of invoice in accordance with the terms and conditions contained in the Credit Application Form. Overdue amounts will attract interests at a compounding rate of 2.5% per month from the date the amount becomes overdue.

**CONTRACT FINISH DATE:** If the Purchaser has not taken delivery of the Total Quantity by the Contract Finish date, the Seller may at any time give notice to the Purchaser that it is ready, willing and able to deliver to the Purchaser the undelivered portion of the Total Quantity in which event the amount payable for the Total Quantity (less payments already made) shall immediately become due and payable. The Seller may elect to invoice the Purchaser for the undelivered portion notwithstanding the Product has not been delivered, and the amount of the invoice shall become payable in accordance with the Credit Application Form. Payments made by the Purchaser shall be credited to the account of the Purchaser against any monies payable or which may become payable by the Purchaser to the Seller under this agreement or otherwise. The Seller may after the Contract Finish date sell at the prevailing market price for the Product any undelivered portion referred to in this clause and give credit to the account of the Purchaser for the resale price received.

**STORAGE:** In the event that the Purchaser has not taken delivery of the Total Quantity by the Contract Finish date, the Purchaser shall pay to the Seller, without deduction, set-off, counterclaim, or cross demand of any kind, storage charges for any undelivered portion of the Total Quantity at the rate of twenty five cents (\$0.25) per tonne per day plus GST. Such storage charges are in addition to the invoiced value of the undelivered portion and shall be due and payable on the last day of each month.

**MIXING FEES:** If the Product is blended or otherwise combined with another product by the Seller, the Seller will charge a mixing fee in addition to the total contracted price for the Product under this agreement.

**COLLECTION COSTS:** The Purchaser will indemnify the Seller against all costs as set out in the Credit Application Form.

**AUTHORITY TO SIGN:** The person signing this agreement on behalf of the Purchaser warrants that he/she has the actual authority of the Purchaser to enter this agreement on its behalf (warranty of authority). If the Purchaser should subsequently assert in writing that the person who signed this agreement did not have the Purchaser's authority to enter this agreement such assertion shall be deemed to constitute a breach of warranty of authority by the person signing this agreement rendering that person liable to pay liquidated damages to the Seller notwithstanding that the Purchaser may also remain liable under this agreement. The quantum of such liquidated damages shall equal the amount or amounts payable but not paid by the Purchaser under this agreement, on the assumption that the Purchaser is bound by this agreement.

**QUALITY:** The Purchaser shall be deemed to have accepted the quality or condition of the Product delivered unless an objection as to quality or condition is made by the Purchaser in writing to the Seller within 5 business days of delivery. No claim for compensation based on any alleged defect in quality or condition may be made thereafter unless the nature of the defect in quality and condition was not able to be ascertained by reasonable inspection at the time the Product was delivered. GST: In addition to the contract price, GST at the appropriate rate is payable.

**SPLIT ACCOUNT:** Under a Split Account the liability of each party will be several.

**PERSONAL GUARANTEE:** Where a Guarantor has been nominated in the Credit Application Form, that Guarantor guarantees the obligations under this agreement of the Purchaser and of the person warranting to have the authority of the Purchaser to enter this agreement.

**TIME:** All stipulations set forth in the terms of trade as to "time" are of the essence.

**QUANTITY AND WEIGHT:** Unless otherwise stated, all quantities shall be expressed metrically and to the nearest one/one hundredth (1/100) of a metric tonne, and delivery weights shall be at weights specified in the weighbridge dockets of the Seller in respect of each delivery.

**CONVEYANCE AND DELIVERY INSTRUCTIONS:** The Seller shall have the right of access to the designated point of delivery for the purposes of delivering, inspecting or removing the Product.

**OWNERSHIP AND PASSING OF TITLE:** Unless otherwise specified by agreement in writing, title to the Product as well as risk for loss and/or damage shall remain with the Seller until the Product has been delivered to the Purchaser at the designated point of delivery.

**FACSIMILE / EMAIL:** The Seller and the Purchaser acknowledge and agree that the execution of a facsimile or and e-mailed copy of this agreement and the sending and/or transmission of that copy to the other party by e-mail or facsimile shall be sufficient to constitute offer and acceptance.

**ENTIRE AGREEMENT:** The Purchaser and the person signing on behalf of the Purchaser acknowledge that they have not relied on any statement or representation made by or on behalf of the Seller in entering this agreement and that the content of this document **TOGETHER WITH THE TERMS AND CONDITIONS CONTAINED IN THE CREDIT APPLICATION FORM (AS VARIED FROM TIME TO TIME BY THE SELLER)** constitutes the entire agreement between the parties. Variations to this agreement **MUST** be confirmed in email by the Seller to the Purchaser. Changes to the terms and conditions of the Credit Application Form are effective from the date the Seller publishes the new terms and conditions on the Seller's website.