



---

# Terms of Trade

---

THE BRICKERY.

STATE OF CLAD®

## Terms & Conditions of Trade

---

To the fullest extent legally possible, all dealings between NZ Brick Distributors Limited Partnership (Limited Partnership Number 2577554) and any Customer relating to any "Products", "Services" provided by NZ Brick Distributors Limited Partnership or transactions involving NZ Brick Distributors Limited Partnership are subject to the following: General Terms & Conditions of Trade ("Terms") unless otherwise agreed in writing.

**1. Payment:** a) Customers in respect of which NZ Brick Distributors Limited Partnership ("Company") has accepted an application for 20 day Credit are to pay within 20 days from end of month of invoice without set-off or deduction b) All other sales are to be paid in full on the same day as sale without set-off deduction c) credit card payments may incur an additional fee of up to 3% (which will be advised at the time of payment).

**2. Property and Security Interest:** a) Property in Products shall not pass until payment in full of all monies owed on any basis by the Customer. The Company reserves the right to take possession & dispose of Products in accordance with the Personal Property Securities Act 1999 ("PPSA"). b) Immediately upon delivery, the Customer accepts liability for safe custody of Products, c) Upon sale or disposition of any Products prior to full payment, the Customer agrees to deposit all proceeds in a separate bank account, agrees not to mix proceeds with any other monies and to hold all proceeds in trust for the Company & forthwith account to the Company therefore even if the Company may have granted any credit facility &/or time to pay, d) Until full payment, the Customer agrees (i) to keep all Products as fiduciary for the Company & store them in a manner which shows the Company as owner and (ii) only to sell Products in the usual course of its business (sale on terms, at cost or for less than cost shall not be "in the usual course") e) The Customer agrees that a certificate purporting to be signed by an officer of the Company identifying Products shall be conclusive evidence of the Company title of the Products. If the Customer considers the certificate is incorrect, the Customer can request that the Company provides details as to how it concluded that it held title in the relevant Products and the Company will take reasonable steps to provide that information. f) If the Customer uses any Products in any construction or project ("Project") the Customer agrees to hold such part of the proceeds of sale or disposition of the Project which equals the value of the Products used in the Project (and until payment, that part of the book debt commensurate thereto) upon trust for the Company until full payment of those Products and of all monies owed to the Company. g) The Customer is authorised to sell the Products in the ordinary course of business provided that such authority may be revoked by the Company at any time if (i) the Company deems the credit of the Customer to be unsatisfactory (ii) the Customer is in default in the performance of its obligations under these terms and conditions (iii) the Customer is deemed to be in default in accordance with clause 26, or (iv) the Customer enters into any composition or arrangement with its creditors. h) (i) the customer acknowledges and agrees that pursuant to this clause it grants in favour of the Company a security interest (as defined in and for the purpose of the PPSA) in the Products and the proceeds of the sale of those Products to secure payment of all amounts owing under the Agreement. (ii) The Customer undertakes to sign any further documents and/or provide any further information (which information the customer warrants to be complete, accurate and up-to-date in all aspects) which the Company may reasonably require to enable registration of a financial statement or a financial change statement on the Personal Properties Securities Register to perfect the security interest. (iii) The Customer undertakes not to register a financial change statement or a change demand in respect of the Products without the Company's prior written consent. (iv) The Customer undertakes to give the Company not less than fourteen (14) day's prior notice of any proposed change in the Customer's name and/or any other change in the Customers details (including, but not limited to, the change of address, email, and telephone number, trading name or business practice). (v) The Customer undertakes to pay all costs incurred by the Company to protect or preserve its security interest or its registration, recovery or attempted recovery of outstanding monies, and the enforcement of these Terms or the security interest contained in these Terms.

**3. Inspection and Limitation Of Liability:** a) In the event of a proven or accepted issue with Company Products or Services, the Company's liability to the Customer is limited to the cost of re-supplying the equivalent Products or Services again (at the Company's discretion), except for loss or expenses arising out of the Company's negligence or wilful default in which case the Company's liability to the Customer will be limited at the value of the Company's applicable insurance. b) The Customer must inspect all Products and Services within 14 days of delivery and/or completion as applicable and advise the Company in writing of any claimed shortages, defects, or other issues within that 14 day period. The Company shall not be liable for any claim of loss or expense arising which is made after 14 days from date of delivery of Product or completion of Services (or at all once Products have been unpacked, on-sold or otherwise used or applied), excluding loss or expenses arising from the Company's negligence or wilful default and/or any latent defect(s) not reasonably evident to the Customer. c) The Company will not be liable for any contingent, consequential, indirect, special, or punitive damage arising whether due to negligence or otherwise. d) Other than any terms or conditions in relation to that Product or Service ("Product Specific Terms") agreed between the parties and to the extent permitted by law, no other term, condition, agreement, warranty, representation or understanding whether express or implied other than in these Terms, is made or given by the Company.

**4. Exclusions:** a) No dealing between the Company & the Customer shall be or be deemed to be a sale by sample b) If the Company publishes material concerning its business or prices, anything so published which is incompatible with these Terms is excluded c) The Customer will rely on its own knowledge & expertise in selecting any Product or Services for any purpose.

**5. Consumer Guarantees Act 1993 ("CGA"):** a) The Applicant and Company acknowledge and agree that both parties are in trade, the Applicant is acquiring goods and services and such goods and services are supplied in trade, and the provisions of the Consumer Guarantees Act 1993 shall not apply to the supply of goods and services under these Terms. b) If the CGA is applicable to these Terms and cannot be contracted out of, clause 3(a) will apply, but subject to the CGA, to the intent that the maximum extent of the warranties and representations given by the Company in that instance are the guarantees implied under the CGA.

**6. Placement Of Orders:** a) If any dispute arises over any order (& including any question of identity, authority or telephone, computer or e-mail order) the internal records of the Company will be conclusive evidence of what was ordered unless otherwise determined under clause 24. b) Each order placed shall be & be deemed a representation made by the Customer at the time that it is solvent & able to pay all of its debts as & when they fall due.

**7. Purchase Price:** a) Unless agreed on separate pricing terms ("Other Pricing Terms"), all sales are made by the Company at its ruling price at time of delivery. b) Government imposts, Goods and Services Tax etc ("Imposts") will be paid by the Customer in addition to the ruling price or where applicable, the price set out in Other Pricing Terms. c) Any Other Pricing Terms, price list, estimate or quote provided by the Company excludes Imposts unless expressly noted thereon.

**8. Ability to Supply:** All delivery dates and times are an estimate only, and the Customer agrees that the Company will not be liable for any delay in supply or availability of any Products. The Company may allocate Products to Customers at its unfettered discretion: eg: if demand exceeds available supply.

---

**9. Delivery:** Subject to this clause 9, the Company may agree to deliver the Products at the request of the Customer. The parties acknowledge & agree a) the Company may elect to charge for any delivery of the Products to the Customer b) if the Company agrees to arrange delivery of the Products to the Customer, the Company will notify the Customer of the date of delivery. c) subject to clause 9d), The risk of the Products passes onto the Customer on delivery and the Customer shall be deemed to have accepted delivery & liability for the Products immediately when the Products are delivered to the premises or site (as agreed between the parties) whether attended or not d) a certificate purporting to be signed by an officer of the Company confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket e) the Company will not be liable for any consequential or indirect loss due to delay, failure or inability to deliver any Products or perform any Services f) once notified that Products are ready for collection or delivery, the Customer agrees to pay all costs of the Company in holding Products g) it shall provide reasonable and proper access to any site specified for delivery and Council approved crossing facilities h) to pay all damages or claims arising in the course of or after delivery whether to footpaths or any other property and including any fine or penalty and/or local authority claim to clean-up roads made dirty on departure i) in the event of a Force Majeure event as defined in clause 25, the Company may delay, cancel or suspend any delivery for any period or cancel any part of any agreement for sale without liability to anyone.

**10. Other Terms & Conditions:** No terms & conditions sought to be imposed by the Customer upon the Company shall apply, unless otherwise agreed in writing.

**11. Severability:** Any part of these Terms may be severed without affecting any other part.

**12. Interest** will be charged on overdue accounts at the 90-day New Zealand bank bill rate plus 3% per annum.

**13. Products and Services:** a) The Company disclaims any responsibility or liability relating to any Products or Services i) made or performed to designs, drawings, specifications, procedures &/or other instructions or with materials which are provided or approved in part or in full by or on behalf of the Customer ii) utilised, stored, handled or maintained incorrectly or inappropriately by the Customer. b) The Customer agrees to check all Products and Services for compliance with all applicable standards & regulatory bodies before use, on-sale or application & to use or apply same in accordance therewith, with all manufacturers and/or the Company's Product Specific Terms, recommendations & directions as well as with good commercial practice. c) Due to variations in colour and texture of materials (including natural materials) used in manufacture, no warranty, condition or guarantee is given by the Company that any Products shall correspond (in glaze, colour, texture, appearance, blend or otherwise) with any sample, display or any previous Products sold or displayed or any of the batch of similarly described Product. d) The Company shall not be liable for any claim, loss or expense on any basis, which may be sustained or incurred by any person by reason of any alleged variation under clause 13c), between the Products delivered and Products ordered. e) Products may be damaged in transit or otherwise be or become unusable, so an allowance of +/- 5% is agreed.

**14. Recovery Costs:** The Customer will pay all the direct costs & expenses (on a full indemnity basis) incurred by the Company or its solicitors, legal advisers, mercantile agents & other parties acting on the Company's behalf in respect of any breach by the Customer of its obligations to the Company.

**15. Default:** a) Upon any default or breach by the Customer of these Terms or any other dealing or arrangement with the Company, the Company may at its discretion (and without limitation) retain all monies paid, call-up any monies unpaid, cease further deliveries, recover from the Customer all loss of profits arising & take immediate possession of any Product held by the Customer, without prejudice to any other rights & without being liable to any party b) The Customer agrees not to commence or continue or permit to be commenced or continued through it any suit or action against the Company whilst the Customer is in default under any part of these Terms or in any of its dealings with the Company.

**16. Customer Restructure:** The Customer will notify the Company in writing within 7 days of any change in its structure or management including any change in director, shareholder or change in partnership or trusteeship and/or of the sale of any part of its business. The Customer will give the Company 14 days prior written notice of any proposed change of its name.

**17. Jurisdiction:** The Agreement is to be governed by, and construed in accordance with, New Zealand law and the Customer agrees to submit to the nonexclusive jurisdiction of the Courts of New Zealand.

**18. Credit Limit:** If the Company grants any credit facility or nominates any credit limit, this is an indication only of its intention at the time. The Company can vary or withdraw any credit facility at its discretion by providing a 2 working day notice, without liability to the Customer or any other party. If you are required to repay any Outstanding Amount under the credit facility, we will give you a reasonable time to do so.

**19. Waiver:**

- a. Waiver of any right arising from a breach of these Terms must be in writing and signed by the party granting the waiver.
- b. A failure or delay in exercise, or partial exercise, of a right or power arising from a breach of these Terms does not result in a waiver of that right or power.
- c. Any waiver by a party of any breach, or failure to exercise any right, under these Terms will not constitute a waiver of any subsequent breach or continuing right.

**20. Notice:** The Company will notify the Customer by providing 10 working days notice of any change to these Terms. If the Customer does not agree with the changes notified, the Customer has the right to terminate the Agreement within the 10 working days notice period. The Customer shall be bound by any changes to these Terms agreed with the Company, despite other purported, pre-existing or conflicting terms or conditions. If the Customer notifies the Company that they do not agree to the changes to the Terms, the Customer will be required to repay any Outstanding Amounts when that Outstanding Amount is due and payable, and the Company will not be required to provide further credit or contract with the Customer from the date the Customer notifies it does not agree to these changes.

**21. Indemnity:** a) The Customer indemnifies the Company against any claim or loss arising from or related to any dealing with the Company or anything arising there from, including any liability arising as a result of any default as described in clause 15 or otherwise, except where the liability arises as a result of the fraud, negligence or wilful misconduct of the Company. b) Nothing in these Terms will derogate from the Company's right to maintain any action against the Customer for any part of any unpaid purchase price, for any monies owed to the Company for any damages loss, liability or any other cause of action.

---

**22. PPSA – Contracting Out:** The Customer: a) agrees that nothing in sections 114(1)(a), 122 133 and 134 of the PPSA shall apply to the Agreement; b) waives its right to: (i) receive a statement of account under the section 116 of the PPSA; (ii) receive notice of a proposal to take all collateral in satisfaction of a default in its obligations under the security agreement under section 120 (2) of the PPSA; (iii) to obtain to a proposal to sell the property under section 121 of the PPSA; (iv) not to have goods damaged or be inconvenienced should the Company remove the accession under section 125 of the PPSA; (v) not to be reimbursed for damage caused when a secured party removes an accession under section 126 of the PPSA; (vi) refuse permission to remove an accession under section 127 of the PPSA; (vii) receive notice of the removal an accession under section 129 of the PPSA; (viii) apply to court for an order concerning the removal of an accession under section 131 of the PPSA; and (ix) receive a copy of the verification statement confirming registration of financial statement or financing change statement relating to the Company interest in the Products.

**23. Partial Delivery/Forward Orders:** The Customer agrees that if any forward order is placed a) to pay for so much of any order as is from time to time invoiced by the Company b) if there is a delay in delivery within the agreed period between the parties, or failure to fulfil any part of any order or delivery shall entitle the Customer to cancel the order and receive any monies paid to the Company for the cancelled order.

**24. Dispute Resolution:** a) A party must, as soon as reasonably practicable, give the other party notice of any dispute arising in respect of, or in connection with, these Terms and/or the Terms of Credit (if applicable). The parties will both discuss the dispute in good faith with a view to resolving it by mutual agreement as soon as practicable after receipt of notice of the dispute. b) If the parties fail to resolve the dispute within a reasonable time, either party may refer the dispute to the New Zealand Disputes Tribunal.

**25. Force Majeure:** a) Neither party will be in default or in breach of any contract as a result of Force Majeure. Force Majeure means anything or event beyond the reasonable control of the relevant party including, but not limited to any strike or lock-out, natural disaster, terrorist attack, acts or decisions of any governmental, public or judicial authority. b) The affected party of a Force Majeure must notify the other party as soon as practicable and if the affected party cannot fulfil its obligations under this Agreement within 10 working days of notification, the other party shall have the right to terminate this Agreement.

**26. Insolvency:** a) If the Customer commits or is involved in any act of insolvency, it agrees it shall be deemed in default under these terms b) An act of insolvency is deemed to include bankruptcy, liquidation, receivership, administration or the like.

**27. Precedence:** These Terms will apply to all the sale of Products or Services supplied to the Customer by the Company except to the extent they are inconsistent with any terms set out in any Terms of Credit, Product Specific Terms or Other Pricing Terms agreed between the parties. Where there is inconsistency between the Terms of Credit, Product Specific terms or Other Pricing Terms, the terms under the Other Pricing Terms will prevail. Where there is inconsistency between the Terms of Credit or Product Specific Terms, Product Specific Terms will prevail.

**28. Product Specific Terms:** a) There may be Product Specific Terms or conditions relating to any specific Products (such as tiles, pavers and/or linkwalls) agreed between the Company and the Customer in addition to this Agreement which will form part of any dealings with the Company. b) Facing bricks will have one face & one header unless otherwise specified & agreed in writing. c) Products sold as "first grade" will comply with the Company's definition of first quality. d) Products sold other than as "first quality" (as notified to the Customer at the time of sale) may be imperfect or damaged and no warranty as to quality or fitness for any purpose is given or to be implied.

**29. Adverse Environments:** The Customer acknowledges that Products (especially sandstock, extremely hard, glazed or softer Products) can be adversely affected by severe environments, temperature extremes, frost, wind borne salt or abrasives which cause flaking, eat-away glaze or finish and reduce expected operating life especially in seaside locations.

**30. Privacy Policy:** The Company Privacy Policy is available at NZBD.net.nz.