

## TERMS OF TRADE

### 1 DEFINITIONS

- (a) "Quote" means the quotation provided by Balcrom Ltd for the supply of Products.
- (b) "Products" means all goods and materials provided by Balcrom Ltd to the Customer under the Contract.
- (c) "Price" means the price agreed between the Parties as specified and quantified in the Quote and is expressed exclusive of GST.
- (d) "Balcrom Ltd" means Balcrom Ltd Limited, its agents, successors or assigns.
- (e) "Customer" means the person(s) or entity(ies) named as the Customer on the Quote.
- (f) "Parties" means Balcrom Ltd and the Customer.

### 2 CONTRACT

- 2.1 These terms and conditions form part of the contract documents between you ("the Customer") and Balcrom Ltd Limited ("Balcrom Ltd"). The following documents also form part of the Contract:
  - (g) the signed quotation form ("the Quote"); and
  - (h) any project specific clarifications attached to (and forming part of) the Quote; and
  - (i) the credit account application form (if any).
- 2.2 In the event of any conflict between this contract and any other terms agreed between Balcrom Ltd and the Customer, the terms and conditions set out in this contract shall take precedence.
- 2.3 Where a credit account application form has been provided, quotes are only capable of acceptance by the Customer if the Customer's credit application has been approved by Balcrom Ltd, or in the event that the credit application has not been approved, if the Customer pays the amount of the Quote to Balcrom Ltd in full at the time of acceptance of the Quote. Balcrom Ltd may at any time in its sole discretion withdraw the provision of credit to the Customer within 14 days' notice.
- 2.4 Any work that is undertaken by Balcrom Ltd prior to acceptance of the Quote by the Customer will be solely on the basis of these terms and conditions.
- 2.5 All Quotes are valid for 30 days, unless withdrawn prior to this in writing. Balcrom Ltd reserves the right to submit a new Quote if acceptance is received outside of the 30-day period.

### 3 SPECIFIC ITEMS INCLUDED AND EXCLUDED FROM QUOTE

- 3.1 The Quote is based on receipt of "for construction drawings" by Balcrom Ltd from the Customer as soon as possible after acceptance of the Quote.
- 3.2 The Quote is based on the use of standard Balcrom Ltd designs and details. Dimensional tolerances, detailing and arrangement of components will be as per standard Balcrom Ltd details based on the information supplied to Balcrom Ltd at the date of the Quote.
- 3.3 Balcrom Ltd typically designs its floor units as simply supported with designs for gravity loads only. Balcrom Ltd is not responsible for the displacement compatibility between precast floor elements and the main structure. This remains the responsibility of the Customer or its project design engineer. 75mm seating is typically assumed by Balcrom Ltd in all Quotes unless stated otherwise.
- 3.4 The Quote is subject to confirmation by Balcrom Ltd after preparation of final working drawings.
- 3.5 Any change to the Quote from a change in the original designs and details will be treated as a variation under clause 8.
- 3.6 Balcrom Ltd has allowed to cast-in any lifting eyes it may require for its own use. These are available for use by others provided they are used in accordance with Balcrom Ltd's instructions allowing for actual embedment lengths and concrete strengths. Balcrom Ltd has made no allowance for any other inserts, loose items lifting or rigging requirements that may be required by others.
- 3.7 No allowance has been made for the design and detailing of the connections between precast elements and the overall structure, which is not Balcrom Ltd's responsibility.
- 3.8 No allowance has been made for unloading the Products, which is the Customer's responsibility to arrange.
- 3.9 No allowance has been made for works such as special surface finishes, treatments, coatings, waterproofing, rebates, recesses, penetrations, holes, cast in items, fixings or any other works that are not clearly detailed on the drawings, supplied for pricing and itemized in the Quote. Any additional work that is required will be treated as a variation under clause 8.
- 3.10 No allowance has been made for the removal of lifting eyes or filling recesses associated with them.
- 3.11 No allowance has been made for remedial work to units manufactured by others, unless prior approval is given by Balcrom Ltd in writing.
- 3.12 Unless otherwise specified, further preparation work will be required by others if the surface is to be painted.
- 3.13 Balcrom Ltd does not accept any liability for damages for late completion or delivery whatsoever, whether liquidated or otherwise and regardless of whether the Customer has any such liability to another party.

### 4 PRICE FLUCTUATIONS

- 4.1 Balcrom Ltd has submitted this Quote based on current labour rates, material costs, general overheads and exchange rates. Any subsequent increases in price or addition to costs resulting in Balcrom Ltd incurring additional expense under this contract will be added to the price provided for under the Contract. Any such increase will not be treated as a variation. Evidence of any cost increase can be provided, if required.

### 5 WORK PROGRAMME

- 5.1 All Quotes are subject to a programme for supply which is agreed between the Parties at the time of placing the order.

- 5.2 The programme must allow reasonable time for completion and/or making good of the Product before they leave Balcrom Ltd's yard. Once Balcrom Ltd's shop drawings have been received and approved, Balcrom Ltd will require sufficient time to complete procurement, mould design, set up and commence manufacture.
- 5.3 Balcrom Ltd will make all reasonable endeavours to satisfy the construction programme, however prior orders must take precedence.
- 5.4 The Programme will include key events critical to Balcrom Ltd's ability to manufacture and deliver the Products.
- 5.5 In the event that the parties are unable to agree on the programme within a reasonable period of time, Balcrom Ltd will be entitled to cancel the contract without any liability to the Customer.

## 6 MEASUREMENTS

- 6.1 The Customer must check the dimensions, layout details and information shown on the Balcrom Ltd layout plan promptly on receipt of drawings.
- 6.2 Balcrom Ltd will not carry out or check site measurements and is not liable for any loss or damage resulting from any discrepancy between the plans and site conditions.
- 6.3 Balcrom Ltd reserves the right to delay the commencement of production until the return Balcrom Ltd's drawings signed by the Customer to confirm acceptance of the dimensions layout details and information shown on the drawings.
- 6.4 Delays in receipt of these signed drawings may affect the ability of Balcrom Ltd to meet any delivery schedules or construction programme, and Balcrom Ltd will not accept any responsibility for such delays.

## 7 PROPPING AND PRE-CAMBERS

- 7.1 The requirement for propping and pre-cambers will be shown on the shop drawings. The Customer must ensure that propping is in place prior to landing the floor units. Balcrom Ltd can advise on propping requirements but will not be responsible for prop designs.
- 7.2 Typically floor units will have a pre-camber, dependent upon spans and loads. The Customer, its contractor or representative must make allowance for cambers in the topping concrete.

## 8 ACCEPTANCE OF PRODUCTS

- 8.1 Where the Quote includes delivery, acceptance of the Products is deemed to take place at such time as the Customer's lifting device is attached to the Products and responsibility for the Products shall then pass to the Customer.
- 8.2 Where the Quote is ex-factory, acceptance of the Products is deemed to take place when the unit is loaded on transport under Balcrom Ltd's crane at Balcrom Ltd's yard. Special dunnage or transporting or lifting equipment shall be supplied by the Customer. All carriers of the Products not associated with Balcrom Ltd are deemed to be agents of the Customer of the purposes of this contract.

## 9 PAYMENT, INTEREST AND RETENTIONS

- 9.1 Balcrom Ltd reserves the right to require a deposit as set out in the signed quotation form, which will be deducted from the final payment claim or invoice.
- 9.2 Payment claims and/or invoices will be submitted by Balcrom Ltd on monthly basis and may be submitted prior to the end of that month.
- 9.3 Payment claims and/or invoices may include work done or materials purchased prior to commencing deliveries of the Products, any Products wholly or partially manufactured (whether delivered to site or stored off site) and any price fluctuations and variations whether or not they have been finally approved.
- 9.4 Payment in full without any retention, deduction, set-off or counterclaim must be made so that it is received no later than the 20th of the month following the date of the payment claim or invoice.
- 9.5 Balcrom Ltd may charge the Customer interest on the outstanding balance of any overdue account until full payment is made. Interest will be charged at a rate of 2% per annum compounding monthly.
- 9.6 The Customer shall also be liable for solicitor/client, and any other costs incurred by Balcrom Ltd in attempting to recover payment from the Customer.
- 9.7 Contra charges will not be accepted. If agreed between the parties, a monetary bond may be arranged in a form acceptable to Balcrom Ltd. No retentions will be given to the Customer.
- 9.8 Payment by the due date is a condition precedent to subsequent manufacture and/or deliveries. All overdue debts with your company must be agreed before we are to start production of a new job
- 9.9 For the purposes of payment only, where the Customer requires delivery of Products to be withheld, the Products shall be deemed to have been delivered when they are in a deliverable state. The Customer shall be liable for costs associated with storage in addition to handling and other costs incurred as a consequence of their not adhering to the original or mutually amended delivery schedule.
- 9.10 If payment is not received in full by the due date, Balcrom Ltd may give written notice of its intention to suspend manufacture and/or supply of the Products and to (without prejudice to its other rights and remedies) suspend work if payment is not received within 5 working days after the date of the notice.
- 9.11 In the event that Balcrom Ltd suspends work under Clause 9.8, Balcrom Ltd:
  - (a) Is not in breach of contract; and
  - (b) Is not liable for any loss or damage suffered by the Customer, or by any person claiming through the Customer; and
  - (c) Is entitled to an extension of time to complete the contract, including for any such time as is reasonably required by Balcrom Ltd to re-establish itself onsite; and
  - (d) Retains its rights under the contract, including any right to terminate the contract; and
  - (e) May at any time lift the suspension, even if the amount has not been paid or the determination has not been complied with.

- 9.12 Nothing in these terms and conditions is intended to affect any rights that are otherwise available to Balcrom Ltd under the Contract and Commercial Law Act 2017; or enable the Customer to exercise any rights that may otherwise have been available to it under that Act as a direct consequence of Balcrom Ltd suspending work under this contract.
- 9.13 The right to suspend work under a contract ceases when the Customer pays the amount due in full or complies with the determination referred to above.

## 10 VARIATIONS

- 10.1 Any variation to this Quote must be agreed to in writing by the Customer and Balcrom Ltd prior to the variation works proceeding and/or the supply of services.
- 10.2 In the event that the parties are unable to agree such variations within a reasonable period of time, Balcrom Ltd will be entitled to invoice the Customer for any variation works carried out and/or services provided at a rate equivalent to Balcrom Ltd's standard charge rates for the same or similar works and/or services.

## 11 DELIVERY AND UNLOADING

- 11.1 The Customer must provide Balcrom Ltd with one week's notice of all delivery dates and times and final confirmation 36 hours prior to delivery.
- 11.2 All delivery dates and times are subject to agreement by Balcrom Ltd.
- 11.3 Balcrom Ltd shall have no liability for any loss, cost or damage arising from a failure to deliver on time.
- 11.4 Balcrom Ltd will not agree to any change to a delivery date or time if its prior commitments to other parties, or unavailability of plant, vehicles or personnel or any other reason, make it unreasonable or impracticable for Balcrom Ltd to do so using Balcrom Ltd's normal resources and procedures.
- 11.5 Because trucks may be mobilized or loaded prior to the day of delivery and charges may start accruing well in advance of the scheduled delivery time, changes to delivery requirements which are made on short notice may (at Balcrom Ltd's discretion) be treated as a variation and Balcrom Ltd's reasonable costs recovered from the Customer.
- 11.6 Delivery times are subject to loading out during our normal working hours, and are subject to the availability of suitable vehicles.
- 11.7 The Quote allows for deliveries during normal weekday working hours and subject to any legal restrictions. Balcrom Ltd will not be bound to accept any request for loading out or delivery outside normal weekday working hours, but if Balcrom Ltd does accept such a request the loading out or delivery may (at Balcrom Ltd's discretion) be treated as a variation under clause 8.
- 11.8 Oversize loads are subject to restrictions and may (at Balcrom Ltd's discretion) constitute a variation under clause 8.
- 11.9 The Customer is responsible for unloading trucks without delay.
- 11.10 Any costs incurred for truck waiting time will be additional to the Quote and will be charged to the Customer.
- 11.11 Where the Customer has requested that deliveries be postponed after production has commenced, Balcrom Ltd is entitled to submit payment claims and/or invoices as if the original delivery schedule applied, and the Customer must pay Balcrom Ltd in accordance with clause 4. Balcrom Ltd is entitled to charge additional costs for handling and/or storage where deliveries are postponed by the Customer.
- 11.12 If a delivery truck is to be driven off a public road, the Customer is responsible, at its own cost, for providing adequate access, clearances and road foundations.

## 12 OWNERSHIP

- 12.1 Ownership in the Products supplied will not pass to the Customer until the Customer has discharged all outstanding indebtedness (whether in respect of the Products or not) to Balcrom Ltd. Notwithstanding this, responsibility for the Products passes to the Customer when either the delivery truck leaves the public road to enter the building site, or when lifting hooks are attached to the unit, whichever occurs first.
- 12.2 Until all money due to Balcrom Ltd are paid, the Customer agrees:
- not to sell, charge or part with possession of the Products otherwise than in the ordinary course of its business;
  - to store the Products in such a manner that they are clearly identifiable as Balcrom Ltd's property; and
  - to hold the proceeds of the Products on trust for Balcrom Ltd, in a separate and identifiable account.

## 13 PERSONAL PROPERTY SECURITIES ACT 1999

- 13.1 Without limiting anything else in these terms and conditions, the Customer acknowledges that:
- this Contract creates, in favour of Balcrom Ltd, a security interest in all present and after acquired goods (being, for the avoidance of doubt, all the Customer's present personal property and after-acquired property except for any item of personal property which has not (or which is exclusively the proceeds of any item of personal property which has not) been supplied by Balcrom Ltd to (or for the account of) the Customer) to secure the payment by the Customer to Balcrom Ltd of any amount outstanding under the Contract; and
  - this Contract will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Customer; and
  - the Security Interest shall continue until Balcrom Ltd gives the Customer a final release.
- 13.2 The Customer undertakes to:
- promptly do all things, sign any further documents and/or provide any information which Balcrom Ltd may reasonably require to enable Balcrom Ltd to perfect and maintain the perfection of its Security Interest (including by registration of a financing statement);
  - give Balcrom Ltd not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Purchaser's address, facsimile number, trading name or business practice).

- 13.3 The Customer waives its right to receive a verification statement in respect of any financing statement relating to the Security Interest.
- 13.4 To the extent permitted by law, the Customer and Balcrom Ltd contract out of:
- (a) section 114(1)(a) of the PPSA; and
  - (b) the Customer's rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.
- 13.5 The Customer agrees that the Security Interest has the same priority in relation to all amounts forming part of the amount outstanding, including future advances.
- 13.6 The Customer grants Balcrom Ltd (or any person authorised by Balcrom Ltd) an irrevocable right to enter upon any premises where Balcrom Ltd believes the Products are located to inspect their condition or repossess the Products at any time. If the Products are located on premises that are leased, the Customer will obtain the landlord's agreement not to distrain against the Products and to allow Balcrom Ltd, or its duly authorised agents and employees, to enter onto the premises for the purposes of inspecting or repossessing the Products. Balcrom Ltd will not be liable to the Customer or any third party for the exercise of its rights under this clause.

#### **14 LIMITATION OF LIABILITY**

- 14.1 Return of the Products will only be accepted with Balcrom Ltd's prior approval.
- 14.2 If the Customer considers that there is a defect or damage resulting from Balcrom Ltd's work, the Customer must notify Balcrom Ltd of the defect or damage within 7 (seven) days of delivery so as to allow Balcrom Ltd to identify, verify and remedy the defect or damage.
- 14.3 Balcrom Ltd reserves the right to rectify any agreed manufacturing issue on site or in its yard.
- 14.4 If the Customer considers that it has a claim against Balcrom Ltd, the Customer will render a detailed account of such claim to Balcrom Ltd within 7 days of the delivery, failing which the Customer will be deemed to have accepted the Products and have no claim whatsoever against Balcrom Ltd.
- 14.5 Balcrom Ltd's liability in respect of defective Products is limited to the re-supply of the Products. Balcrom Ltd has no further liability or responsibility for any direct, indirect or consequential injury, loss or damage (including loss of profit) whatsoever and howsoever arising provided that this clause will not prevent a Customer, who is entitled to exercise any remedies under the Consumer Guarantees Act 1993 ("CGA"), from exercising such remedies.
- 14.6 The Customer indemnifies Balcrom Ltd against any liability for any direct, indirect or consequential injury, loss or damage arising out of any act or default or omission of, or any representation made by the Customer, or any of its employees or agents.
- 14.7 Balcrom Ltd's ability to supply the Products is subject to availability and supply of the necessary materials, services and labour. Balcrom Ltd will not be liable for any loss or damage caused by non-performance of this agreement resulting from any occurrence beyond the control of Balcrom Ltd such as, but not limited to, acts of God, fire, labour disturbances, breakdowns or inclement weather.
- 14.8 Despite anything else, any liability of Balcrom Ltd arising under the Contract, in tort, in equity or otherwise, will not exceed 3 (three) times the price of the Products in relation to which the liability has arisen.

#### **15 OTHER TERMS AND CONDITIONS**

- 15.1 This quotation does not allow for provision of a bond or any form of guarantee or warranty other than required by law. It does not allow for any insurance other than that provided by Balcrom Ltd's existing insurance policies, a summary of which will be provided if requested. Balcrom Ltd may at its option subcontract the whole or part of the work covered by the quotation.

#### **16 CONSUMER GUARANTEES ACT 1993**

- 16.1 If any of the Products are acquired by the Customer for business purposes, the Consumer Guarantees Act does not apply to the contract in respect of those Products or services.
- 16.2 Nothing in these terms and conditions are intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act except to the extent permitted by the Act.

#### **17 DEFAULT**

- 17.1 Balcrom Ltd shall be entitled to cancel the Contract in the following circumstances:
- (a) Any insolvency of any kind of the Customer;
  - (b) Assignment, transfer or sub-contracting any part of this contract by the Customer without the consent of Balcrom Ltd;
  - (c) Material breach of this contract;
  - (d) Persistent default under this contract;
  - (e) Death, personal or mental injury of the Customer resulting in him/her becoming incapacitated;
  - (f) Termination of any main contract by the Customer;
  - (g) Where the Customer suffers a change of ownership or effective control;
  - (h) Where the Customer gives a notice under s 162 of the PPSA.
- 17.2 In addition to having rights of termination, Balcrom Ltd may (without prejudice to any of Balcrom Ltd's other rights) in the circumstances set out above:
- (a) demand immediate payment of all or any part of any moneys (whether or not then due);
  - (b) suspend or terminate any trade account the Customer may have;
  - (c) without notice withhold deliveries of the Products ordered by the Customer;
  - (d) cancel the Terms and Conditions and seek damages; and/or

(e) enter upon the Customer's premises or any other place Balcrom Ltd believes the Products are stored, take possession of and sell the Products, even if Balcrom Ltd does not have priority over other persons having a Security Interest in the Products, and sections 108, 109 and 120 of the PPSA do not apply to the extent that they are inconsistent with this clause.

## 18 WAIVER

18.1 Any forbearance or delay by Balcrom Ltd in the enforcement of its rights or powers shall not constitute a waiver.

## 19 FORCE MAJEURE

19.1 If Balcrom Ltd by reason of any matter beyond its control including, without limitation to, any act of God, fire, unavailability and/or delay in the supply of equipment, is unable to perform in whole or in part any obligation under the contract, Balcrom Ltd shall be relieved of that obligation for the period that it is not reasonably able to perform and shall not in any way be liable to the Customer in respect of such inability.

## 20 DISPUTES

- 20.1 In the event of a dispute between Balcrom Ltd and the Customer concerning a matter arising from the Contract, the parties agree that either of them shall have the right to request that the matter is referred to mediation.
- 20.2 Balcrom Ltd and the Customer shall endeavour to agree on a mediator. In the event that the parties are unable to resolve their dispute by mediation, the parties shall refer the dispute to the appropriate Court or proceed to adjudication pursuant to the Construction Contracts Act 2002.
- 20.3 If the matter is referred to adjudication and the Customer is the owner of the construction site or the owner is an 'associate' of the Customer within the meaning of the Construction Contracts Act 2002, Balcrom Ltd may request the adjudicator place a charging order on the title of the property.

## 21 PRIVACY

- 21.1 All emails, documents, images or other recorded information held or used by Balcrom Ltd is Personal Information as defined and referred to in clause 21.2 and therefore considered confidential. Balcrom Ltd acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Balcrom Ltd acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Balcrom Ltd that may result in serious harm to the Customer, Balcrom Ltd will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 21.2 The Customer authorises Balcrom Ltd or Balcrom Ltd's agent to:
- (a) access, collect, retain and use any information about the Customer;
    - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by Balcrom Ltd from the Customer directly or obtained by Balcrom Ltd from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 21.3 Where the Customer is an individual the authorities under clause 21.2 are authorities or consents for the purposes of the Privacy Act 2020.
- 21.4 The Customer shall have the right to request (by e-mail) from Balcrom Ltd, a copy of the Personal Information about the Customer retained by Balcrom Ltd and the right to request that Balcrom Ltd correct any incorrect Personal Information.
- 21.5 Balcrom Ltd will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.6 The Customer can make a privacy complaint by contacting Balcrom Ltd via e-mail. Balcrom Ltd will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at <http://www.privacy.org.nz/comply/comptop.html>.

## 22 REVIEW OF TERMS

22.1 Balcrom Ltd reserves the right to amend its standard terms and conditions any time, and from time to time. The change in the terms and conditions will take effect from the date on which Balcrom Ltd gives notice to the Customer of such change.