



# **Terms of Sale**

## **Effective 1<sup>st</sup> August 2009**

These Terms of Sale Will be effective from 1<sup>st</sup> August 2009



## Definition and Inconsistency

1. In these Terms of Sale  
“Terms” means these Terms of Sale (including the Special Terms applicable to the type of goods being supplied);  
“Company” means Excel Concrete Pty Ltd (ABN 07 010 891 773);  
“Customer” means the customer placing an order and any agent or representative of that customer.
2. Placing of an order with the Company by the Customer for goods and/ or services indicates acceptance by the Customer of these Terms for the provision of those goods and/ or services. In the event of any inconsistency between these Terms and any terms and conditions on the Customer’s order, the Customer agrees that these Terms shall prevail.

## Quotations and Prices

3. Quotations are open for acceptance by the Customer for 30 days from the date of quotation.
4. All prices quoted are strictly net of all discounts. Any goods and services tax (GST) or other similar government taxes, if applicable, are additional to the quoted price.

## Delivery and Surcharges

5. All prices are for supply, delivery and/ or installation, as applicable, during the Company’s business hours, Monday to Friday, unless otherwise quoted in writing. Work by the Company outside of these hours may incur a surcharge. The Customer should contact their local Company sales office for surcharge schedules.
6. Unless the quoted price is inclusive of delivery to a nominated delivery site, the Customer will be charged for delivery
7. A waiting time or hourly hire surcharge may apply when a delivery vehicle is unable to unload promptly and without delay upon arrival at the delivery site.
8. A minimum load surcharge may apply for delivery of loads smaller than the minimum load size for delivery of each particular type of goods. The Customer should contact its local company sales office for details and rates of all surcharges.
9. Goods will be delivered to the roadside adjacent to the delivery site. If at the Customer’s request, the delivery vehicle leaves the road and enters the delivery site to unload, the Customer is responsible for providing suitable and safe access for the Company delivery vehicle and Company agents and contractors. In addition the Customer agrees to indemnify the Company and Company agents and contractors for all damage and injury to any person and to any public or private property which may result including any costs associated with enabling the delivery vehicle to leave the site, and the cost of any returned product as a result of the Customer failing to provide suitable and safe access to the delivery site.
10. The Customer must be present at the delivery site and must sign the Company delivery docket to acknowledge that the products and quantities described in the delivery docket have been delivered and comply with the Customer’s order and that the Customer also accepts any applicable delivery surcharges.
11. Where the Customer does not sign or is not available to sign the delivery docket, the signature of the driver on the delivery dockets shall be prima facie evidence of delivery to the Customer of the products and quantities described on the delivery docket including any applicable surcharges.
12. If the Customer is not present at the delivery site, the goods may be unloaded at that location, in which case the Company will no longer be responsible for loss or damage to the goods.
13. If the goods are delivered on pallets, the pallets remain the property of the Company.

The Customer may be charged for such pallets but the Company will give a credit when the pallets are returned in good condition.

## **Payment**

14. Unless prior arrangements for credit have been made, payment for goods and/ or services is due in full before delivery. Where there is more than one load to be delivered, full payment must be made prior to the unloading of the first delivery vehicle. Payment for surcharges must be made at the time they are incurred.
15. Payment terms for all credit accounts are as advised to the Customer at the time the credit account is opened, being either "Net 30 days" (meaning the Company must receive payment in full on or before the 1st working day of the month following the date of supply) or "7 days from date of invoice" (meaning the Company must receive payment in full within 7 days of date of invoice). Any variation to these payment terms must be agreed in writing by the Company.
16. Acceptance by the Company of any late payment by the Customer or the Customer exceeding the credit limit set by the Company shall not amount to a waiver by the Company of its right to payment "Net 30 days" or "7 days from date of invoice" as applicable, nor is it an agreement to provide credit other than in accordance with these Terms.
17. The Company may require the Customer to provide security for payment in a form acceptable to the Company prior to the supply of goods and/ or services.
18. The Customer is not entitled to withhold any payment by way of retention unless the terms and conditions of the retention are agreed to in writing by the Company prior to supply.
19. The Customer must pay the Company the cost of any bank fees arising from dishonoured cheques paid by the Customer to the Company, and must pay an administrative charge and for any legal or other debt collection costs incurred by the Company.
20. The Customer must notify the Company in writing within 7 days of any change in the beneficial ownership of the Customer.
21. The Company can vary or withdraw any credit arrangements at any time and without liability whatsoever to the Customer or any party claiming through the Customer.
22. The Company may charge the Customer interest on overdue amounts at the Reserve Bank of Australia's large business variable indicator rate (Reserve Bank Rate). The effective Reserve Bank Rate will change twice yearly as follows:
  - a) Reserve Bank Rate effective 1 April to 30 September = Reserve Bank Rate published for previous February;
  - b) Reserve Bank Rate effective 1 October to 31 March = Reserve Bank Rate published for previous August.


Where interest is charged, it will be calculated monthly on amounts outstanding from the date on which they were due and payable, until the Company receives full payment of the outstanding amounts.

## **Risk**

23. The Customer will become responsible for loss of or damage to the goods immediately upon delivery of the goods to the nominated delivery site or to a carrier nominated by the Customer.

## **Title**

24. Goods supplied to the Customer remain the property of the Company until payment in full is received by the Company. The Company acknowledges that until full payment is made, the Customer holds the goods as bailee of the Company and that a fiduciary

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- relationship exists between the Customer and the Company.
25. Until payment is made, the Customer shall hold the goods in such a manner that they are clearly identifiable as the product of the Company. The Customer acknowledges that if it sells any of the Company's goods, it sells the goods as a fiduciary agent of the Company provided that such sales shall not give rise to any obligations on the part of the Company.

### **Installation**

26. For goods supplied to a Customer who is undertaking the installation of those goods, the Customer agrees to indemnify the Company against any liability the Company may incur as a result of the failure of the Customer to follow generally accepted good practice, or due to a lack of ability, expertise, or skill with the particular type of goods being installed.

### **Dispute**

27. If the Customer believes that the goods and/ or services supplied do not conform with the order placed or that the price charged does not conform with the quotation given by the Company, the Customer shall notify the Company in writing as soon as practical, detailing the way in which the goods or price do not conform.
28. Failure to give such notification within seven days of the date of supply or date of invoice (as applicable) shall raise the inference against the Customer that the goods are in accordance with the order and quotation.
29. The Customer shall be deemed to have accepted the goods as supplied if it fails to keep the goods in the condition they were in when supplied or declines a reasonable request from the Company to inspect the goods.

### **Warranties**

30. The Company warrants that the goods delivered are those specified in the delivery docket and the goods delivered are free from defects in material and workmanship except such defects as are normally regarded as being commercially acceptable.
31. All other warranties which would be imported into these Terms by statute are negated except to the extent that such negation is specifically forbidden by statute.

### **Limitation of Liability for Breach of a Condition or Warranty**

32. Pursuant to section 68A of the Trade Practices Act 1974 the following clause applies in respect of any of the goods and/or services supplied under this contract which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this clause will not apply if the Customer establishes that reliance on it would not be fair and reasonable.
33. The Company's liability for breaches of express or implied conditions and warranties, other than the warranty as to title, is limited to any one of the following as determined by the Company: the replacement of the goods or the supply of equivalent goods; or the repair of the goods; or the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired. The Company will not be liable for any damage arising out of or in connection with, special, consequential, direct or indirect loss, damage harm or injury suffered or incurred as a result of such a breach unless such liability is imposed on the Company by the Trade Practices Act 1974.
34. In addition to Trade Practices Act 1974, the limitations of the Company's liability in respect of breaches of express or implied conditions and warranties as expressed in the previous clause shall be varied to the extent permitted by relevant State and territory legislation covering sale of goods and consumer protection.



### **Termination and Suspension**

35. If the Company is not satisfied as to the Customer's ability to pay for the goods and/ or services, it may suspend or terminate supply and shall not be liable in any way for the claim, damage, expense or cost arising from the suspension or termination and monies then outstanding by the Customer shall immediately become due and payable.

### **Agreement**

36. These Terms, the quotation (if any) and any other documents specified in the quotation, form the agreement between the Company and the Customer and any variations, alterations or additions must be acknowledged in writing by the Company.
37. The Company may make partial deliveries of the goods ordered and invoice the deliveries separately. The supply of goods and/ or services in more than one delivery shall be subject to separate agreements for the sale of each delivery.

### **Severance**

38. In the event that it is held that one or more of these Terms are not enforceable, the remaining terms shall apply.

### **Force Majeure**

39. Unless otherwise stated in the quotation, penalties for time delays by the Company will not apply. In the event that there is failure to deliver, or any time delay in delivery, commencement of site works or completion of site works due to weather, fire, labour, dispute, strike or other cause whatsoever beyond the Company's control or due to the inability of the Company to obtain raw materials from the source expected by the Company:
- a) The Company will not be liable for any loss or damage sustained by the Customer or by any other person by reason of any such delay, and
  - b) The Company will be entitled to suspend deliveries for such period as it may think fit or terminate the agreement immediately after suspending deliveries and shall not be liable for any loss or damage sustained by the Customer or by any other person by reason of such suspension or termination.

### **Privacy Policy**

40. Personal information provided by the Customer to the Company may be disclosed elsewhere within the Company. The Company will use this information to manage its business dealings with the Customer, for example:
- to provide the Customer with the products or services the Customer has requested;
  - to assess the Customer's credit worthiness, where relevant;
  - to manage the Customer's payments or accounts;
  - to inform the Customer of the Company's products and services including by electronic means;
  - To comply with the Company's legal obligations,
- and may supply the Customer's information to contractors and advisors that help the Company to do this. Individuals may access personal information held by the Company about them, subject to the federal Privacy Act. For more information, please refer to the Privacy Statement of the Holcim group of companies in Australia (which includes the Company) at [www.holcim.com.au](http://www.holcim.com.au)





### **Special Terms applying to the sale and delivery of Pre-Mixed concrete**

41. Unless otherwise stated in the quotation, prices are based on “Normal Class Concrete” as specified in the current issue of Australian standard AS1379 (Specification & Supply of Concrete) and having a nominal slump not exceeding 80mm and using a nominal 20mm maximum size aggregate. If the Customer requires a slump not exceeding 80mm or aggregate with the maximum size other than 20mm, a surcharge may apply.
42. The Company reserves the right to charge for return cartage, handling and disposal costs for:
  - a) Any pre-mixed concrete ordered of which the Customer does not accept delivery,
  - b) Pre-mixed concrete which is returned from the job site due to the Customer being unable to use the full quantity ordered,
  - c) Pre-mixed concrete rejected because the time between batching and discharge is greater than the time permitted by AS1379 or the specification that covers the project being supplied, provided that the delay was not caused by the Company.
43. Unless otherwise agreed in writing by the Company and the Customer, pre-mixed concrete will comply with AS1379. If compliance with AS1379 requires the addition of a cooling agent, a surcharge to the quoted price may apply.
44. Pre-mixed concrete is sold in the plastic state and the subsequent in-situ performance when set is greatly affected by the Customer’s work practices in handling, placing and curing of the concrete. The Company accepts no responsibility for the performance of pre-mixed concrete other than with respect to the criteria specified in AS1379, and in particular the Company accepts no responsibility:
  - a) if water or any other material is added to the plastic concrete before or after discharge from the delivery vehicle, unless there is prior approval by an authorised representative of the Company; or
  - b) if the Customer has specified a pre-mixed concrete mix design other than a mix design devised by the Company; or
  - c) for the surface texture and colour of hardened pre-mixed concrete, including where the aggregate in the concrete has been exposed by the Customer; and for any future colour change or oxidation of aggregates that have been exposed to the atmosphere.
45. ” Production Assessment” (as described as AS1379) will be carried out by the Company in accordance with AS1379. Where “Project Assessment” (as described in AS1379) is requested by the Customer, the Company will provide that service at the ruling price at the date of supply. If the Customer wished to perform independent tests at its own expense, the Company will only consider results of samples and tests performed in accordance with the current issue of AS1012 (Methods of Testing Concrete) and tested in NATA (National Association of Testing Authorities) approved laboratory.

### **Special terms applying to the sale and deliver if Quarry Products**

46. When quarry products are sold by volume rather than weight, the volume will be determined by the loose uncompacted volume as measured on the delivery vehicle at the time of loading at the quarry.
47. Upon request the Company will make the relevant quarry product available for inspections and sampling by the Customer prior to supply.
48. If quarry products are returned at the Customer’s request, the Company reserves the right to charge for return cartage, handling and disposal costs.
49. Unless otherwise agreed by the parties, quarry products covered by Australian Standard AS2758, will comply with this standard.





### **Special terms applying to sale and delivery of Precast & Structural Concrete Products**

50. When the concrete products quoted are described as “seconds”, “rejects” or “not first class” (NFC), the Customer acknowledges that any defects in these concrete products have been specifically drawn to the Customer’s attention prior to purchase.
51. Unless otherwise stated in the quotation, concrete products will be manufactured to the relevant definition of “finishes” set out in the current edition of Precast Concrete Recommended Practice of the Concrete Institute of Australia and to the relevant permissible tolerances specified in the current issue of Australian Standard AS3600 (Concrete Structures). If the Customer requires testing of the concrete product prior to delivery, the Company’s obligation will be limited to preparation and testing of standard concrete test cylinders to indicate concrete strength for the purposes of determining 28 day compressive strength, transfer of pre-stress or lifting of reinforced concrete components. The cost of additional or different tests including testing by a NATA (National Association of Testing Authorities) approved laboratory will be charged to the Customer.
52. Unless otherwise stated in the quotation, the Company will not be responsible for removing and/or patching cast-in fitting and/or holes provided for lifting or hoisting the concrete products supplied.
53. When the Customer has arranged the unloading of the concrete products from the delivery vehicle, the Company accepts no responsibility for any damage to the concrete products that occurs during unloading. The Company’s responsibility for the goods ceases upon attachment of any lifting device to the concrete products.
54. The Company will accept return, within 30 days of supply, (other than products manufactured to the Customer’s design) subject to the concrete products being clean, free from defects, of salable quality and the Customer arranging and paying return delivery to the Company. A restocking fee of 15% of the original invoice price may be charged.
55. Goods manufactured to a design provided by the Customer will not be accepted for return.
56. The specification of products manufactured by the Company to the Customer’s design must be supplied in writing by the Customer and the Company will be entitled to rely upon those specifications as being correct for the production of the shop drawings required for manufacture.
57. The Company at its option may submit shop drawings and details to the Customer for approval. When the Customer has given written approval that the drawings meet the Customer’s requirements, the Company will not be liable for any errors or divergences from the Customer’s specification, provided that the concrete products supplied are in accordance with the approved shop drawings.
58. The Company will not be liable for any delays caused by the Customer not providing any specifications required to prepare shop drawings or delays caused by the Customer failing to approve shop drawings.
59. The Customer submits to the non-exclusive jurisdiction of the courts and tribunals of Queensland in respect of any dispute of litigation concerning these Terms and the Customer’s account with the Company.

### **Special Terms applying to pre-mixed Concrete placing services including Housing Slabs**

60. Clauses 5-13, inclusive, of these Terms are not applicable to pre-mixed concrete placing.
61. All quotations will be in writing and will stipulate the scope of materials and work covered by the quotation.
62. The Company will not be obliged to perform any variations or additions to the quoted



- work unless the full cost of the variation has been agreed in writing by the Company.
63. The Customer will provide access to the site where the quoted work is to be undertaken. If work by the Company is required to obtain access, the cost of materials and labour involved will be identified in writing as a variation to the original quotation and when agreed by the Customer will be added to the previously quoted price. If the Customer does not provide access or agree to pay the cost providing access the Company may withdraw from the contract without liability to the Company.
64. Unless stated in the quotation, the following are not allowed for in the price:
- a) additional, increased or more difficult work or rework resulting from any of the following: subsidence, unsatisfactory or unsuitable base work, foundations, nearby structures or redesigns, latent conditions as defined in Australian Standard AS 2124 (General conditions of contract); and the location of or interference by any underground drain, pipe, tank, sewer, cable, tunnel, void, service or other underground work;
  - b) work not reasonably anticipated by the Company due to insufficient, absent or misleading information provided to the Company.
65. The Customer is responsible for:
- a) obtaining surveys and setting out and continuously maintaining survey pegs and levels necessary for the works;
  - b) obtaining all necessary permits, approvals and consents from any person or statutory authority; and
  - c) providing comprehensive and detailed location and marking on the site of any underground works.
66. The Company will not be liable for, and the Customer will indemnify the Company against, any damage or loss in connection with the work caused by:
- a) subsidence, landslip or other adverse geotechnical conditions;
  - b) unsatisfactory or unsuitable base work or foundations not constructed by the Company.
67. The Company may subcontract any portion of the works, but any subcontracting will not relieve the Company of any of its obligations to the Customer under the contract.
68. If at any time the Company advises the Customer against proceeding with any work on the basis that the Company expects inclement weather conditions to damage the work, and despite the Company's advice the Customer instructs the Company to continue, the Company will not be responsible for any damage caused to the work by any inclement weather conditions which occur subsequent to the Company's advice to the Customer not to proceed.
69. Materials used in the quoted works that are not manufactured by the Company will be sourced from reputable suppliers. To the extent permitted by law, the Customer shall not hold the Company liable for any defects in these other products but rely on the warranty (if any) offered by the manufacturer of those materials.

## **Excel Offices**

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