



# STANDARD CONDITIONS OF SALE

CONCRITE PTY LIMITED

## 1 DEFINITIONS

The following definitions apply unless the context requires otherwise.

*Concrite* means Concrite Pty Limited (ACN 000 795 166);

*Conditions* means these Standard Conditions of Sale;

*Customer* includes the purchaser of concrete from Concrite and (save where the expression is used in the context of the purchaser's obligation to pay Concrite) any agent, employee, sub-contractor or representative of such purchaser;

*Delivery* means the delivery to and discharge of concrete at Discharge Location;

*Delivery Address* means the address for delivery nominated by Customer at time of quotation;

*Discharge Location* means the point at Delivery Address where concrete is to be discharged from Concrite's delivery vehicle;

*Excess Water* means water added to concrete without Concrite's approval;

*Price* means the price payable for concrete, goods and services specified in Concrite's quotation to Customer or, in the absence of a quotation, at Concrite's ruling rates. Price may be varied by application of special charges.

## 2 AGREEMENT

2.1 These Conditions, the quotation (if any) and any other documents specified in the quotation form the entire agreement between Concrite and Customer with respect to which Concrite will supply concrete to Customer. They set out the only conduct relied on by the parties and supersede all earlier conduct by the parties. Any variations, alterations or additions to these Conditions must be acknowledged in writing by Concrite.

2.2 Where concrete is supplied in more than one load, a separate agreement shall be deemed in respect of each load.

## 3 QUOTATIONS AND ACCEPTANCE

3.1 Quotations remain open for acceptance by Customer for a maximum period of thirty (30) days and are based on Customer's indicated total quantity of concrete required as shown on Concrite's quotation. If the quantity of concrete required by Customer subsequently varies from that shown on Concrite's quotation, Concrite reserves the right to vary Price.

3.2 Orders for concrete based on oral quotations by Concrite are subject to these Conditions.

3.3 Placement of an order with Concrite by Customer, either orally or in writing, constitutes Customer's acceptance of these Conditions.

## 4 PRICE

4.1 Unless otherwise agreed, Price is for normal-class concrete of 90mm slump and 20mm aggregate size delivered to Delivery Address.

4.2 Price may be varied in accordance with clauses 3.1, 4.4, 5.7, 6.2, 7.8, 7.9, 8.2, 9.2, 10.2 and 11.2.

4.3 Price is strictly net of all discounts and tax, if applicable, is not included in Price.

4.4 Price is partly based on the costs to Concrite of transport, labour and materials at the time of quotation. After 30 days from the date of Concrite's quotation, Concrite may vary Price in accordance with any variation to any such cost prior to Delivery.

## 5 PAYMENT

5.1 Unless alternative prior arrangements have been agreed, payment of Price is due in full prior to the commencement of the discharge of concrete at Discharge Location.

5.2 Payment terms for all credit accounts is "Net 30 days" meaning Concrite must receive payment in full in respect of its invoices to Customer on or before the last working day of the month following the date of Delivery to which the invoices relate.

5.3 Acceptance by Concrite of any late payment by Customer, or Customer exceeding the credit limit set by Concrite, shall not amount to:

- (a) a waiver by Concrite of its right to payment "Net 30 days" pursuant to clause 5.2; or
- (b) an agreement to provide credit other than in accordance with these conditions.

5.4 Concrite may require Customer to provide security for payment in a form acceptable to Concrite prior to Delivery.

5.5 Customer shall pay Concrite the cost to Concrite of any bank fees arising from dishonoured cheques delivered by Customer to Concrite and also pay for any legal or other debt collection costs and expenses incurred by Concrite as a result of any breach by Customer of these Conditions on a full indemnity basis.

5.6 Concrite may vary, withdraw or terminate any credit arrangements with Customer at any time and without any liability whatsoever to Customer or any party claiming through Customer.

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- 5.7 (a) Any amount not paid by the due date bears interest from the date of delivery until payment at the interest rate prescribed by section 101 of the Civil Procedure Act 2005 plus one-eighth of that rate, compounded on a daily basis. All payments received by the Supplier from the Customer must be credited first against any interest due under this clause. The Supplier may, in its absolute discretion, waive its entitlement to interest.
- (b) The Customer agrees to indemnify the Supplier all of its legal costs and expenses, stamp duty where applicable, and any other expenses incurred by the Supplier in connection with recovery of, or securing, overdue amounts.
- (c) The Customer agrees to charge all their equitable interest in freehold or leasehold property. The Customer agrees to deliver to the Supplier within seven (7) days of demand, a properly executed Memorandum of Mortgage in a form approved by the Supplier which includes a covenant providing that interest may be charged on all outstanding monies at rates set from time to time by Section 101 of the Civil Procedure Act 2005 plus one-eighth of that rate, compounded on a daily basis and incorporating the covenants in Memorandum Q860000, registered at the office of the Registrar General in Sydney. The Customer consents to the Supplier registering a caveat against the title to any real property owned by the Customer. The Customer irrevocably authorises any Credit Manager or Solicitor nominated by the Supplier to be the Customer's true and lawful attorney to execute and register such mortgage and caveat and all other documents facilitative of registration.
- 5.8 Customer is not entitled to partly or wholly withhold payment of Price by way of retention. Customer shall waive any right of set off (legal or equitable) it may acquire against Concrete in connection with any matter arising out of any Deliveries.

## **6 CONCRETE STANDARD**

- 6.1 Subject to clause 6.3, concrete shall comply with Australian Standard AS 1379, "Specification and supply of concrete".
- 6.2 If Customer requires special-class concrete, or a slump in excess of 90mm, or aggregate with a maximum size other than 20mm, or air entrainment, special charges may apply.
- 6.3 Concrete does not undertake to add heating or cooling agents to control concrete temperature and hence does not undertake that concrete will meet the temperature limitations of AS 1379.
- 6.4 The volume of concrete delivered shall be calculated in accordance with AS 1379.

## **7 DELIVERY**

- 7.1 Customer shall give Concrete advance notice of estimated daily concrete requirements.
- 7.2 Any Delivery times made known to or agreed with Customer shall be an estimate only. Concrete shall:
- (a) use its reasonable endeavours to meet Customer's Delivery time requirements;
- (b) not be liable for any loss, damage or expense (direct or indirect) sustained by Customer arising from:
- (i) Concrete's failure to Deliver pursuant clause 7.6 or any failure to Deliver on any day resulting from plant or delivery equipment breakdown, traffic delay, labour dispute, strike, weather or other cause whatsoever beyond Concrete's control or to the inability of Concrete to obtain raw materials or equipment from the source expected by Concrete; and
- (ii) (notwithstanding 7.2(b)(i)) any delay in Delivery as a result of any cause.
- 7.3 In the event of Concrete's failure to Deliver due any of the causes stated in clause 7.2(b)(i), Concrete may suspend Deliveries for such period as it thinks fit or terminate concrete supplies to Customer (whether or not it has suspended Deliveries) and shall not be liable for any loss or damage sustained by Customer or by any other person by reason of such suspension or termination.
- 7.4 Any Delivery by Concrete shall be to the Discharge Location at the Delivery Address.
- 7.5 If Concrete's delivery vehicle is required to leave a public road to gain access to Discharge Location, Customer shall:
- (a) ensure that Concrete's delivery vehicle has a safe, suitable and unrestricted route between the kerbside adjacent to Delivery Address and Discharge Location; and
- (b) indemnify Concrete pursuant to clause 15.
- 7.6 Concrete may in its absolute discretion refuse to Deliver if it is of the opinion that Customer has failed to perform its obligations under clause 7.5(a).
- 7.7 If Concrete is unable to complete the Delivery of any part of an order, Customer shall accept such part of the order as Concrete is able to Deliver pro-rata at the same rates as the whole of the order agreed to be sold and on the same terms, including (without limitation) terms relating to payment by Customer.
- 7.8 If Customer does not accept Delivery of any concrete ordered by Customer and batched by Concrete, or if concrete is not Delivered due to a refusal by Concrete to Deliver pursuant to clause 7.6, a special charge will be payable calculated in accordance with the following:
- (a) the Price of the concrete not Delivered;
- (b) cartage costs; and
- (c) the cost of handling and disposal of that concrete.
- 7.9 Delivery shall take place between 6.30am and 4.00pm on Weekdays (not including Public Holidays) and 6.30am and 12.00pm on Saturdays. Any batching or Delivery of concrete outside these hours will result in a special charge.
- 7.10 Customer shall be present at Discharge Location at the time of Delivery. If Customer is not present, Concrete may complete the Delivery without obligation to have its delivery docket signed by Customer, whereupon:
- (a) Concrete shall have no liability to Customer in respect of any discrepancy between the concrete Delivered and Customer's order; and
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- (b) Customer acknowledges that any and all rights Customer has to reject the concrete referred to in the delivery docket are waived.

7.11 Prior to discharge of any concrete from Concrete's delivery vehicle, Customer shall check that the concrete description and quantity appearing on Concrete's delivery docket conforms with Customer's order placed with Concrete. Customer shall acknowledge receipt of the Delivery by signing Concrete's delivery docket. If:

- (a) there are any discrepancies between the products and quantities described in Concrete's delivery docket and Customer's order;
- (b) Customer disagrees with any discharge records in Concrete's delivery docket; and/or
- (c) Customer disagrees that the addition of any excess water referred to in Concrete's delivery docket has been done at Customer's request.

Customer shall record in writing full details thereof on Concrete's delivery docket prior to the departure of Concrete's delivery vehicle from Delivery Address.

7.12 Where Customer fails to carry out any or all of its obligations under either or both of clauses 7.10 and 7.11 Concrete's records shall be deemed conclusive evidence of:

- (a) Delivery to Customer of concrete which conforms with Customer's order for that concrete;
  - (b) any:
    - (i) addition of excess water to the concrete at Customer's request and risk; and/or
    - (ii) application of Delivery related special charges to the Price under the Conditions;
- referred to in Concrete's records.

7.13 Any changes made to any delivery docket by Customer without Concrete's prior written consent (other than in compliance with Customer's obligations under clause 7.11) shall be void and deemed to have no effect.

## **8 TESTING OF CONCRETE**

8.1 At the request of Customer, Concrete will endeavour (without obligation to Customer) to arrange and conduct project assessment testing of concrete supplied to Customer.

8.2 The costs of project assessment testing and reports (including the provision of production assessment reports) shall be payable by Customer at Concrete's then current ruling rates.

8.3 Any concrete testing not carried out or arranged by Concrete must be:

- (a) by sampling at the discharge chute of the agitator on Concrete's delivery vehicle;
- (b) performed in accordance with Australian Standard AS 1012; and
- (c) carried out by a laboratory which is accredited by NATA (National Association of Testing Authorities).

8.4 Copies of all reports not arranged by Concrete which are produced for project assessment shall be forwarded by Customer to Concrete as soon as they are available to Customer.

## **9 WAITING TIME**

9.1 An unloading time of 21 minutes per Delivery is allowed for unloading following arrival of Concrete's delivery vehicle at Delivery Address. If a Delivery exceeds 3 cubic metres of concrete, an additional 7 minutes for each cubic metre over 3 cubic metres of concrete Delivered is allowed.

9.2 Any period in excess of the time stated in clause 9.1 will be charged a waiting time special charge.

## **10 ADDITIONAL CARTAGE - SMALL LOADS**

10.1 Price is based on minimum individual Deliveries of 3 cubic metres of concrete.

10.2 An additional cartage special charge will be charged for Deliveries of less than 3 cubic metres of concrete.

## **11 PUMPED CONCRETE**

11.1 Customer must give prior notice to Concrete when concrete is to be placed by concrete pump.

11.2 Concrete may impose a special charge at its then current ruling rates for concrete supplied which is to be placed by non standard concrete pumping.

11.3 Due to variables beyond its control, Concrete does not warrant that concrete designed to be placed by concrete pump will pump in all circumstances.

## **12 SITE PRACTICES BY CUSTOMER**

Concrete shall not be liable for the failure of concrete to perform to any standard if:

- (a) excess water and/or any other material is added to concrete by or at the request of Customer before or after Delivery;
- (b) concrete is not placed and compacted within the time limit provisions of AS 1379; or
- (c) that failure is due to any or all of such site practices of Customer as are specified in clauses 15(a)(i) and 15(a)(ii) and/or any other act or omission of Customer.

## **13 WARRANTIES**

13.1 Subject to clause 7.12, Concrete warrants that the concrete Delivered is in accordance with the description on Concrete's delivery docket.

13.2 All other conditions or warranties which would be implied into these Conditions by law or statute are excluded unless such exclusion is forbidden or made void by statute.

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## **14 CONCRITE'S LIABILITY**

### **14.1 Subject to clause 14.2:**

- (a) Concrete's liability to Customer in tort or contract or in any way whatsoever for loss or damage of every kind in relation to defective or non-conforming or non-complying concrete is limited to supplying replacements of any:
  - (i) defective or non-conforming or non-complying concrete; and
  - (ii) steel reinforcement and formwork directly affected;
- (b) Concrete shall not be liable for any claim for indirect or consequential loss or damage arising out of the supply of concrete; and
- (c) Concrete shall not be liable for any claim by Customer in respect of any matter arising out of the supply of concrete unless a fully particularised claim is lodged in writing with Concrete not later than 14 days after the occurrence of the events or circumstances on which the claim is based.

### **14.2 For Deliveries to "Consumers" as defined by section 4B of the Trade Practices Act 1974 (for instance, certain owner builders) Concrete's liability for a breach of a condition or warranty implied by Division 2 of part V of that Act (other than Section 69 thereof) is limited to any of the following:**

- (a) the replacement of concrete or the supply of equivalent concrete;
- (b) the repair of concrete;
- (c) payment of the cost of replacing concrete or of acquiring equivalent goods and services; or
- (d) payment of the costs of having concrete repaired;

at Concrete's election.

## **15 CUSTOMER'S INDEMNITY**

Customer shall indemnify Concrete against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against Concrete arising from:

- (a) any act or omission of Customer including (without limitation):
  - (i) the faulty handling or placing or curing of concrete by Customer;
  - (ii) any faulty construction practice carried out by Customer;
  - (iii) the addition of excess water and/or any other material to concrete by or at the request of Customer before or after the concrete's discharge from Concrete's delivery vehicle; or
  - (iv) the time taken for the placement and compaction of concrete Delivered to Customer not being in accordance with AS 1379; and
- (b) (further or alternatively):
  - (i) damage to Concrete's delivery vehicle;
  - (ii) damage to any public or private property (including Customer's); and/or
  - (iii) injury to or death of any person;

caused directly or indirectly by Concrete's delivery vehicle leaving a public road to gain access to Discharge Location.

## **16 CUSTOMER'S SPECIFICATION**

Concrete shall not be taken to have approved any concrete specification supplied to it by Customer as being suitable for any particular purpose and Concrete shall not be liable for any loss or delay, or any costs associated therewith, that result from any defects in or unsuitability of such specification.

## **17 TERMINATION**

If Customer:

- (a) fails to make any payment it owes to Concrete;
- (b) fails to abide by the terms of any credit account facility it has with Concrete;
- (c) fails to satisfy Concrete of its ability to pay for concrete when requested to do so;
- (d) is declared bankrupt, resolves to go into liquidation, or has a petition for its bankruptcy or winding up presented or enters into a scheme of arrangement with creditors, or if a liquidator, receiver, administrator or official manager is appointed in relation to its affairs; or
- (e) breaches any of its obligations under these Conditions which it fails to remedy within 7 days of being given written notice by Concrete;

then Concrete may without notice:

- (i) suspend further performance of its obligations for such period as it thinks fit; or
- (ii) terminate its obligations hereunder at any time;

without affecting any right or remedy of Concrete against Customer.

## **18 NO WAIVER**

Concrete's failure to enforce at any time any of these Conditions or the granting by Concrete of any time or other indulgence shall not be construed as a waiver of any Condition or any right of Concrete to enforce that or any other Condition.

## **19 GOVERNING LAW**

These conditions are governed by the laws of New South Wales. The parties submit to the non exclusive jurisdiction of the courts there.