



## TERMS AND CONDITIONS OF SALE

Neilsens Concrete Pty Ltd

These Conditions of Sale will apply to the supply of Goods and related services by the Supplier to the Customer from time to time.

### 1 Quotations, order and Contracts

- 1.1 All quotations are made and all orders for Goods are accepted by the Supplier on and subject to these Conditions of Sale and special terms and conditions which are agreed to by the Supplier in writing.
- 1.2 The Supplier may withdraw, revoke or vary a written quotation at any time prior to the Customer submitting an order which accepts the in written quotation. The Supplier reserves the right to accept or decline, whole or in part, any order for Goods placed by a Customer.
- 1.3 The Customer acknowledges that it has checked all quotations and is satisfied that the quotations include all the Goods which the Customer requires and on which the Customer has requested to the Supplier to quote and that the Supplier will have no liability in respect to any omissions or errors in quotations in respect of the Goods on which customer has requested the Supplier to quote.

### 2 Price

- 2.1 The price of the Goods will be the Supplier's current price at the time of delivery of the Goods subject to any contrary agreement (if any) between the Supplier and the Customer regarding the price of the Goods.
- 2.2 The price of the Goods specified by the Supplier in any quotation will remain valid for a period of 30 days for an order made by the Customer in accordance with the quotation, unless otherwise specified.
- 2.3 Unless otherwise indicated, all prices for Goods are net, exclusive of applicable Taxes charges and GST. Where Goods are subject to GST, the Customer must pay GST at the same time as payment for the Goods is made.

### 3 Delivery

- 3.1 The Customer will ensure that the Customer (if an individual) or an authorised representative is available at the Delivery Site to sign the Delivery Docket. A Delivery Docket can be signed electronically, including on a hand-held or portable electronic device. If the Customer or its authorised representative does not sign or is not available to sign the Delivery Docket, the Customer authorises the driver to complete the delivery in accordance with clause 5.2 and to complete the applicable Delivery Docket. The Customer will be bound by the actions of any person who has, or appears, represents or purports to have, the authority of the Customer in respect of a delivery. Neither the Supplier nor any its employees, agents and representatives are obligated to make any enquiries as to the authority of any such person.
- 3.2 A Delivery Docket signed or completed in accordance with these Conditions of Sale constitutes the Customer's agreement that:
  - a) the delivery complies with the Customer's request and that the details in respect of the delivery including, without limitation, the type and quantity of Goods delivered and the place and time of delivery set out in the Delivery Docket and any supporting information maintained by the supplier, including electronically, in connection with the supply (such as without limitation, time and GPS Data logs) are correct and;
  - b) The Customer is liable to pay any additional fees or surcharges described on the delivery Docket pursuant to these conditions of sale.
- 3.3 The price quoted for delivery for the Goods is based on:
  - a) Delivery between the hours of 6.00 a.m. to 5.00 p.m. on Business Days to the Delivery Site. A surcharge will apply for concrete batched, quarry materials delivered and/or other Goods delivered outside these hours;

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- b) The Supplier's ruling minimum load for the Goods (for concrete this is a four (4) cubic metre minimum) and in the event of deliveries being required of less than the minimum load an additional cartage charge will be payable in accordance with the Supplier's ruling rates;
  - c) Delivery being made by the shortest access route available to the Delivery Site, and in the event of roads being closed and preventing delivery by the shortest access route, the Supplier will have the right to charge for any additional costs incurred by it in making delivery to the Delivery Site; and
  - d) Delivering the Goods at the kerb alignment on the Delivery Site within the time specified within the Supplier's charges and an additional charge will be payable for waiting time in Excess of the standard unloading time of thirty (30) minutes.
- 3.4 The Customer will be responsible for providing adequate, safe and timely access to the Delivery Site and the Customer will indemnify the Supplier for all loss, damage or liability incurred by the Supplier as a result of failure to provide such access.
- 3.5 The Supplier reserves the right to charge the Customer any Costs which it incurs as a result of any delay by the Customer in unloading the Goods or where unloading of the Goods cannot be effected, including, if applicable, a return delivery fee at the prevailing freight rates.
- 3.6 For concrete, an additional surcharge will apply when concrete is returned from the Delivery Site to the concrete plant in the event of the Customer being unable to accept the full batch of concrete as ordered.
- 3.7 Where the Supplier or its transport contractor enters the Customer's premises or the premises of a third party nominated by the Customer for the purpose of delivery of the goods, the customer to the fullest extent permitted by law;
- a) Releases the supplier, its employees, agents and contractors from any claim the customer may at any time have had against the supplier but for this release, in respect of damage occasioned to the Customer's premises or injury to persons arising out of the delivery by the Supplier or its transport contractor of Goods to such premises;
  - b) indemnifies the Supplier against any loss, damage or liability suffered or incurred by the Supplier in respect of damage occasioned to the Customer's or the third party's premises or injury to persons arising out of the delivery by the Supplier or its transport contractor of Goods to such premises, except for and to the extent that such loss damage or liability suffered or incurred by the Supplier arises out of the negligence or wilful misconduct of the Supplier or its transport contractor.

#### **4 Payment**

- 4.1 Unless the Supplier grants credit to the Customer pursuant to a Commercial Credit Account and subject to the Supplier's right to withdraw credit, payment for the Goods purchased from the Supplier must be made by the Customer in Australian dollars in immediately available funds prior to delivery of the Goods.
- 4.2 Where the Customer has a Commercial Credit Account with the Supplier, the Supplier will issue an invoice for payment (Supplier's Invoice) for all Goods supplied by the Supplier for the calendar month. The Customer must ensure that payment for the Goods is made by the Customer to the Supplier by no later than 30 days after the date of the Supplier's Invoice or such other date for payment as the Supplier and the Customer agree in writing.
- 4.3 If there are any additional charges or surcharges incurred on delivery as provided by clause 3 (Additional Charges) the Customer is liable to pay these amounts. If the Customer has a Commercial Credit Account these Additional Charges will be added to the Supplier's invoice for payment. If the Customer does not hold a Commercial Credit Account and has paid for the Goods prior to the

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delivery of the Goods the Customer must pay the Additional Charges in immediately available funds. If the Customer paid for the Goods prior to the delivery of the Goods by credit card, the Customer authorises payment of these Additional Charges by the Supplier crediting these Additional Charges to the Customer's nominated credit card.

- 4.4 The Supplier reserves the right at any time to determine that a Customer ceases to hold a Commercial Credit Account by notifying the Customer in writing and immediately upon notification the Customer will cease to hold a Commercial Credit Account.
- 4.5 The Supplier reserves the right to charge interest on any amount overdue for payment from the date it becomes due for payment until the date payment is received by the Supplier. The interest rate that is to apply is the overdraft rate charged by the Supplier's principal bankers. All amounts received by the Supplier will be credited first against the accrued interest.
- 4.6 A statement signed by the Supplier's authorised representative certifying the amount of any Additional Costs or other claim by the Supplier will in the absence of manifest error be conclusive and binding of the amount due for payment.
- 4.7 All payments are to be made at Johnstone Road, Brendale or PO Box 5319 Brendale Qld 4500 and a failure to pay or the dishonouring of a cheque tendered by the Customer will constitute a breach of these Conditions of Sale.
- 4.8 Payments made by credit card may be subject to a surcharge.

## **5 Risk**

- 5.1 Risk in the Goods passes to the Customer when the Supplier or its transport contractor's delivery vehicle arrives at the Delivery Site. The Customer must insure the Goods against loss or damage from that time.
- 5.2 The unloading of the Goods at the Delivery Site is the Customer's responsibility at its own cost and risk but the supplier may, without liability to the customer, unload the Goods at the Delivery Site if the customer requests the Supplier to do so or is absent from the delivery site at the time the supplier or its transport contractor wishes to unload. The customer releases and discharges the Supplier and its transport contractor from and against any claim, cause of action or liability arising out of unloading the goods at the delivery site.

## **6 Force Majeure**

If the Supplier is prevented either directly or indirectly from performing any of its obligations under these Conditions of Sale, including without limitation, making a delivery of the Goods or any part of the Goods by reason of Force Majeure it will be entitled, at its option, by notice to the Customer, either to;

- a) extend the time for delivery of the Goods for a reasonable period; or
- b) subject to refunding the Customer for any payment already made to the Supplier in respect of those.

## **7 Default by Customer**

7.1 If:

- a) there is any default or failure by the Customer in making due and punctual payment to the Supplier of any money owing by the Customer; or it is Insolvent; or
- b) there is a breach by the Customer of any of these Conditions of sale
- c) all money payable by the Customer to the Supplier will at the Supplier's election become immediately due and payable;
- d) and the Supplier may without prejudice to any other rights it may have, do any or all of the following:

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- (i) suspend deliveries of further Goods to the Customer;
  - (ii) terminate the contract to supply Goods in relation to Goods that have not been delivered;
  - (iii) without limiting clause 4.4, withdraw any Commercial Credit Account which may have been extended to the Customer and require immediate payment of all money owing to the Supplier by the Customer;
  - (iv) seize, take possession of and sell or retain any Goods to which title has not passed to the Customer.
- 7.2 All Costs incurred by the Supplier relating to any action taken by the Supplier to recover money due from the Customer (including, without limitation, legal or other debt collection costs) will be payable by the Customer on demand.

## **8 Retention of title**

- 8.1 The Customer agrees that the Supplier retains legal and equitable title in any Goods supplied to the Customer until the Supplier receives payment in full for or in connection with the supply of the relevant Goods. Until payment in full has been received, the provisions of this clause 8 will apply.
- 8.2 Despite title in the Goods remaining with the Supplier until payment has been received in full, the Customer may sell the Goods or use the Goods in a manufacturing or construction process in the ordinary course of the Customer's business. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for the Supplier and the Customer is under a duty to account to the Supplier for the proceeds. The creation of, or any failure of, any trust will not in any way limit the obligation of the Customer to pay an amount to the Supplier for the Goods supplied.
- 8.3 Until Goods are sold or used in a manufacturing or construction process, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly identified as the property of the Supplier and keep full and complete records, firstly of the physical location of the Goods and, secondly, the ownership of the Goods by the Supplier.
- 8.4 This reservation of title and ownership is effective whether or not the Goods become part of a product or mass through manufacturing, processing or becoming commingled and the Supplier's security interest continues in that product or mass to the extent permitted by law.

## **9 Application of the PPSA**

- 9.1 The Customer acknowledges and agrees that the Supplier may apply to register a financing statement in respect of any security interest in the Goods at any time before or after delivery of the Goods. The Purchaser waives its rights under s 157 of the PPSA to receive notice of any verification of the registration.
- 9.2 The Supplier can apply amounts it receives from the Customer towards amounts owing to it in such order as the Supplier chooses.
- 9.3 If the Customer defaults in the performance of any obligation owed to the Supplier under these Conditions of Sale or any other agreement for the Supplier to supply Goods to the Customer, the Supplier may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions of Sale or the PPSA. To the maximum extent permitted by law, the Customer and the Supplier agree that the following provisions of the PPSA do not apply to the enforcement by the Supplier of its security interest in the Goods: section 95, 96, 121(4), 125, 130, 132(3) (d), 132(4), 142 and 143.
- 9.4 The Purchaser must promptly do anything required by the Supplier to ensure that the Supplier's security interest is a perfected security interest and has priority over all other security interests in the Goods.

## **10 Supply of concrete**

- 10.1 If the Goods supplied comprise concrete, this clause 10 will apply.
- 10.2 Unless otherwise specified concrete supplied will be in accordance with the following Australian Standards:  
AS 1379 The specification and supply of concrete

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#### AS 1012 Methods of testing concrete

- 10.3 Testing of concrete supplied will not automatically be carried out, but the Customer may request an assessment in accordance and under the terms of contract and arranged at the Customer's expense. Test samples will be taken only at the agitators discharge chute. The results of such test will only be recognised by the Supplier if carried out in accordance with the standards nominated and by an N.A.T.A. registered testing authority.
- 10.4 The concrete supplied is designated on the face of the Delivery Docket
- (a) the quantity of concrete required;
  - (b) the standard compressive strength grade;
  - (c) a standard slump at the point of acceptance; and
  - (d) the maximum nominal size of aggregate.
- 10.5 The Supplier will not be liable in any manner whatsoever in respect of strength or any other defect which may develop in any concrete supplied if:
- a) water is added to concrete before or after discharge from the delivering agitator without the approval of the Supplier's representative;
  - b) an admixture is used at the Customer's request;
  - c) discharge from the agitator occurs more than ninety (90) minutes after leaving the mixing plant
  - d) In the event of delay of delivery or Non-Delivery arising from any cause beyond control of the supplier including but not limited to unforeseen traffic conditions, plant breakdown, Truck & agitator breakdown, industrial stoppages, bans and shortages of materials;
  - e) Due to mishandling, placement, curing and improper job practices.
  - f) a request for the reduction of water from Neilsens kerb mix design will have an affect on compaction and negate the guarantee of 28 days strength.
- 10.6 For the decorative concrete the following additional terms apply:
- a) The aggregate and other raw materials used to make decorative concrete are products by nature and therefore are subject to variation in colour, size and shape;
  - b) minerals in the aggregate of coloured concrete can cause staining. An approved sealer will reduce the likelihood of this condition occurring. The Supplier recommends an approved same day sealer be applied to coloured concrete;
  - c) Cement Concrete & Aggregates Australia (CCAA) have recommended practice for placing decorative concrete The Customer should refer to CCAA's recommended practices for placement;
  - d) Exposed Aggregate mixes are designed to be placed directly "off the chute" from Concrete Agitators. The customer should consult with the supplier if the customer requires to place these mixes by a concrete pump.
  - e) On site water addition takes the concrete slump beyond specification and colour variation and aggregate separation may occur and;
  - f) The supply of decorative concrete takes additional lead time to obtain this should be considered in the timing of the order process for the customer.
  - g) Neilsens shall not accept liability for the placement of insitu compaction performance of any proprietary WALL SYSTEM concrete.

## 11 Liability and Indemnity

- 11.1 In the event of any Goods supplied by the Supplier in accordance with these Conditions of Sale failing to meet the agreed standards, the liability of the Supplier (if any) will be limited to the replacement of such defective Goods. All other guarantees, warranties, undertakings, or representations express or

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implied and whether arising by statute or otherwise are expressly excluded (except to the extent only that such exclusion is prohibited by law).

- 11.2 The Supplier will not in any circumstances in any dispute be liable for any indirect or consequential loss or damage of any nature whatsoever
- 11.3 Each Indemnity given by the Customer in favour the supplier pursuant to these terms and conditions is also given in favour of each of the Supplier's officers, employees, agents and contractors and may be enforced by the supplier as agent for any indemnified person.

## **12 Miscellaneous**

- 12.1 These Conditions of Sale set out the entire agreement between the parties in relation to their subject matter.
- 12.2 The laws applicable to the agreement between the Supplier and the Customer are the laws of Queensland and the Customer submits to the jurisdiction of the courts of Queensland.
- 12.3 Nothing in these Conditions of Sale will constitute the Supplier as a subcontractor of the Customers
- 12.4 A party waives a right under these Conditions of Sale only if it does so in writing. Clause 12.5 applies to any waiver in writing. A party does not waive a right because it fails to exercise the right, delays exercising the right or only exercises part of the right. The exercise of a right does not prevent any further exercise of that right or of any other right. A waiver of any breach of a term of these Conditions of Sale does not operate as a waiver of another breach of the same term or any other term.
- 12.5 A provision of these Conditions of Sale or a Delivery Docket, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound. If there is a waiver or variation in writing it must be confirmed by the Supplier in writing by a person authorised by the Supplier's management to make such variation or provide the waiver in writing and no other employee of the Supplier including a delivery driver under contract to the Supplier nor any other person will have any authority to waive or vary these Conditions of Sale or a Delivery Docket.
- 12.6 If a provision in these Conditions of Sale is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to that extent, and in that jurisdiction, be treated as deleted from these Conditions of Sale. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.
- 12.7 The Supplier may assign or otherwise deal with the benefit of any contract made pursuant to these Conditions of Sale without the consent of the Customer. The Customer may not assign or otherwise deal with the benefit of any contract made pursuant to these Conditions of Sale.

For Full Terms and Conditions please refer to [www.neilsens.com.au](http://www.neilsens.com.au)

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