

Metromix Supply Terms + Conditions – Key Terms – Concrete

This document sets out the key terms applying to the supply of Goods and Services to you by Metromix. The full Terms + Conditions applicable to each Order of Metromix Goods and Services can be found here: <https://www.metromix.com.au/>. The numbering of the clauses in these Key Terms are the same as the equivalent clauses in the full Terms + Conditions.

Terms defined in these Key Terms have the meaning specified in the full Terms + Conditions. By placing an order with us you acknowledge that you have read and received a copy of the full Terms + Conditions and you agree to them in their entirety.

1. OUTLINE

1.1 Application: These Terms + Conditions apply to the supply of all Goods and Services by us to you from the date that you accept these Terms + Conditions.

1.2 Acceptance: You accept these Terms + Conditions when:

1.2.1 you submit an Order or accept our Quote or Delivery Docket (whether in writing, verbally or by continuing to instruct us to supply the Goods and Services); or

1.2.2 you accept delivery of any, or any part, of the Goods and Services pursuant to an Order; or

1.2.3 you make Payment, or partial Payment, for any Goods and Services supplied by us; or

1.2.4 when you sign our Quote, Delivery Docket or these Terms + Conditions,

whichever occurs first.

2. QUOTES + ORDERS

2.1 Validity of Quote: A Quote is valid for 30 days only (or such other period specified on the Quote). We reserve the right to withdraw a Quote at any time before you place an Order.

3. PRICE

3.1 Price: Unless otherwise agreed to in writing by us or by our authorised representative, subject to clauses 3.3 and 3.4, the price charged and payable for the Goods and Services shall be the price in Australian dollars specified in the Quote at the applicable rate, in addition to any applicable taxes, charges and delivery costs in relation to the Goods and Services.

3.3 Cartage Levy: You acknowledge and agree that the costs we incur in transporting and delivering the Goods in accordance with clause 7.1, including fuel costs, labour costs and toll charges, may be charged to you as a Cartage Levy. The Cartage Levy applicable to your delivery will be calculated based on the prevailing rate notified to you at the time of the Quote or at any time prior to delivery of the Goods in accordance with clause 3.5 (in which case the latter will prevail).

3.5 Rate changes: We may from time to time, on at least one month's notice in writing (other than in respect of the Cartage Levy), update our pricing schedule and rates applicable to you. Our standard rates for the Goods are usually adjusted from 1 April each year and any changes to that pricing notified to customers afterwards. Unless you object to any change in writing prior to submitting an Order for the Goods, you agree to the changed rates. We may update the Cartage Levy rate applicable to an Order at any time prior to Delivery, by giving you written notice of the adjusted Cartage Levy rate.

4. PAYMENT

4.1 Payment Terms: The payment for Goods and Services will be payment before delivery unless the Customer is an "approved account" with the Company. In such cases an approved account will mean that payment is to be made strictly net at 30 days from the end of the month during which purchases were made. The Company reserves the right at all times to determine that an "approved account" is no longer so approved.

7. DELIVERY + RISK

7.1 Delivery: Delivery of the Goods shall take place upon pick up by or Delivery of the Goods to you, your agent or nominee or to a carrier commissioned on your behalf as applicable at the place specified by you or as otherwise agreed. Unless otherwise agreed between the parties in writing, deliveries shall commence within a reasonable time after acceptance of these Terms + Conditions, and shall entail a continuing supply.

7.4 Risk passes on delivery: The risk in the Goods shall pass to you upon the Delivery of the Goods in accordance with clause 7.1, and it is acknowledged that our responsibility for the Goods will cease at the kerbside nearest to the delivery address provided.

7.5 Traffic management: You will be solely responsible for assessing any requirements for traffic management associated with a Delivery to you and for putting in place all traffic management measures which you ought reasonably to know are required in all the circumstances of the Delivery. If it is necessary for a vehicle to leave a public road, cross a footpath or to enter upon private property in the course of effecting a Delivery, you acknowledge and agree that you:

7.5.1 will be responsible for providing safe and adequate access and egress to the discharge or unloading location; and

7.5.2 must indemnify us against any Loss or damage to any private or public property, any injury or other cost arising from events occurring in the course of gaining access or effecting the Delivery unless solely caused by our negligent act or omission.

7.6 Refusal to deliver: We reserve the right to refuse to Deliver if we are of the opinion that you have failed to perform the obligations in clause 7.5 and 7.5.1 and you will indemnify us against any Loss arising from the refusal.

8. SUSPENSION + CANCELLATION

Please refer to the full Terms + Conditions for details regarding suspension and cancellation of Orders.

9. DEFECTS

9.2 Defects: The Company when supplying any Goods shall not be taken to have approved any specification as being suitable for any particular purpose and shall not be liable for any loss, delay or costs arising from the defects in or unsuitability of the specification. You warrant that you have formed your own opinion as to the correctness and suitability of any specification, information or advice provided or any representation made by us or our employees and contractors (including as to product design and application) in connection with the supply of the Goods or Services, and do not rely on us in respect of such information, advice or representation.

9.5 Inspection: You should inspect the Goods immediately before Delivery or once they are delivered, check for any difference between the Goods as delivered, the description or quantity between the Delivery Docket and the Order, and may only reject the Goods (in whole or in part) if:

9.5.1 they do not materially comply with the Order; or

9.5.2 if permitted by law, including the ACL.

10. EXCLUSIONS + LIMITATIONS

10.5 Total liability: Our total liability for breach of these Terms + Conditions or breach of our contractual obligations or duties at law or in equity (however arising) is limited to our option to:

In the case of Goods

10.5.1 the replacement of the Goods or the supply of equivalent goods;

10.5.2 the repair or rectification of the Goods; and

In the case of Services

10.5.3 the supply of the Services again.

10.6 Notwithstanding the foregoing, we shall not in any circumstances be liable for any Loss (including back charges), arising directly or indirectly from delays in Delivery or failure to deliver for any cause or reason including traffic delays, equipment breakdown, unavailability of raw materials, inclement weather and labour disputes.

10.11 Claims: To the extent permitted by Law, we shall not be liable for any claim by the Customer alleging a Loss arising out of the Quote, sale, supply or Delivery of Goods or Services under these Terms + Conditions unless:

10.11.1 the Company is notified by the Customer in writing of any alleged defect, non-conformity or failure giving rise to the claim within 14 days of the Delivery or such later date as the Customer became, or ought reasonably to have become, aware of the events or circumstances on which the claim is based;

10.11.2 the Customer allows the Company reasonable facilities to investigate any such defect, non-conformity or failure promptly, to advise the Customer of any appropriate remedial action and follows any such reasonable advice;

10.11.3 a fully particularised claim is lodged in writing with the Company not later than 2 months after the Customer became or ought reasonably to have become aware of the events or circumstances on which the claim is based.

12. TITLE

12.2 Title: We will retain absolute title over the Goods until we have received Payment in full in respect of the Goods.

14. GST

14.1 Prices exclusive of GST: Unless otherwise agreed, prices with respect to any taxable supply are exclusive of GST.

14.2 GST payable in addition: You must pay to us all GST in addition to any other amounts payable by you to us in respect of a taxable supply, which will be payable by you when required to pay for the Goods or Services.

Schedule A STANDARD CONDITIONS OF SALE FOR READY MIXED CONCRETE

1. The definitions used in these Standard Conditions of Sale for Ready Mixed Concrete will have the same meaning as given in the Metromix Supply Terms + Conditions.
2. All concrete is offered for supply under Australian Standard Specification AS1379, unless otherwise stated. Unless otherwise agreed in writing, pre-mixed concrete will comply generally with AS1379 and will contain materials of the Company's choice, including where applicable recycled and returned materials.
3. The concrete supplied is as detailed on the Delivery Docket. The Company is unable to accept responsibility in respect of strength or any defect which may develop in any concrete supplied if:
 - (a) water is added to concrete either before or after discharge from the delivery unit without the approval of the Company's representative.
 - (b) an admixture is used in the concrete at the Customer's request or specification.
 - (c) such lack of strength or defect is due to faulty handling, placing or curing by the Customer or agent.
 - (d) such lack of strength or defect is due to faulty or defective job practise by the Customer or agent.
4. The mix ordered will be detailed on the face of the Delivery Docket and must be checked by the Customer at the time of Delivery for compliance with the job specification. The Company is unable to accept responsibility if this check is not made before discharge is commenced.
5. The Company will not recognise test results from concrete supplied by it unless the concrete is sampled at the point of Delivery and tested in accordance with Australian Standard Specification AS 1012. Testing will not automatically be carried out, however if so requested, the Company will institute a test programme at the Customer's expense. Charges for this service will be in accordance with the Company's ruling rates at the time of delivery.
6. The Company reserves the right to charge for any concrete ordered of which the Customer is unable to accept Delivery, if the amended order is not received by the Company prior to the actual batching of the concrete. Concrete which is returned from the site due to the Customer's inability to use the full quantity ordered will be subject to an additional charge at the Company's ruling rate to cover cartage, handling and disposal costs.
7. A period of seven minutes per cubic metre, with a maximum of thirty minutes, is allowed for unloading per batch load. Any extra time in excess of this period will be charged at the Company's ruling rate at the time.
8. Prices are based on minimum individual deliveries of four cubic metres. Additional cartage will be charged for loads less than three cubic metres at the Company's ruling rate at that time.
9. Unless otherwise stated in the quotation, prices are based upon slumps not exceeding 80mm, using 20mm maximum size aggregate. A surcharge at the Company's ruling rate will apply for concrete which is ordered to have a slump other than 80 mm or to contain aggregate other than 20mm in size.
10. If compliance with AS1379 requires the addition of a cooling agent, a surcharge to the quoted price at the Company's ruling rate will apply.
11. The Customer must inform the Company when concrete pumping is required as some concrete mixes are not suitable. The concrete pump is to be fit for purpose.
12. Special concrete for critical elements will be subject to a surcharge and the Customer must inform the Company when this type of concrete is required.
13. The Customer must supply a company representative to the Company or his nominated representative for the purpose of confirming the receipt of goods and or acceptance of associated charges. Failure to do so will result in the Customer being liable for payment of the goods and associated charges as per the Delivery Docket.
14. We may charge for any concrete and for the return cartage, handling and disposal costs relating to any concrete Order from the Customer and batched by us which is returned or rejected by the Customer because:
 - (a) the Customer cancels or does not accept Delivery even though the concrete was batched in accordance with the Order;
 - (b) the Customer was unable to use the full quantity Ordered; or
 - (c) the time between batching and discharge exceeds the time permitted by AS1379 or the specification that covers the project being supplied, provided that the excess time was not due to our acts or omissions.
15. The Company shall not be liable in any circumstances for any loss arising from any alleged defect, non-conformity or failure in any concrete delivered, caused by, contributed to or arising from:
 - (a) preparing, handling, placing, working, curing, pumping, compacting, surface finishing, rolling or levelling of the concrete not being in accordance with any applicable Australian Standard, specification or guidelines applying to the work;
 - (b) the addition, without the written instructions of a representative of the Company other than the driver, of any water, admixtures, additives or other material to the concrete:
 - A. prior to Delivery commencing:
 - (i) by the Customer or a third party; or
 - (ii) by the Company at the request or specification of the Customer or a third party; or
 - B. after Delivery has commenced (either before or after discharge from the Delivery vehicle):
 - (iii) by the Customer or a third party; or
 - (iv) by the delivery vehicle driver on the instruction of the Customer or a third party;
 - (c) the effect of any weather conditions or temperature including heat, cold, rain, wind or hail; or
 - (d) any act or omission (including construction or site practices) of the Customer or a third party.