

## Metromix Supply Terms + Conditions

### 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.

1.3 **Inconsistency:** The following documents comprise the contract with you, and to the extent of any inconsistency, the following order or priority will apply:

- 1.3.1 Terms + Conditions;
- 1.3.2 Quote;
- 1.3.3 Standard Conditions;
- 1.3.4 Delivery Docket.

### 2. QUOTES + ORDERS

2.1 **Requesting a Quote:** You may request a Quote from us relating to the potential supply of Goods and Services. You warrant that you will provide all Relevant Information to us when seeking a Quote or placing an Order for Goods or Services.

2.2 **Providing a Quote:** We may provide to you a Quote relating to the potential supply of Goods and Services, which may include the price and quantity of the Goods and Services proposed to be supplied by us and other relevant details as necessary. The Quote may also specify certain exclusions and where prices are estimates only and will be subject to the conditions and assumptions specified. We are entitled when giving a Quote, accepting any Order or supplying or delivering Goods or Services, to rely upon the accuracy and completeness of any Relevant Information provided by you.

2.3 **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.

2.4 **Placing an Order:** If our Quote is acceptable to you, you may place an Order for each supply of Goods and Services. An Order is not binding until we have provided you in our absolute discretion our written acceptance or confirmation of the Order.

2.5 **Additional conditions:** Unless otherwise agreed by us in writing, these Terms + Conditions will prevail over, and we will not be bound by, any conditions (express or implied) added or provided by you, whether in an Order or otherwise.

2.6 **Standard Conditions:** The applicable Standard Conditions will apply for the supply of Goods comprising concrete or raw materials/ aggregate.

### 3. PRICE

3.1 **Price:** Unless otherwise agreed 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.

3.2 **Raw Materials:** Raw Materials are sold based on weight (tonnes). Cubic metre conversion rates can be provided on request.

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 (in which case the latter will prevail).

3.4 **Variation of price:** Prices in the Quote are based on multiple factors including the current cost prevailing and the specifications supplied at the time of the Quote, as well as the ability to deliver Goods in full truckloads during normal working hours (6am to 4.30pm Monday to Friday and 6am to 12pm Saturday). Subject to your rights under applicable law including the ACL, we reserve the right to vary the price to account for any increased costs if:

- 3.4.1 there is any movement in the cost of raw materials, transport, or change in the cost of supplying the Goods or Services specified in

- your Order, including but not limited to a change in any applicable Charges or change in the cost of fuel and labour;
- 3.4.2 the Goods are requested by you to be delivered in smaller truck loads, resulting in an increased cost of cartage;
- 3.4.3 the delivery of Goods or work required in relation to the supply of the Goods or Services are requested by you to be delivered or performed outside normal working hours - (6am to 4.30pm Monday to Friday and 6am to 12pm Saturday) for us or the quarry of supply (provided that we are not bound to accept such a request);
- 3.4.4 the Goods or Services specified in your Order are varied from the Goods or Services specified in our Quote;
- 3.4.5 your instructions change or further information is provided or becomes apparent to us such that the Order or Quote is no longer accurate;
- 3.4.6 we incur any additional costs or expense due to any delay in performance caused or contributed to by you, your employees, offices, agents and contractors; or
- 3.4.7 otherwise as provided in these Terms + Conditions,

and we provide you, where practicable, reasonable notice of any such variation of price.

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.

3.6 **Additional costs:** If we are requested to supply additional and/or alternative Goods and Services which fall outside an existing Order or specifications contained in our Quote or otherwise, we will either (as reasonably practicable):

- 3.6.1 provide a further Quote for the additional services in writing; or
- 3.6.2 the rates and prices previously Quoted to you (as applicable) will apply to the additional Goods and Services.

### 4. PAYMENT

4.1 **Invoice on delivery:** Unless otherwise agreed in writing, we will issue you an Invoice after delivery of your Order (based on the Delivery Docket). You will make payment in accordance with the applicable Payment Terms.

4.2 **Payment Terms:** The payment for Goods and Services will be cash 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.

4.3 **Upfront Payments:** You may be required to pay part or all of the price for our Goods and Services in advance. We reserve the right to cease or suspend work pending receipt.

4.4 **Payment method:** All Payments are to be made to us by either:

- 4.4.1 direct credit to the bank account nominated by us or as otherwise indicated by us in writing;
- 4.4.2 credit card;
- 4.4.3 or on such other terms as may be agreed in writing by us.

4.5 **Payment in instalments:** We may at our discretion as agreed in writing accept Payments in instalments upon such terms as we see fit.

4.6 **No retention:** The Customer hereby irrevocably agrees that it is not entitled to withhold payment of the whole or any part of an amount payable to us under these Terms + Conditions by the way of retention or set-off for any reason whatsoever.

### 5. PAYMENT DEFAULT

5.1 **Default Interest:** We may at our discretion in the event of your failure to make a Payment in accordance with clause 4 (Payment) charge Default Interest at the rate of the amount allowed by the Supreme Court of NSW in respect of judgment debts as at the date of the failure.

5.2 **Payment of Default Interest:** Default Interest pursuant to clause 5.1 shall be:

- 5.2.1 payable on demand; and
- 5.2.2 calculated daily from the date Payment was due to the actual date that the Payment is made in full.

5.3 **Payment Dispute:** In the event of any dispute arising between the Company and the Customer as to whether an amount is payable, the Customer shall, within the relevant period under clause 4.2, pay to us the amount claimed by us to be payable (including any interest charged by us under clause 5.1), to be held by us until settlement of the dispute.

5.4 **Costs of enforcement:** We may recover from you any costs we incur in the collection of Payment of any Invoice.

5.5 **No set off:** You may not set off against any Payment any claims which you may have against us.

5.6 **Default Interest amount credited first:** Any Payment you make to us shall first be credited against any Default Interest accrued pursuant to this clause 5 to the actual date of Payment.

## 6. OBLIGATIONS

6.1 **Our obligations:** We will (in providing the Services):

6.1.1 use reasonable skill and care;

6.1.2 comply with all relevant laws applicable to us.

6.2 **Your obligations:** You will:

6.2.1 allow our personnel and sub-contractors (as well as any relevant third party, supplier or service provider) to access any premises and system owned or controlled by you to the extent that such access is necessary for the proper provision of any Goods or Services, provided that we shall ensure that our personnel and sub-contractors comply with any reasonable confidentiality, security, work health and safety or operational requirements;

6.2.2 provide all information, documents, assistance, resources, facilities and instructions as and when we may reasonably require to enable us to provide the Goods and Services; and

6.2.3 perform any obligations assigned to you in a Quote, proposal, Order or other relevant document or agreement or otherwise as reasonably required by us.

## 7. DELIVERY + RISK

7.1 **Delivery:** Delivery of the Goods shall take place upon pickup 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.

7.2 **Cost of delivery:** We may charge you the cost of delivering the Goods to you (including but not limited to any trucking, shipping, logistics contractor and stevedoring costs), which (subject to clause 3.3) will be included in the price of the Goods or as otherwise set out in our Quote. Any transportation costs incurred after the Goods have been Delivered will be paid by you.

7.3 **Instalments:** We reserve the right to allocate our supplies and stocks in our absolute discretion. We reserve the right to make Deliveries in instalments and these Terms + Conditions shall be severable as to such instalments, in which case Payment for each instalment is a condition precedent to the delivery of subsequent instalments (unless otherwise agreed).

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.

7.7 **Insurance:** Customer warrants that it has affected and maintains at all times a public and product liability insurance policy with a limit of not less than the \$20,000,000.

## 8. SUSPENSION + CANCELLATION

8.1 **Suspension or cancellation by you:** You may not suspend or cancel an Order, or any part of it, unless:

8.1.1 we give our written consent; and

8.1.2 you pay to us (if required by us in our absolute discretion) any and all costs reasonably incurred by us in relation to the cancelled Order or the cancelled part of the Order to the date of cancellation.

8.2 **Costs incurred:** In the event of you or your agent submitting an Order or giving us delivery instructions and afterwards cancelling, you must pay to us on demand as liquidated damages all expenses incurred by us up

to the time of cancellation. Our estimate or statement of expenses incurred shall be final and binding on the parties.

8.3 **Cancellation by us:** We may in writing cancel an Order or delivery of an Order without liability to you (save as required by relevant laws) if:

8.3.1 we reasonably form the opinion that you are insolvent or at material risk of insolvency;

8.3.2 you fail to pay any amount for the Goods or Services on the due date; or

8.3.3 we reasonably form the opinion that supplying Goods or Services to you may have a negative impact upon our business or commercial reputation or image; or

8.3.4 we do not have sufficient stock or supply of raw materials to fill your Order,

and in such circumstances you must immediately pay to us all monies owing under these Terms + Conditions or any other Order or Quote.

8.4 **Disputes:** Where a dispute arises between you and us as to the performance of by either party or any term, warranty or condition of any contract, we reserve the right to stop supply pending settlement of the dispute. For the purpose of this clause, we will determine if there is a dispute and at what time the dispute is settled.

## 9. DEFECTS

9.1 This clause 9 is subject to clause 10 (*Exclusions + Limitations*), clause 11 (*Statutory Rights*) and any other statutory or legal right whether under these Terms + Conditions or otherwise.

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.

9.3 **Exclusions:** We are not liable for:

9.3.1 any defects in the Goods caused by placement or installation of the Goods, the design of the structure into which the Goods are placed or installed,

9.3.2 the addition of water to the Goods at or after Delivery – concrete supply only

9.3.3 damage to the Goods after Delivery or failure to maintain the Goods properly after delivery; or

9.3.4 any deficiency or fault in any work or services performed by us or our agents arising whether directly or indirectly as a consequence of any deficiency or fault in any works or services not performed by us.

Without limiting the foregoing, the Company shall be entitled:

9.3.5 prior to commencement of or at any time during the performance of any works or services, to require a certificate from a relevant person or authority that any works or services, not performed by the Company, are in accordance with specifications; and

9.3.6 should it consider that there is any default or deficiency in any works not performed by it or that the same are not in accordance with specification and without liability on its part, to suspend performance of any works or services until such default or deficiency is rectified to the Company's satisfaction or the same made good in accordance with specifications.

9.4 **Testing:** Testing of concrete and/or Raw Materials or other technical Services will not necessarily be carried out or provided, unless ordered by the Customer.

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.

9.6 **Rejection:** If the Customer disagrees with any of the details on the Delivery Docket or if there is a difference between the Goods as delivered, the description or quantity of the Goods appearing on the Delivery Docket or the Goods Ordered, then the Customer must elect whether to accept or reject the Goods in whole or in part, and, thereafter:

9.6.1 if the Customer accepts all or some of the Goods, the Customer will be taken to have Ordered what is delivered; and

9.6.2 if the Customer rejects all or some of the Goods, the Customer must call us and record in writing on the Delivery Docket or via email details sufficient to accurately identify the nature of such disagreement or difference before the Delivery vehicle departs from the Delivery address.

9.7 **Acceptance:** If the Customer accepts the Goods then you or your representative must sign the Delivery Docket at our weighbridge or at the Delivery location.

9.8 **Right to refuse:** If the Customer is not present at the Delivery location at the time of Delivery, or being so present, fails or refuses to sign the Delivery Docket as required by clause 9.7, we may, in our absolute discretion, elect to refuse to deliver the Goods but, in those circumstances, the Customer will nevertheless be liable to pay for those Goods as if they had been delivered.

9.9 **Deemed acceptance:** Notwithstanding any other provisions under these Terms + Conditions, if the Customer is not present at the Delivery location at the time of Delivery, or the Customer is present but does not sign the Delivery Docket in accordance with clause 9.7 or, having so signed, recorded details of any disagreement or difference on the Delivery Docket in accordance with clause 9.6.2 and the Goods are discharged then, to the extent permitted by Law:

9.9.1 the Customer shall be deemed to have unreservedly accepted both the Delivery and the accuracy of the Delivery Details;

9.9.2 we shall have no Liability to the Customer for Loss in respect of any difference between the description and quantity of the Goods appearing on the Delivery Docket and the Customer's Order;

9.9.3 the Customer irrevocably waives all of its rights to reject the Goods referred to in the Delivery Docket; and

9.9.4 the Delivery Docket shall be prima facie evidence of all matters recorded thereon including the Delivery Details and the application of Delivery related surcharges.

9.10 **Replacement or credit:** If we accept the rejection or return of Goods from you, we will at our option either:

9.10.1 replace the returned Goods; or

9.10.2 give a credit for such Goods (or a partial refund for any discrepancy in quantity delivered).

9.11 **Costs to return Goods:** You shall bear any expense of transportation of Goods returned to us, unless you have a statutory or other legal right that permits otherwise.

9.12 **Payment for other Goods:** You may not withhold any payment due to us in respect of any other Goods pending the resolution of a claim for a defect.

9.13 **Non-payment of account:** We will not accept notifications under this clause 9 in the event of your non-payment of an account.

9.14 **Goods damaged in transit:** Except where delivery is arranged by you, if the Goods are damaged in the course of being delivered to you:

9.14.1 you must notify us immediately on Delivery of any claim for Goods damaged in transit; and

9.14.2 subject to our acceptance of your claim under this clause 9, we will replace the relevant Goods at no extra charge to you.

## 10. EXCLUSIONS + LIMITATIONS

10.1 **ACL exception:** The exclusions and limitations in this clause 10 are subject to clause 11 (*Statutory Rights*).

10.2 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms + Conditions, that are not contained in it, are excluded to the fullest extent permitted by law. Except in respect of Orders placed as a 'consumer' which may be subject to clause 11, unless you notify us to the contrary prior to or when placing an Order for the Goods the Customer is, and has held itself out to be, acquiring the Goods for either the purpose of re-supply (in an altered form or condition or to be incorporated into other goods) or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

10.3 **Limitations:** No warranty is given and we will not be liable for:

*In the case of Goods*

10.3.1 alterations to Goods for which we are not responsible;

10.3.2 defects or depreciation caused by wear and tear, accidents, corrosion, dampness or other abnormal conditions or effects;

10.3.3 damage or failure caused by unusual or non-recommended use, misuse or application of the Goods; or

10.3.4 loss caused by any factors beyond our control; and

*In the case of Services*

10.3.5 interference with our Services for which we are not responsible;

10.3.6 damage or loss caused by unusual or non-recommended use of our Services; or

10.3.7 loss caused by any factors beyond our control.

10.4 **Indirect loss:** We will not, in any circumstances, be liable for any consequential Loss suffered by the Customer or any other person resulting from any act or omission by us (including breach, negligence, termination or non-observance of the terms of an Order or agreement which incorporates these Terms + Conditions).

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 at 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.

10.7 If the Customer agrees (whether before or after any agreed rectification) to accept defective, non-conforming or non-complying Goods or Services we will have no further Liability in relation to those Goods or Services and the Customer releases us and indemnifies us against any further Liability in relation to those Goods or Services.

10.8 **No reliance:** You acknowledge and agree that:

10.8.1 you have and will make your own assessment of the fitness for purpose and suitability of any Goods supplied to you; and

10.8.2 you do not rely on any prior negotiations or arrangements in relation to the acquisition of any Goods.

10.9 **Third party work:** If we obtain goods or services from a third party (including logistics, transport, shipping or stevedoring service providers) in order to carry out your instructions or complete an Order:

10.9.1 we will not be liable for any breach of these Terms + Conditions if that breach is as a result of or is connected with the supply by a third party of such goods or services;

10.9.2 we acquire such goods or services as agent for you not as principal and will have no liability to you in relation to the supply of these goods or services;

10.9.3 any claim by you in relation to the supply of such goods or services must be made directly against that third party; and

10.9.4 you must pay for such goods or services from the third party plus the cost of or relevant fee for us performing such services as agent for you (whether separately identified in our Quote or not). You do not require us to account to you for any commissions or benefits we may receive from such a third party supplier in connection with the supply of such goods or services to you and authorise us to contract on your behalf as we think fit.

10.10 We give no warranty in respect of any goods or services that are supplied or carried out or provided to you by a third party even where forming part of an Order. Any warranties, statutory guarantees or other rights will be governed by the terms of supply by that provider to you and relevant laws.

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.

## 11. STATUTORY RIGHTS

11.1 **Statutory rights:** In circumstances where you are acquiring Goods and Services from us as a 'consumer' for the purposes of (and as defined in section 3 of) the ACL, we acknowledge and agree that certain statutory guarantees and rights shall apply to you as provided by relevant laws but subject to these Terms + Conditions as applicable and where permitted by relevant laws.

11.2 **No restriction:** Nothing in these Terms + Conditions excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL, and any relevant State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the purchasers of goods and services in various circumstances.

11.3 **Unfair contract:** If section 23 of the ACL applies to any provisions in these Terms + Conditions, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

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## 12. TITLE

- 12.1 **Possession as bailee:** After delivery of the Goods, until the full Payment has been made you shall possess the Goods as bailee only.
- 12.2 **Title:** We will retain absolute title over the Goods until we have received Payment in full in respect of the Goods.
- 12.3 **Conditions:** Until payment of all moneys payable by the Customer to us, the Goods are subject to the following terms:
- 12.3.1 The Customer holds the Goods as fiduciary, bailee and agent for the Company and must keep the Goods physically separate from all other goods of the Customer, and clearly identified as owned by the Company.
- 12.3.2 If a Default Event occurs, then without prejudice to our other rights, we may without notice to the Customer enter any premises occupied by the Customer or any other place where the Goods may be and recover possession of them. If the Customer sells any of the Goods while money is owed to us, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- 12.3.3 If the Customer uses the Goods in some manufacturing or construction process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to such Goods in trust for the Company. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to the Company and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Goods will be discharged.
- 12.3.4 If the Goods are resold, or products using the Goods are manufactured and resold by the Customer, the Customer holds the entire book debts owed in respect of such sales and proceeds of such sales in trust for the Company. Such part of the book debts and proceeds shall be deemed to equal in dollar terms the amount owed by the Customer to the Company at the time of the receipt of such book debts.

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## 13. INTELLECTUAL PROPERTY

- 13.1 **Your intellectual property:** If you provide us with Material to be used in the supply of the Goods or Services:
- 13.1.1 you warrant and represent to us that any Goods or Services supplied to you based on the Material you provide to us will not infringe the Intellectual Property Rights of any third party; and
- 13.1.2 you indemnify and will keep us indemnified from and against any and all claims, liabilities, obligations, expenses or damages which we may suffer or incur as a result or in connection with the representation or warranty in clause 13.1.1 being untrue or breached.
- 13.2 **Licence over Materials:** You grant to us a non-exclusive royalty-free license throughout the universe to use all Intellectual Property Rights in all Materials for so long as necessary or convenient for the production of the Goods or Services and the matters contemplated in relation to the delivery of the relevant Goods or Services.
- 13.3 **Our intellectual property and Background IP:** Nothing in these terms and conditions affects the ownership of Background IP or Third Party IP. All of our Intellectual Property Rights in and relating to the production, development and supply of the Goods or Services, including but not limited to drawings, illustrations, specifications, software and other documents (excluding Materials licensed to us pursuant to clause 13.2) remains our property and shall not be transferred, assigned, licensed, reproduced, disclosed or otherwise given to any other person by you without our prior written consent.
- 13.4 **Confidentiality:** You shall keep confidential and shall not use any confidential information communicated by us to you without our prior written consent.

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## 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.
- 14.3 **Issue of tax invoice:** We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.
- 14.4 **Third party supplies:** If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.

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## 15. GENERAL + TERMINATION

- 15.1 **Regulatory Compliance:** The parties acknowledge and agree that
- 15.1.1 except as expressly agreed to the contrary, they are respectively responsible for compliance with all Regulatory Requirements applicable to them including with respect to their respective activities in relation to this agreement; and

- 15.1.2 each will promptly notify each other of any regulatory authorities' queries or complaints regarding this agreement and the matters contemplated by it.
- 15.2 **Indemnity:** To the maximum extent permitted by law, you agree to indemnify and keep us indemnified in respect of:
- 15.2.1 all damages and Loss that we may incur in connection with your negligence, act or omission, or any breach or failure to comply with these Terms + Conditions;
- 15.2.2 any act or omission of any third party contractors, service providers, port, shipping carrier or agents in connection with the supply of the Goods and Services to you.
- 15.3 **Termination:** If a Default Event occurs:
- 15.3.1 we may, without limiting any other right we have under these Terms + Conditions, terminate any outstanding Order and any contract for the supply of Goods and Services to you; and
- 15.3.2 all Payments and any other money under these Terms + Conditions becomes immediately payable.

If these Terms + Conditions are terminated in accordance with this clause 15.3, you will be liable for payment of costs and disbursement properly incurred by us up to the date of termination. For lump sum or fixed fee work, you must pay the part of the fee that we reasonably estimate has been incurred in respect of the Goods or Services to date plus any costs, expenses and disbursements.

- 15.4 **Breach:** If the Customer fails whatsoever or howsoever to comply with any of these Terms + Conditions, the Company shall have the right at its option to suspend further performance of its obligations to the Customer and/or to terminate any contract with the Customer without affecting any other right or remedy of the Company.
- 15.5 **Assignment:** We may without notice to you assign, transfer and/or sub-contract our rights and/or obligations (in whole or in part) under these Terms + Conditions. You may not assign, transfer, hold on trust or otherwise delegate any of your rights or obligations under these Terms + Conditions without our prior written consent.

- 15.6 **Force Majeure:** If a Force Majeure Event occurs, we may:
- 15.6.1 totally or partially suspend any Order, any part of an Order or any deliveries relating to an Order during any period in which we may be prevented or hindered from delivering by our normal means of supply or delivery due to that Force Majeure Event; and
- 15.6.2 elect to extend at our discretion the period for performance of an obligation under these Terms + Conditions as is reasonable in all the circumstances or terminate this contract,

and we will not be liable to the Customer for any loss, damage, cost or expense incurred as a result of any such delay, suspension or termination.

- 15.7 **Severability:** Each clause in these Terms + Conditions is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.
- 15.8 **Waiver:** No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.
- 15.9 **Variation:** These Terms + Conditions may only be varied by a director of the Company. Such variation must be in writing and signed by the director and no other employee of the Company, nor any lorry driver under contract to the Company, or any other person.

15.10 **Governing law:** These Terms + Conditions shall be governed by the laws of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of New South Wales.

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## 16. INTERPRETATION + DEFINITIONS

- 16.1 **Personal pronouns:** Except where the context otherwise provides or requires:
- 16.1.1 the terms **we**, **us** or **our** refers to the Company; and
- 16.1.2 the terms **you** or **your** refers to the Customer.
- 16.2 **Interpretation:** In these Terms + Conditions:
- 16.2.1 the words *such as*, *including*, *particularly* and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- 16.2.2 the singular includes the plural and *vice versa*;
- 16.2.3 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 16.2.4 a reference to a monetary amount in these Terms + Conditions is in Australian dollars;
- 16.2.5 an agreement on the part of two or more persons binds them jointly and severally;
- 16.2.6 a reference to a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
- 16.2.7 a reference to a party includes its successors and permitted assigns; and

16.2.8 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of these Terms + Conditions or any part of it.

16.3 **Defined terms:** In these Terms + Conditions, unless otherwise provided, the following terms shall have their meaning as specified:

**ACL** means the Australian Consumer Law under the *Consumer and Competition Act 2010* (Cth) as amended.

**Background IP** means any Intellectual Property Rights:

- (a) existing prior to the commencement of these Terms + Conditions; or
- (b) obtained or created after the commencement of these Terms + Conditions by a party other than as a result of the performance of these Terms + Conditions.

**Cartage Levy** means the levy payable by you for the costs incurred by us in connection with transport and delivery of the Goods, as calculated under clause 3.3.

**Charges** means any sales tax, excise duties, customs duty, transfer duty, freight, GST or any other taxes, duties or charges (including any carbon tax type tax or similar) applicable in respect of the provision of the Goods and Services.

**Company** means Metromix Pty Ltd ABN 39 002 886 839 of Rhondda Road, Teralba, New South Wales 2284, Australia.

**Consequential Loss** includes:

- (a) any direct or indirect loss of overhead costs, administrative expenses, revenue, profits, anticipated savings, business, data and value of equipment (other than direct cost of repair);
- (b) any direct or indirect loss of opportunity, expectation loss or delay loss;
- (c) any form of consequential, special, punitive or exemplary loss or damages; and
- (d) liquidated damages,

howsoever it arises or is claimed (including as a result of negligence or by the operation of Law).

**Customer** means any person or entity that places an Order with us and agrees by conduct or by virtue of notice or otherwise to be bound by these Terms + Conditions, including any related company, related party, officer, employee, contractor, agent, successor, assign and authorised person. The action or signature of any such person appearing to have the authority of the Customer shall bind the Customer.

**Default Event** means any one of the following events:

- (a) you fail to make any payment when due, whether for the Goods and Services or otherwise;
- (b) you are in breach of these Terms + Conditions;
- (c) Winding Up commences against you;
- (d) a receiver is appointed to you;
- (e) you become insolvent, bankrupt or commit an act of bankruptcy;
- (f) proceedings are commenced or an application is made for the appointment of any persons listed in items (b) to (d) above; or
- (g) a mortgagee or their agent enters into possession of your assets.

**Default Interest** means as defined in clause 5.

**Delivery** means the delivery of the Goods and Services in accordance with clause 7.1.

**Delivery Details** may include, in respect of a Delivery, details of:

- (a) a number uniquely identifying a Delivery to be used as a reference;
- (b) Customer name and account number with delivery address and any specific instructions;
- (c) Date and times of loading and delivery stages (arrival and finish time);
- (d) Purchase order number from the Customer (if any);
- (e) Delivery vehicle identity (registration number);
- (f) Description and system codes of Goods or Services that are being supplied;
- (g) Quantity of Goods or Services;
- (h) for cash sales - the rate and value of Goods or Services supplied.

**Delivery Docket** means a document prepared by us which records Delivery Details in respect of a Delivery.

**Force Majeure Event** means circumstances beyond our reasonable control, which shall include, but not be limited to, compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, pandemic or epidemic, acts of God, acts of the public enemy, your acts or omissions, weather, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, inability to obtain raw materials from the source expected by the Company to be its source of supply as at the date of this contract, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, loss or damage to Goods in transit or instructions or lack of instructions from you.

**Goods** means goods sold by the Company from time to time, including any Goods specified on a Quote.

**GST and GST Law** have the meaning set out in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property Rights** means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trade marks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights and all extensions and renewals thereof anywhere in the world which currently exist and/or are recognised in the future.

**Invoice** unless otherwise agreed means the invoice issued upon the delivery of the Goods and Services specified in your Order.

**Law** includes the common law of Australia, rules of equity and the provisions of any relevant statute or statutory instrument including a by-law.

**Liability** includes any demand or claim (including a demand or claim for direct or indirect Consequential Loss) in respect of any damage, cost (including legal costs), expense, harm, injury or death or any fine or penalty imposed by or under a Law or by any authority.

**Loss** means any Liability incurred or alleged to have been incurred by us, the Customer or a third party in respect of, arising from or connected with any supply of Goods or Services by us or by our failure to supply any Goods or Services or of a breach of these Terms + Conditions, whether arising in Law or otherwise.

**Material** means any material in which you have Intellectual Property Rights provided by you for use by us in the production, development and supply of the Goods and Services to you.

**Order** means an order for Goods and Services received by us whether in writing or otherwise.

**Payment** means payment of any amount relating to Goods or Services in accordance with these Terms + Conditions.

**Payment Terms** means the deadline for payment of the price for our Goods and Services specified in clause 4.2 or a relevant Quote, Order or other document and in the absence of any stated frequency shall be payable in full in advance of the provision of the Goods and Services.

**Raw Materials** includes quarry products such as aggregates, sands, road bases and fills.

**Quote** means a quotation by us for the supply of particular Goods and Services which may contain the details as specified in clause 2.2 and be attached to these Terms + Conditions.

**Regulatory Requirements** means all applicable laws including practice requirements stipulated by any regulatory authority (whether established pursuant to statute or otherwise and whether mandatory or voluntary), regulations, instruments and provisions in force from time to time and any binding codes of practice.

**Related Bodies Corporate** means as defined in the *Corporations Act 2001* (Cth).

**Relevant Information** includes all specifications relating to the Goods or Services, the application of the Goods or Services, site details and other matters that may affect our ability to supply the Goods or Services or with which the Customer ought reasonably to be aware that we will be bound by contract, Law, custom or usage to conform.

**Services** means services provided by the Company from time to time, including (where applicable):

- (a) the testing of concrete, Raw Materials, additives or admixtures whether in respect of compliance with a relevant standard or otherwise;
- (b) the provision of other technical or design services or advice;
- (c) the provision of vehicles and drivers to Customers on a temporary basis;
- (d) weighbridge services,

as agreed between the parties under a Quote and/or proposal or other document provided by us.

**Standard Conditions** means for:

- (a) the supply of concrete, the Standard Conditions for Sale of Ready Mixed Concrete set out in Schedule A to these Terms + Conditions;
- (b) the supply of Raw Materials, the Standard Conditions for Sale of Raw Materials set out in Schedule B to these Terms + Conditions.

**Terms + Conditions** means these terms and conditions of supply which, together with the Quote, and any other document we attach or incorporate by reference, forms a contract between you and us.

**Third Party IP** means IP which is owned by a person other than us, and is used (whether under licence or otherwise), or proposed to be used, for the purpose of supplying the Goods or Services.

**Website** means the Company's website at [www.metromix.com.au](http://www.metromix.com.au).

**Winding Up** means commencing to be wound up, or suffering a provisional liquidator, liquidator, official manager or any other administrator of the affairs of insolvent companies to be appointed.

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## 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 practice 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 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.

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## Schedule B STANDARD CONDITIONS OF SALE FOR RAW MATERIALS

1. All Orders will be subject to a 12-tonne minimum quantity (**Minimum Quantity**), both for Goods delivered and Goods supplied ex bin. The Company reserves the right to refuse any Order for the supply of less than the Minimum Quantity of Goods. If the Company accepts (in its absolute discretion) an Order for the supply of less than the Minimum Quantity, the Order will be deemed to be for the Minimum Quantity and the Customer agrees to pay for the supply of those Goods in accordance with these Terms + Conditions on the basis that the Minimum Quantity of the material was supplied, notwithstanding that the Customer may receive less than that quantity of Goods.
2. For Dune Sand and Unprocessed Fill materials - The Goods are an unwashed and unscreened product which are loaded directly from the quarry. The Company will undertake a high-level visual inspection of the Goods for other foreign and/or organic materials before loading. However, given that some of these particles are very fine and may have naturally occurring variances we cannot make any guarantees as to variances, inclusion of foreign and/or organic materials, consistency, faults, colour, ratings or otherwise.
3. For Processed Road-base and Fill materials - The Goods are an unwashed product. The Company will undertake a high-level visual inspection of the Goods in addition to executing the requirements of the Company's Inspection Test Plan. However, given that some of these particles are very fine and may have naturally occurring variances we cannot make any guarantees as to variances, inclusion of foreign and/or organic materials, consistency, faults, colour, ratings or otherwise.
4. For Processed Aggregates and Sand materials - The Goods are a washed and screened product which are stockpiled after undergoing processing. The Company will undertake a high-level visual inspection of the Goods in addition to executing the requirements of the Company's Inspection Test Plan. However, given that some of these particles are very fine and may have naturally occurring variances we cannot make any guarantees as to variances, inclusion of foreign and/or organic materials, consistency, faults, colour, ratings or otherwise.