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Crosbie National Cement Pty Ltd ABN 14 150 295 328 - Supply Terms & Conditions

1 Reading Guide

1.1 Accepted Order means any actual supply of Goods or Services by the Supplier to the Client which in the case of Goods shall occur when Risk has passed to the Client.
1.2 ACL means the Australian Consumer Laws.
1.3 Approved Payment Method means a payment by cash, cheque, bank cheque, electronic banking or credit card.
1.4 Cancellation means the cancellation of an Order after is has been accepted by the Supplier;
1.5 Consequential Loss means the loss or expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay or any consequential special or indirect loss or damage whether or not the possibility of potential extended loss or damage was known or foreseeable and whether arising from a claim under indemnity, contract, tort (excluding negligence) statute or otherwise.
1.6 Credit Account means the credit facility given by the Supplier to the Client (if any).
1.7 Delivery Site means the place that the Client tells the Supplier to deliver the Goods to.
1.8 Goods means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
1.9 Order means a request, howsoever made, by the Client to the Supplier for the supply for Goods or Services;
1.10 PPSA means the Personal Properties Securities Act 2009 and PPSR means the Register created by that Act.
1.11 Price means the amount agreed to be paid to the Supplier by the Client for the Order.
1.12 Supplier means Crosbie National Cement Pty Ltd ABN 14 150 295 328 its successors and assigns or any person acting on behalf of and with its authority.
1.13 Supply Terms means these terms and conditions and any other terms and conditions of quotation hire or supply notified by the Supplier to the Client (whether on an invoice, quotation, order form, hire form, through the Supplier's website, docket or otherwise) or supply agreement (howsoever described) and any document said to be part of these terms and conditions.

2 Orders

2.1 All Orders are subject to these Supply Terms and the Client shall be bound by these Supply Terms on placing an Order or when an Accepted Order occurs. These Supply Terms shall over ride any terms that the Client may seek to impose on the Supplier.
2.2 Any Order is an offer by the Client and is not binding on the Supplier until it is accepted in writing by the Supplier or an Accepted Order has occurred.
2.3 The Supplier may give written notice of Cancellation to the Client at any time before there is an Accepted Order. On the giving of such notice the Supplier shall repay to the Client any money paid by the Client for the Goods or Services but shall not be liable for any loss or damage whatsoever suffered by the Client arising from the Cancellation.
2.4 If the Client gives a written notice of Cancellation to the Supplier the Client shall be liable to the Supplier for its Consequential Loss if the Cancellation is accepted by the Supplier.
2.5 The Supplier will not accept the Client's Cancellation where the Goods are to be made, developed or grown to the Client's specifications, or for non-stocklist items, once the Order has been placed.

3 Payment

3.1 If the Client has a Credit Account with the Supplier, in the absence of any other arrangement, the Client authorises the Supplier to charge the Price to the Credit Account.
3.2 If the Client does not have a Credit Account with the Supplier then the Client must pay the Price before the Accepted Order is completed by an Approved Payment Method.
3.3 The Supplier may at its discretion ask the Client to pay the Price by instalment (including a non refundable deposit) and if so those payments must be paid at the time stipulated by the Supplier by an Approved Payment Method.
3.4 Where the Client has requested the Supplier to charge the Price to a credit card then the Client authorises the Supplier to charge any monies payable under these Supply Terms and additionally a surcharge of 1.5% on those monies to the credit card without further authority.
3.5 If the Client fails to make any payment to the Supplier by the due date the Supplier may charge interest at a rate of 5% above the Reserve Bank Cash Rate calculated daily and compounded monthly but in no circumstances will the interest charge exceed 20% per annum
3.6 All costs and expenses associated with recovering any monies owed to the Supplier by the Client under these Supply Terms (including but not limited to legal costs on an indemnity basis) are to be paid by the Client to the Supplier.
3.7 If any payment is made by the Client to the Supplier and that payment is subsequently dishonoured the Client shall immediately pay that amount to the Supplier together with any additional costs or expenses incurred by the Supplier as a consequence of the payment being dishonoured.

4 Delivery

4.1 If the Client requests the Supplier to deliver the Goods to the Delivery Site then unless the Supplier has agreed to include the cost of the delivery in the Price then the Client shall pay the Supplier's then stated cost of delivery.
4.2 Any date or time specified by the Supplier for delivery is an estimate only and the Supplier shall not be liable to the Client for late delivery and the Client shall have no rights to refuse delivery.
4.3 The Client must give the Supplier safe and adequate access to the Delivery Site for the delivery and if needed the equipment needed to unload the Goods if the Supplier's vehicle is not suitable and shall indemnify the Supplier for any Consequential Loss as a result or failure to provide such access or equipment.
4.4 If delivery of Goods sold by the Supplier to the Client cannot be effected then at the Supplier's sole discretion the Supplier may store the Goods and charge the Client a storage fee equal to 10% of the Price per week until the Goods have been collected by the Client and if not collected within 3 months the Goods shall be deemed abandoned and become the property of the Supplier.

5 Risk

5.1 The risk of any loss or damage to or deterioration of the Goods from any cause whatsoever passes from the Supplier to the Client when the Client takes possession of the Goods or otherwise if:
(a) the Client collects the Goods and if the Supplier or its contractors have loaded the Goods for the Client, when the Goods are fully loaded onto the Client's vehicle or vessel;
(b) the Supplier delivers the Goods to the Delivery Site and the Client unloads the Goods, when the Client begins unloading the Goods;
(c) the Supplier delivers the Goods and unloads them at the Delivery Site, when the Supplier has finished unloading the Goods; or
(d) the Client requests the Supplier to deliver the Goods to an unattended location or the Delivery Site is closed when the Goods are unloaded and they will be left there at the Client's risk and any Order Defect (see clause 6.2) shall be waived.
5.2 If any of the Goods are damaged after risk has passed to, but prior to ownership passing to, the Client the Supplier is entitled to receive the proceeds of any insurance claim whether the policy is owned by the Supplier or the Client who assigns that benefit to the Supplier.

6 Warranties and Defects

6.1 The Supplier warrants only that the Goods are to be of merchantable quality and does not warrant that the Goods are fit for a particular purpose and, except or unless otherwise stated in these Supply Terms, warranties relating to title, defects or conformity of the Goods are expressly excluded where permitted by law and that risk in the Goods is the Client's risk.
6.2 The Client shall inspect the Goods upon delivery and will, within three (3) Business Days, give written notice to the Supplier of any defects not excluded by clause 6.1, short deliveries or any failure to fulfill any
Order (an Order Defect). The Client will, within a reasonable time following such notice, grant the Supplier access to the Goods to inspect them so it may accept or reject the Order Defect. If the Client fails to give a written notice or having given the written notice fails to give the Supplier access to the Goods then the Goods shall be deemed to be in compliance with the Order and free from any Order Defect.
6.3 If the Supplier accepts a return of the Goods (for reason other than a defect) the Supplier reserves the right to impose a fee at the Suppliers absolute discretion for 20% of the value of the Goods for allowing their return. This clause does not create any obligation on the Supplier to accept any Goods.
6.4 If the Goods are subject to a manufacturer's warranty the Client acknowledges that they are responsible for any Work carried out by the Supplier, if the Goods fail and they have not been paid for that Work under the manufacturer's warranty.

7 Exclusion of Implied Terms

7.1 The Client may have the benefit of consumer guarantees under the ACL and otherwise. To the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Supply Terms or in connection with the supply of any Goods or Services by the Supplier to the Client under law, statute, custom or international convention are excluded

8 Exclusion from Consumer Contracts

8.1 If the Client is an individual acquiring the Goods wholly or predominantly for personal, domestic or household purposes then Clause 12 does not apply and these supply terms can be varied in that regard.

9 Limitation of Liability under ACL Guarantees

9.1 To the extent that Goods supplied by the Supplier are not Goods of a kind ordinarily acquired for personal, domestic or household use and the Client is deemed to be a consumer for the purpose of Section 64A of the ACL, the Client agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Client may have a benefit of under the ACL (other than a guarantee under Sections 51 (Title), 52 (Undisturbed Possession) and 53 (Undisclosed Securities) is limited to at the option to the Supplier to one or more of these:
(a) replacement of the Goods or the Supply of equivalent Goods;
(b) the repair of the Goods;
(c) the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or
(d) equivalent Goods or payment of the costs of having the Goods repaired.
9.2 To the extent that the Services provided by the Supplier are Services other than Services of a kind ordinarily required for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with the consumer guarantee that the Client may have the benefit of is limited to, at the option of the Supplier:
(a) the supply of the Services again; or
(b) the payment of the fair cost of having the Services provided again.

10 Limitation of Liability

10.1 To the maximum extent permitted by law and subject to clauses 7 and 9 the Supplier's total liability arising out of or in connection with its performance or its obligations pursuant to these Supply Terms or arising out of or in connection with the supply of specific Goods or Services (including pursuant to or for any breach of these Supply Terms or repudiation of those, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:
(a) the Supplier shall have no liability to the Client to any Consequential Loss; or
(b) the Supplier's total aggregate liability for loss, however arising shall not exceed the GST exclusive aggregate price paid by the Client to the Supplier for the specific Goods or Services that gave rise to the loss in question. Limitation exclusions in this clause do not apply to the extent that any loss is directly attributable to:
(i) the personal injury or death caused by the Supplier's default, breach of these Supply Terms or negligence; or
(ii) fraud by the Supplier.
10.2 Each party must take reasonable steps to mitigate any loss it suffers or incurs.

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11 Title

11.1 The Supplier retains legal and equitable title in any Goods supplied to the Client until payment and until then the Client may sell the Goods or use the Goods in a manufacturing or construction process in the ordinary course of the Client's business for true market value but as between the Client and the Buyer of the Goods, the Client sells as principal and not as the agent of the Supplier. The proceeds of any such sale must be held by the Client in a separate fund on trust for the Supplier and the Client is under a duty to account to the Supplier for those proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Client to pay the Supplier for the Goods.
11.2 Until the Goods are sold or used in a manufacturing construction process, the Client must keep the Goods safe and free from deterioration, loss or harm and clearly designate the Goods as the property of the Supplier and keep full and complete records of the physical location of the Goods and the ownership of the Goods by the Supplier.
11.3 The Supplier is irrevocably entitled to, at any time, and from time to time before any sale of any of the Goods by the Client to enter any of the Client's premises, vehicles or vessels to inspect or to recover and retake possession of the Goods and otherwise in relation to the Goods exercise any of its rights whether those rights are as owner or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or any way. If the Goods are held by a third party then the Client shall obtain the consent of that third party so that the Supplier may exercise its rights under this clause and shall indemnify the Supplier and its agents from any liability arising from the exercise of those rights.
11.4 The reservation of title and ownership is effected whether or not the Goods have been altered from their supplied form or comingled with other Goods.

12 Personal Property Securities Act 2009 ("PPSA")

12.1 The Supplier's rights set out in these Supply Terms where applicable constitute the grant of a purchase money security interest (PMSI) by the Client in favour of the Supplier for the purposes of the PPSA.
12.2 The Client must immediately, if requested by the Supplier sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that the Suppliers PMSI is a perfected security interest under the PPSA.
12.3 The Client will not enter into any security agreement that permits any other person to have or to register any security interests in respect of the Goods or any proceeds from the sale of the Goods until the Supplier has perfected its PMSI under the PPSA.
12.4 In this clause collateral, financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
12.5 Upon assenting to these Supply Terms in writing the Client acknowledges and agrees that these Supply Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all
Goods or collateral being a monetary obligation of the Client to the Supplier for Services that have previously been supplied and that will be supplied in the future by the Supplier to the Client.
12.6 The Client undertakes to:
(a) promptly sign any further documents or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to;
(i) register a financing statement or financing change statement in relation to a security interest on the PPSR;
(ii) register any other document required to be registered by the PPSA; or
(iii) correct a defect in a statement referred to in this sub- clause;
(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods so charged;
(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or collateral in favour of a third party without the prior written consent of the Supplier; and
(e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
12.7 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Supply Terms.
12.8 The Client waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
12.9 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
12.10 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
12.11 The Client must unconditionally ratify any actions taken by the Supplier under clauses 12.6 to 12.8.
12.12 Subject to any express provisions to the contrary nothing in these Supply Terms is intended to have the effect of contracting out of any of the provisions of the PPSA.

13 Security and Charge

13.1 The Client charges all of the Client's right, title and interest in all present and after-acquired property and present and after- acquired land held by the Client, to secure the payment of all amounts due and payable under these Supply Terms (Secured Monies). The Client consents to the Supplier lodging a caveat or caveats or to registering the Supplier's security interest on the PPSR to note the Supplier's interest under this clause.
13.2 On demand by the Supplier, the Client will immediately provide any information, or do any action required by the Supplier, including executing a mortgage or any other instrument of security, in terms satisfactory to the Supplier, to further secure payment of the Secured Monies.
13.3 The Client irrevocably appoints the Supplier and, any person nominated by the Supplier, severally the attorney of the Client with power to execute, sign, seal and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.
13.4 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on an indemnity basis incurred in exercising the Supplier's rights under this clause.

14 Intellectual Property

14.1 All intellectual property created by the Supplier relating to the Goods or Services is from the time of the creation owned by the Supplier.
14.2 The Supplier grants to the Client a non exclusive royalty free licence to use the Supplier's intellectual property to the extent that such materials form part of or are integral to the Goods or Services and the Client must not remove any branding, patent, copyright or other proprietary notices of the Supplier on the Goods unless the Client first obtains the prior written consent of the Supplier.
14.3 If the Client provides the Supplier with any design, writing, drawing or specifications that are used in regards to the Goods or Services the Client warrants that the use of them will not cause the Supplier to infringe any third party's rights and agree to indemnify the Supplier against any action taken by a third party in respect of any alleged rights.
14.4 If anything referred to in clause 14.3 is given by the Client to the Supplier the Client gives the Supplier ownership to those things and if that cannot be given both the moral rights in those things and the exclusive right to make a commercial use of them.

15 GST

15.1 If the Supplier has any liability to pay Goods and Services Tax (GST) on the supply of any Goods or Services to the Client, the Client must pay the Supplier an amount equivalent to the GST liability of the Supplier
at the same time as the consideration is paid for the Goods or Services (unless the consideration for that Supply is expressed specifically to be GST inclusive).

16 Privacy

16.1 The Supplier will comply with the Australian Privacy Principles in all dealings with the Client.
16.2 The Supplier may need to collect personal information about the Client and, if applicable its Directors, including but not limited to full names and addresses, drivers licence details, credit card details, dates of birth and credit or business history (the Personal Information).
16.3 The Client consents to the Supplier using the Personal Information in order to:
(a) satisfy itself as to the Client's creditworthiness or exercising the Supplier's rights under clauses 12 and 13;
(b) provide Goods and Services to the Client;
(c) prevent the theft of the Goods;
(d) enter into contracts with the Client or third parties; and
(e) market to the Client and maintain a business relationship with the Client.
16.4 The Client consents to the Supplier disclosing the Personal Information to:
(a) any credit provider or credit reporting agency for the purpose of obtaining or giving information about the Client including its credit or business history or the Client's commercial activities or creditworthiness generally;
(b) the Supplier's service providers, contractors and affiliated companies from time to time to help improve and market the Supplier's services to the Client; and
(c) any lawyers or mercantile agents to enforce any of the Supplier's rights against the Client or to any prospective guarantor if the Client proposes a replacement or additional guarantor.
16.5 The Client has a right to access the Personal Information the Supplier holds about the Client and copies of the Supplier's Credit Product Privacy Policy and Credit Reporting Policy are available upon written request made to the Supplier.

17 Claim for Payment

17.1 If applicable a claim for monies owed under these Supply Terms are a claim for payment under the Building and Construction Industry Security of Payment Act 1999 (NSW).

18 Acknowledgements

18.1 The Client acknowledges and agrees that:
(a) the failure by the Supplier to enforce any provision of these Supply Terms shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision;
(b) if any part of these Supply Terms is void or unenforceable, it may be severed without affecting the enforceability of any other part;
(c) a breach of these Supply Terms is a breach of the Credit Terms (if applicable);
(d) where the law permits the Supplier shall be under no liability whatsoever to the Client for any Consequential Loss suffered by the Client from a breach by the Supplier of these Supply Terms;
(e) the Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute;
(f) the Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent; and
(g) it must pay any stamp duty assessed on this document or the transactions contemplated by it or fee to any Register or maintain any security interest held or to be held by the Supplier under these Supply
Terms;

19 General

19.1 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
19.2 The Client shall, until title in the Goods has passed, give the Supplier not less than fourteen (14) days prior written notice of any proposed change affecting the structure, management, ownership or control of
the Client including its ACN, ABN or any details required on the PPSR or any other change in the Client's Contact Details.
19.3 Electronic signatures shall be accepted providing that the persons signing have complied with the Electronic Transactions Act 2000 (NSW)
19.4 These Supply Terms and any contract, agreement or transaction to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of Sydney, New South Wales.