



Premix Concrete SA Pty Ltd

Terms and Conditions of Supply - Goods (Concrete and Stylecrete)

1. Meanings

In these terms:

Additional Costs means any fee or cost set out in our Schedule of Rates (other than our rate Goods) which we may invoice you for in respect of a Contract including, for example, a fee for re-scheduling the delivery of the Goods or for waiting time incurred by us at the Delivery Site when we deliver the Goods.

Claim means, a demand, claim, action or proceeding against a party, however arising (including in contract, negligence or under a right under statute) and whether present, unascertained, immediate, future or contingent.

Concrete means ordinary structural or pavement concrete we supply to you other than Stylecrete.

Contract means any contract for a supply from us to you.

Credit Agreement means any credit and security agreement between us and you in respect of the supply of Goods.

Delivery Date means the date in a Contract on which we will deliver the Goods to you as varied under these terms.

Delivery Docket means a docket prepared by us and provided to you which records details of the Goods we deliver to you.

Delivery Site means the site we are to deliver the Goods as set out in a Contract.

Liabilities means a Claim, losses, liabilities, costs or expenses of any kind and however arising, including penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

Goods means goods we supply to you under a Contract including concrete and/or Stylecrete.

notice means written notice by post or email.

Order means any order for Goods you place with us by any means including by email or telephone.

Order Information means all information about the Supply including delivery of the Goods which you make known to us in writing as part of an Order or Contract.

Quote means any written quote or written offer from us to you.

Rate means (i) the rate or fee for the Goods on a volume basis agreed for the Contract (including in the Order or Quote), or if not so stated (ii) as set out in our Schedule of Rates as at the date of the Contract for such Goods on a volume basis.

Schedule of Rates means our schedule of rates for Goods and Additional Costs as issued and amended by us from time to time.

Stylecrete means our range of decorative Concrete products which comprises of, natural materials (including stones and aggregates), additives, colours and admixtures which can be polished, exposed, or Seeded.

Seeded or Seeding means a process that involves the addition of pebbles to the surface of Stylecrete.

Supply means our supply of good and/or services to you.

we or **us** means Premix Concrete SA Pty Ltd (ACN 008 284 688).

you means the person or entity described as the customer in the Order or Quote.

2. Interpretation

In these terms:

- 2.1. a reference to "\$" or "dollars" is to Australian dollars;
- 2.2. singular includes plural and vice versa;
- 2.3. reference to a person includes a corporation and partnership and vice versa;

- 2.4. headings do not affect interpretation;
- 2.5. no rule of construction applies to the disadvantage of a party because that party put forward a Contract or any portion of it; and
- 2.6. if any part of a Contract would be unenforceable, the provision must be read down to the extent necessary to avoid that result, and if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of the Contract.

3. Application

- 3.1. A Contract is formed if you accept a Quote in writing, by email or otherwise, you accept a Supply from us or we accept an Order from you for Goods. These terms:
 - 3.1.1. apply to each Contract;
 - 3.1.2. together with our Quote, your Order and/or any Credit Agreement (if any) are the sole terms of each Contract;
 - 3.1.3. do not apply to a Contract to the extent that an applicable Quote expressly amends these terms; and
 - 3.1.4. prevail over any terms put out by you including in any Order, unless our managing director or chief executive officer expressly agrees in writing.
- 3.2. None of our employees, agents or contractors may vary or add to these terms without the prior written authority of our managing director or our chief executive officer. Except as required by the mandatory operation of law, all implied terms and conditions are excluded. If you enter into a Contract as a trustee you agree that you enter into the Contract in both your own capacity and as trustee of the trust.

4. Quotes and Orders

- 4.1. An Order you give us is subject to our acceptance and we may decline an Order. You may not cancel a Contract, or delay delivery unless we agree in writing.
- 4.2. Quotes are valid for the period specified in a Quote unless withdrawn or varied by us by notice prior to our receipt of your notice of acceptance. Where a Quote does not specify a validity period for the quote then the Quote will be valid for a period of 30 days.
- 4.3. Where you make an Order with us by telephone we may email you to confirm details of the Order. We may refuse to supply the Goods until you confirm that the contents of our email properly record the details of your Order and our price for the same.

5. Order Information and Conditions of Supply

- 5.1. You warrant that you will provide us with all applicable Order Information in making an Order and/or so we can properly prepare a Quote for you and that all Order Information you provide to us is true, accurate and complete.
- 5.2. Subject to these terms or any written term in a Contract, you acknowledge and agree that (i) you have selected the Goods based on your own requirements and your investigations as to the suitability of the Goods, and (ii) we have not provided you with any advice as to the suitability of the Goods for your intended use or as to their fitness for purpose.
- 5.3. Unless expressly set out in writing (including in a Quote or in a document signed by us) we give no warranty, advice or representation as to:
 - 5.3.1. the suitability of the Goods for your intended use; or
 - 5.3.2. whether the Goods will have the durability, other characteristics and performance you require including being fit for a particular purpose.
- 5.4. You must not make any representation or warranty to your customers about our Goods which is inconsistent with the

terms of our Contract or our published information about our Goods.

- 5.5. You release us and indemnify us from any Liabilities in respect of the above matters unless we have provided such a warranty, advice or representation to you in writing.

6. Prices and Payment

- 6.1. Unless stated otherwise, total prices Quoted are exclusive of GST.
- 6.2. The price for the Goods will be calculated based on the volume of Goods supplied multiplied by the applicable Rate (which such Rate may be set out in the Order or Quote) plus any applicable Additional Costs incurred in respect of the same. The price will be included on the Delivery Docket. However, where the Goods are delivered by a number of deliveries we may elect only to include the total price on our final Delivery Docket. Unless a Quote expressly provides otherwise you must pay us as set out in this clause.
- 6.3. We may invoice for the Goods before delivery and you must pay the same prior at or prior to delivery unless (i) you have a Credit Agreement in place with us, and (ii) the invoice (and any other outstanding amounts due to us) is within the credit limit under the same. Where you have the benefit or such a credit arrangement (i) you must pay our invoice within the period required under the Credit Agreement, and (ii) we may elect to invoice you on or after delivery of the Goods (where under the Contract we deliver the Goods in batches we may invoice you on or following the delivery of each such batch of Goods). Where you do not have a Credit Agreement in place with us and for any reason we deliver the Goods prior to you paying for the same, you must pay our invoice for the Goods within 2 working days of us requiring payment of the same.
- 6.4. All payments must be made in full. You may not deduct or set off from any amount due to us under a Contract any amount (including a Liability) you allege we owe you unless we agree in writing. An invoice is payable by you alone and under no circumstances may you withhold payment on the basis you are awaiting payment from any third party or request we seek payment directly from any third party. You must pay GST on an invoice as and when you are required to pay the invoice.
- 6.5. If you pay an invoice by credit card you must also pay us a credit card administration fee as notified by us from time to time which will be an amount equal to any credit card merchant fees we incur as a result of you paying by credit card.
- 6.6. We may set off any amount we owe you under or in respect of any Contract against any or all amounts you owe us under or in respect of any Contract.
- 6.7. If payment is overdue, we may charge you interest at the Reserve Bank of Australia's cash rate plus 7% from the date of the default until we receive payment in full. We may apportion any part payments you make against any outstanding interest or principal as we may decide. We may also apportion any payments you make under one Contract to amounts due under another Contract.
- 6.8. If payment is overdue under any Contract we may in respect of any Contract cancel or suspend the delivery or performance of any Supply. You must still pay us for any Supply (or part thereof) delivered or performed under any such Contracts.
- 6.9. Payment is not deemed to be received until we receive cleared funds. A cheque is not deemed to be payment until it is accepted and cleared. Deposits, progress payments and upfront payments must be paid in accordance with a Quote.

7. Delivery and Instructions

- 7.1. We will use reasonable efforts to deliver the Goods to the Delivery Site by the Delivery Date however we will not have any Liability to you where despite using reasonable efforts we are unable to do so (in such circumstances we will agree a revised Delivery Date with you).
- 7.2. The Goods will be delivered by us to the Delivery Site which will be at the public road closest to the Delivery Site. Where you require us to deliver the Goods on private property at the Delivery Site, you must ensure that the same is safe and that we have unrestricted and adequate rights and room to make that delivery and you indemnify us from any Claims arising from our access to such private property unless solely caused by our negligence. You are responsible for traffic management

associated with our delivery of Goods to the Delivery Site including obtaining any approvals in respect of the same. If you are in breach of your obligations under this clause we may refuse to deliver the Goods and you must indemnify us for any loss we incur in respect of having to reschedule the delivery of the Goods.

- 7.3. You must ensure that you have authorised staff present at the Delivery Site on the Delivery Date to meet your obligations and exercise your rights as set out in this clause. Where you breach this obligation you are deemed to have appointed any persons at the Delivery Site as your attorneys to meet your obligations and exercise your rights as set out in this clause and you irrevocably agree that we can rely on the acts of the same (including in respect of signing a Delivery Docket).
- 7.4. We will provide you with a Delivery Docket immediately prior to Delivery. You must check the Delivery Docket and the Goods. Based on the same, you must either sign the Delivery Docket or if there is a material difference between the Delivery Docket and Goods about to be delivered (i.e. Good quantity, quantity or type) you must set out in detail the basis for such Claims in writing on the back of the Delivery Docket and return this to us before we leave the Delivery Site (**Rejection Notice**). The Rejection Notice must specify whether you reject all or some of the Supply and where the rejection is for part of the Supply we will deliver that portion of the Supply. If you do not have staff present to sign the Delivery Docket or you staff refuse to sign a Delivery Docket without providing a proper Rejection Notice we may elect not to deliver the Goods but you will remain liable to pay for the same. You will be liable to us for all loss and costs we incur if your Rejection Notice has been wrongfully issued.
- 7.5. Where you accept the delivery of the Goods and have not issued a Rejection Notice, then the following will apply regardless of whether or not you have signed the Delivery Docket:
- 7.5.1. you will be deemed to have accepted the Goods and that the details in the Delivery Docket are true and correct (including as to the type of Goods delivered and the quantity of the same); and
- 7.5.2. you release us in respect of any Claim in respect of the type of Goods delivered and the quantity of the same (other than any defects in the Goods which could not reasonably be identified by you via the inspection).
- 7.6. You must pay us for any Goods and transport and disposal of the same which is returned from the Delivery Site because:
- 7.6.1. you are unable to use all of the Goods or you wrongfully refuse to accept the Goods including by issuing a Rejection Notice without proper cause; or
- 7.6.2. the delivery of or acceptance of the Goods by you exceeds the time between batching and discharge as allowed under AS1379 so long as we have not caused this to occur.
- 7.7. Title to the Goods does not pass to you until we receive payment for the Goods in full. Risk in the Goods passes from us to you on the Goods leaving our vehicle at the Delivery Site.
- 7.8. Unless you give us notice to the contrary, we will assume that all of your employees, directors and officers who give us instructions or sign any document (including a Delivery Docket) are authorised to do so and that we may act on oral instructions or accept their signature is authorised by you. We are not liable to you for any damage or loss suffered by you which results from us following your directions or instructions including in respect of the delivery of the Goods.
- 7.9. Where under a Contract we deliver the Goods by means of a number of deliveries to the Delivery Site (i) we may issue a Delivery Docket with each such delivery, (ii) this clause 7 will apply to each such Delivery, and (iii) we will provide with the final delivery of Goods a Delivery Docket which also records the total of all Goods delivered under the Contract.

8. Conditions Applying to Supply of Goods

- 8.1. Unless a Contract provides otherwise we warrant that Goods comprising pre-mix concrete will comply generally with AS1379 based on "Normal Class Concrete".

- 8.2. You agree that we will not be liable for any Claim or Liability arising from any failure or defect in the Goods (including cracking) delivered to you which is caused or arises from:
- 8.2.1. you or others curing, placing, pumping rolling, finishing or other use of the Goods not in accordance with applicable Australian Standards (including AS3600) or good and accepted industry standards;
 - 8.2.2. you failing to take into account certain of our Goods have a quicker set and drying times (for example, our Vanillia, Diamond, Blizzard and Platinum cements);
 - 8.2.3. weather conditions including temperature or rain;
 - 8.2.4. you or others adding water or other materials to the Goods at or after delivery of the Goods including any Seeding of Goods (you acknowledge that Premix does not provide any Seeding services);
 - 8.2.5. colour change to Goods including greenish tint developing (including as the Goods contain Brightonlite cement); or
 - 8.2.6. you using Goods other than their intended, proper or usual purposes (for example, polishing paving Concrete or using or finishing Concrete as decorative exposed concrete).
- 8.3. You acknowledge and agree that our Concrete is not suitable for use as decorative exposed concrete. As such, if you require decorative exposed concrete you should order from our Stylecrete range. Where you purchase Concrete for your own personal, domestic or household use and finish, or have others finish, the Concrete as decorative exposed concrete you (a) do so at your own risk, and (b) release us from all any Claims arising from such use. Where you purchase Concrete as part of a supply you are making to a customer (i.e. you are a concrete placer) you warrant to us that (a) you are not buying such Concrete for use as decorative exposed concrete and you will not finish the same as decorative exposed concrete, and (b) you will not represent to any person (including your customer) that the Concrete is Stylecrete or is suitable for use as decorative exposed concrete. You agree to release and indemnify us from all Claims arising from any breach by you of the warranties in this clause.

9. Conditions Apply to Stylecrete

- 9.1. This clause only applies to Stylecrete.
 - 9.2. You acknowledge and agree that:
 - 9.2.1. Stylecrete is a decorative concrete product which is comprised of cement, other natural materials (including stones and aggregates), additives, colours and admixtures;
 - 9.2.2. you are responsible from selecting the product from our Stylecrete range and how the same is to be placed and finished to procure a desired final appearance;
 - 9.2.3. samples and brochures we provide to you or publish (including online) in respect of our Stylecrete products are a guide only and we do not guarantee that the Stylecrete provided to you will match that in such samples or brochures and in particular there may be colour variations between the Stylecrete provided to you from that in such samples and brochures;
 - 9.2.4. Stylecrete may have some colour change. The colour change may include a greenish tint due to a change in the raw materials used in the manufacturing of cement, over which we do not control. Stylecrete may also have colour change due to iron staining (including caused by the oxidation of aggregates) and colour variation due to the use of aggregate which is a natural product which varies with each batch of Stylecrete;
 - 9.2.5. how you or your contractor place and finish the Stylecrete (including wash of aggregate or polishing) will impact on the final appearance of the Stylecrete including the amount of aggregate which is left exposed;
 - 9.2.6. you must confirm with us whether or not a particular Stylecrete is suitable for having a honed or polished finish; and
 - 9.2.7. as a natural product and given the impact that placing and finishing can have on the final appearance of Stylecrete you should not expect the final appearance of Stylecrete to exactly match any samples or brochures we provide or publish.
 - 9.3. Where you are purchasing Stylecrete as part of any supply you are making in commerce to a customer (i.e. you are a Stylecrete placer) then you acknowledge and agree that you will inform your customer of the matters set out in this clause in writing (this is important as your customer needs to understand these matters as part of properly deciding whether or not to use Stylecrete and understanding the potential variations in outcomes if Stylecrete is selected and used).
 - 9.4. You release us from all Claims arising from the matters set out in this clause 9. You also indemnify us from any Claims from your customer from the matters set out in this clause 9 including because your customer Claims that the final appearance of the Stylecrete product does not match any sample, brochures published by us.
 - 9.5. We have samples at our display offices of how the final appearance of Stylecrete products may vary based on some of the above factors and we encourage you to attend and assess the same.
- ## 10. Claims and Liability
- 10.1. Subject to applicable law, we will not be liable to you and you will not bring any Claim against us unless:
 - 10.1.1. you promptly notify us as to any defect or non-conformity in respect of Goods (including providing full details in respect of the same) we have delivered to you;
 - 10.1.2. you allow us to inspect those Goods; and
 - 10.1.3. where applicable you provide us with tests of the Goods by a properly certified body and the tests are conducted in accordance with applicable Australian Standards.
 - 10.2. Except as provided in a Contract we disclaim and exclude all conditions and warranties, expressed or implied (including any rights and remedies) imposed or conferred by statute, common law, equity, trade custom or usage.
 - 10.3. We have no Liability to you under or in connection with a Contract (including under a Claim made under statute) for any loss of profit or reputation, economic loss, indirect, consequential or special loss, cost, damage or expense including in respect of a Supply. Where by law we are liable to you as a manufacturer (including under section 274 of the *Australian Consumer Law* (being Schedule 2 of the *Competition and Consumer Act 2010*) our Liability is limited to paying an amount equal to the costs of the goods, obtaining equivalent goods or repairing the goods.
 - 10.4. Unless the Contract expressly states otherwise, you warrant that you will acquire the goods from us for the purposes or re-supply or transforming them in trade or commerce.
 - 10.5. This clause 10.5, applies where the warranty in clause 10.4 is not provided and therefore you are a "consumer" within the meaning of section 3(1) of the *Australian Consumer Law* (being Schedule 2 of the *Competition and Consumer Act 2010*). Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
 - 10.6. If Goods or services we supply are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then our Liability for a breach of a condition, warranty or guarantee of supply (including any imposed or implied under Schedule 2 (The Australian Consumer Law) of the *Competition and Consumer Act 2010*, is limited to (as we may decide):
 - 10.6.1. in the case of goods (i) the replacement of the goods or the supply of equivalent goods, or (ii) the repair of the goods, or (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods, or (iv) the payment of the cost of having the goods repaired; and

10.6.2. in the case of services (i) the supplying of the services again, or (ii) or the payment of the cost of having the services supplied again.

10.7. Our Liability to you for all Claims not caught by other provisions in this clause 10 is limited to a maximum amount equal to the total amount you have paid to us for the applicable Goods or services to which the Claim relates. You agree that:

10.7.1. this is a genuine pre-estimate of your likely Liability arising from a breach by us of a Contract, our acts or omissions or negligence; and

10.7.2. if this clause was not included then either the terms of the Contract on which we would have agreed to provide the Supply would have been substantially different (including an increase in price).

11. Intellectual Property

We own the intellectual property rights in our brands for the Goods including the word "Stylecrete" and our sub-brands for "Stylecrete" products such as "galaxy", "fusion" and "smoke" (**Brands**). You agree not to use these Brands other than in respect of the applicable Goods we supply to you.

12. Confidential Information

12.1. A party (**recipient**) must use or disclose confidential information provided by or about the other party (**discloser**) only:

12.1.1. to perform its obligations under a Contract;

12.1.2. as required by the mandatory operation of law;

12.1.3. to its professional advisors (bankers, accountants, lawyers) for a proper purpose; or

12.1.4. with the other party's prior written consent.

12.2. The obligations imposed under clause 12.1 survive the termination of a Contract.

12.3. In this clause **confidential information** means any confidential or proprietary information (in any form including copies and notes) obtained in connection with a Contract (including in negotiating a Contract). It however excludes: (i) information which is or becomes a matter of public record other than by a breach of this clause; (ii) information which the discloser certifies in writing as not being confidential information; and (iii) information which the recipient proves it lawfully possessed before obtaining it in connection with a Contract.

13. Indemnity and Costs

13.1. You indemnify us against any Liability (including reasonable legal fees on a solicitor/client basis) which we may incur arising out of any breach by you of the Contract or any negligence or wrongful act or omission by you.

13.2. You must pay us all our costs (on a solicitor/client basis) incurred in the recovery of monies owing by you or in otherwise enforcing our rights against you under a Contract.

14. Termination

14.1. We may terminate all or any Contracts by notice to you if:

14.1.1. you fail to pay any amount in full within 30 days of the due date under a Contract;

14.1.2. you breach any term or condition in a Contract and fail to remedy that breach within 14 days of notice from us or the breach cannot be remedied;

14.1.3. you are a company and you are subject to a change in *control* from that existing on the date you entered into your first Contract with us (*control* in this clause has the meaning given in section 50AA of the *Corporations Act 2001*);

14.1.4. you are a natural person and you commit an act of bankruptcy under the *Bankruptcy Act 1966* or become an *insolvent under administration* within the meaning of section 9 of the *Corporations Act 2001*;

14.1.5. you become an *externally-administered body corporate* (within the meaning of section 9 of the *Corporations Act 2001*) or a party takes action to make you an *externally-administered body corporate*;

14.1.6. a party seeks to enforce a security against the whole or substantial part of your assets; and/or

14.1.7. there is, in our opinion (acting reasonably), a material adverse change in your financial position that gives us reasonable grounds for believing that you may be unable to fully and promptly perform your obligations under a Contract.

14.2. You may terminate a Contract by notice to us if:

14.2.1. we breach any term or condition in a Contract and fail to remedy that breach within 14 days of notice from you or the breach cannot be remedied; and/or

14.2.2. we become an *externally-administered body corporate* (within the meaning of section 9 of the *Corporations Act 2001*) or a party takes action to make us an *externally-administered body corporate* (within the meaning of section 9 of the *Corporations Act 2001*)

14.3. Despite the above, where the *Corporations Act 2001* prohibits or prevents a valid termination of a Contract as a result of a party (a) becoming an *externally-administered body corporate* (within the meaning of section 9 of the *Corporations Act 2001*), or (b) having a *controller* appointed in respect of that party's property, then the other party may suspend the performance of its obligations (other than any payment obligation you have to us which has accrued or does accrue) under the Contract unless and until the administrator or controller provides satisfactory undertakings in writing to that party that the affected party is able to meet its outstanding obligations under the Contract.

14.4. Termination does not affect any of our rights or remedies existing before termination or arising from termination.

15. Force Majeure

15.1. We will not be liable for delay or failure to perform any of our obligations under a Contract to the extent that such delay or failure is caused by a force majeure event.

15.2. A **force majeure event** means any circumstance not within our direct or reasonable control including labour disputes, obtaining labour, materials or goods, destruction or damage to our premises or a relevant work site, malfunction, breakdown or damage to our plant or equipment, breach of contract, default or insolvency of any third party, an act of government or governmental authority, terrorism, disruption to the supply of power, gas, water, electronic or telecommunication services, civil disorder, the weather or other natural events.

15.3. We may terminate a Contract 30 days after the occurrence of a force majeure event if in our opinion we are unable to perform the Contract or can only perform the Contract at a loss due to the effects of the force majeure event.

16. Assignments and Amendments

16.1. You may not assign your rights under a Contract with us without our prior written consent.

16.2. We may use subcontractors to perform any part of the work without notifying you or obtaining your consent. No subcontractor has authority to agree to any variation of the Contract or any Supply under it on our behalf.

16.3. A Contract can only be amended by agreement in writing. We can only waive any of our rights under a Contract by written notice to you.

17. Notice

Notice can only be in writing and be given to a party either: (i) by post to the addressee's last known principal place of business. Notice by post is deemed to be received at the time at which the letter would be delivered in the ordinary course of post, and (ii) by email. Notice by email is deemed to be received 48 hours after sending unless the sender receives a delivery delay or failure message.

18. Law and Jurisdiction

These terms and each Contract are governed by South Australia law any dispute arising in connection with a Contract or these terms is subject to the exclusive jurisdiction of the courts of South Australia (and the Federal Court of Australia (Adelaide Registry)).

PREMIUM CONCRETE SA PTY LTD (ACN 008 284 688)

Version 1: Dated 23 November 2018