

## 1. DEFINITIONS

- (1) Buyer means the entity to whom Goods are supplied by M-C;
- (2) Contract means a contract of sale of Goods arising out of an order accepted by M-C;
- (3) Delivery means the Goods have been:
  - (a) Handed to the Buyer or the Buyers Representative;
  - (b) Delivered to the carrier or site nominated by the Buyer;
- (4) Goods means any goods and or services supplied by M-C;
- (5) M-C means Mini-Crete Pty Ltd ABN 12 143 670 777 and its assigns;
- (6) GST means Goods and Services Tax as provided for in A New Tax System (Goods and Services Tax) Act 1999;
- (7) MSDS means any Material Safety Data Sheet or other similar information published or made available by M-C from time to time;
- (8) Invoice means the invoice issued by M-C in relation to a Contract;
- (9) Words importing the singular number include the plural and vice versa.

## 2. CONDITIONS

- 2.1 Every Contract is governed by these terms and conditions.
- 2.2 These terms & conditions, the terms of the relevant invoice & any other written agreement between M-C & the Buyer constitutes the entire agreement between the parties.
- 2.3 Any terms & conditions contained in the Buyer's order documentation inconsistent with these terms and conditions, including a statement that the Buyer's terms & conditions prevail, are expressly excluded.
- 2.4 M-C may at any time after giving the Buyer notice vary these terms & conditions.

## 3. QUOTATIONS & ORDERS

- 3.1 All information about the Goods including quotations provided by M-C to Buyers are invitations to do business.
- 3.2 Purchase orders from the Buyer are deemed to be offers to purchase.
- 3.3 M-C may in its absolute discretion choose to accept or reject a Buyer's purchase order. Such acceptance may be in writing or by the supply of Goods to the Buyer.
- 3.4 Any quotation or other document provided by M-C to the Buyer may be varied or withdrawn by M-C at any time.

## 4. PRICES & PAYMENT

- 4.1 Prices of the Goods, including all GST and other government taxes in relation to the Goods will be set out in the relevant Invoice. Unless otherwise expressly stated all prices quoted to the Buyer are exclusive of GST.
- 4.2 In addition to the price payable for the supply of Goods, the Buyer must pay the GST payable in respect of that supply.
- 4.3 Where the Goods are concrete unless otherwise stated the prices quoted are for:
  - (1) Delivery during normal hours 7.00am to 4.00pm, weekdays to a single location;
  - (2) A discharge period of 7 minutes per cubic meter for unloading. Additional charges will apply for actual discharge periods in excess of this.
- 4.4 Payment by the Buyer of the price of all Goods supplied & all charges on the Invoice must be made before, or immediately on, Delivery unless M-C granted the Buyer credit where payments must be made within 30 days from Invoice date.
- 4.5 All payments by the Buyer must be made without any set off.
- 4.6 All losses, legal and other costs arising from the Buyer's failure to pay the total Invoice amount by the due date are recoverable

from the Buyer as liquidated damages.

## 5. RETENTION OF TITLE

- 5.1 Property in the Goods supplied will not pass to the Buyer until the money owing for the Goods, and any other money owing by the Buyer to M-C, has been paid.
- 5.2 Until the Goods have been paid for in full the Buyer; has possession of the Goods as bailee only; must properly store, protect and insure the Goods, including storing them in a manner that shows clearly that they are the property of M-C; and may sell or consume the Goods, in the ordinary course of its business, but only as fiduciary agent of M-C. The Buyer has no authority to bind M-C to any liability by contract or otherwise and must not purport to do so.
- 5.3 The Buyer must, if requested by M-C, deliver up the Goods to M-C, failing which M-C is irrevocably authorised to enter the place where the Goods are stored and repossess the Goods if : the Buyer fails to pay a due amount following demand by M-C; or the Buyer commits an act of bankruptcy; or a receiver is appointed to the Buyer; or the Buyer goes into liquidation, administration, or some other form of insolvency administration; or the Buyer ceases to carry on business; or the Buyer enters into a scheme or compromise with its creditors.
- 5.4 M-C's property in the Goods is not affected if the Goods become a fixture attached to premises of the Buyer or a third party.
- 5.5 The provisions of this clause 5 apply despite any arrangement between the parties under which M-C grants the Buyer credit.
- 5.6 M-C may commence legal action against the Buyer if the Goods are not paid although property in the Goods has not passed to the Buyer.

## 6. DELIVERY

- 6.1 If M-C is unable to Deliver the Goods it may charge the Buyer all costs and expenses associated with the delayed Delivery.
- 6.2 The circumstances in which M-C will be deemed to be unable to Deliver the Goods include (without limitation):
  - (1) where the Buyer is unable or unwilling to accept Delivery;
  - (2) the site where Delivery is to take place is deemed unsafe or unsuitable by M-C; or
  - (3) the Buyer does not pay the price for the Goods in cash or by cheque or by credit card where the Goods were supplied on a payment on, or before, delivery basis.
- 6.3 The Buyer will not be relieved of any obligation to accept and to pay M-C for the Goods by reason of any delay in Delivery.
- 6.4 M-C has no liability to the Buyer for any loss or damage consequential or otherwise for failure to deliver the Goods or for late Delivery of the Goods.
- 6.5 The Buyer indemnifies M-C against any loss or damage it might suffer or incur arising out of Delivery of the Goods to anywhere other than a kerbside or road.
- 6.6 The Buyer accepts all risks associated with the Buyer, or the Buyer's Representative, entering M-Cs premises & sites.
- 6.7 Risk in the Goods will pass to the Buyer on Delivery.

## 7. SPECIFICATIONS FOR THE SALE OF CONCRETE

- 7.1 At the time of ordering concrete the Buyer must specify the properties such as strength, durability & water cement ratio referred to in AS1397-2007. Concrete will comply with AS1379-2007 only if conditions of exposure comply with AS3600-2001.
- 7.2 Testing will only be arranged if requested by the Buyer and charged to the Buyer at M-C's ruling rates. If the results of any concrete testing are to be used in any claim against M-C, the testing must be performed strictly in accordance with AS1379-2007 and AS1012 and the results provided to M-C.
- 7.3 Orders for concrete cannot be cancelled by the Buyer after batching of the concrete has started. The Buyer must pay for the full quantity of concrete ordered regardless of whether they are

able to accept delivery of the full quantity ordered.

7.4 Where concrete ordered by the Buyer is not accepted and returned to M-C, the Buyer will be subject to handling and disposal charges for the returned concrete.

7.5 M-C is not liable for and is indemnified by the Buyer in respect of any losses, costs or claims made which arise out of any defects, shrinkages, or other faults which are in or may develop in the concrete and which are due to:

- (1) faulty handling, placing or curing of the concrete;
- (2) the addition of any water or other material to the concrete either before or after discharge by M-C by a party other than M-C;
- (3) the use by M-C of non-standard materials or mix at the Buyer's request;
- (4) the concrete is not laid within 1.5 hours of leaving M-C's plant.

7.6 Concrete specification must be checked by Buyer at delivery & the Buyer is responsible for ensuring the concrete is the required specification.

7.7 Unless otherwise stated in writing, M-C does not recommend any concrete specification as being suitable for a particular purpose and will not be liable for any loss or costs associated with the inappropriate use of a concrete specification.

7.8 Unless otherwise stated prices are based upon slumps not exceeding 80mm.

7.9 M-C delivery drivers are not for any purpose arising under this Contract an authorised representative of M-C.

## 8. RETURNS

8.1 Goods, other than concrete, may only be returned for credit or exchange at the discretion and prior approval of M-C. A re-stocking fee of 15% of the price will apply to any Goods returned to M-C.

8.2 All claims for defective Goods or claims for short quantities delivered must be made within 48 hours of Delivery.

## 9. IMPLIED TERMS AND LIMITATION OF LIABILITY

9.1 To the fullest extent permitted by law all statutory or implied warranties and conditions are excluded from the Contract.

9.2 To the extent permitted by law, the liability of M-C under any warranty or condition which cannot legally be excluded from the Contract, is limited at the option of M-C to either:

- (1) the repair or replacement of the Goods, or
- (2) the supply of equivalent goods, or
- (3) paying the cost of repair or replacement of the Goods,
- (4) paying the cost of the supply of equivalent goods.

9.3 Except as provided in clause 9.2, M-C will not be liable to the Buyer or any other person in contract or tort for direct, indirect or consequential loss, damage, expense or injury suffered by the Buyer or any other person in relation:

- (1) to the Goods supplied pursuant to the Contract;
- (2) to the Buyer or the Buyer's Representative entering M-C's premises & sites.

9.4 Except as provided in clause 9.2, M-C gives no warranty in relation to the Goods.

## 10. SAFETY RESPONSIBILITY AND INDEMNITY

10.1 The Buyer is responsible for the proper storage and use of the Goods & must ensure that the Goods are stored & used without risk to people or the environment.

10.2 Without limiting the Buyer's obligations under clause 10.1, the Buyer acknowledges that the Buyer has familiarised itself with any recommended handling procedures contained in any MSDS in respect of the Product.

10.3 The Buyer indemnifies M-C and holds M-C harmless against any claim, loss or expense which M-C suffers or is liable for in respect of or in connection with:

- (1) the Goods, or their use, storage or handling; or
- (2) M-C exercising its rights under clause 5.

## 11. TERMINATION

11.1 In addition to any other right of termination it may have M-C

may terminate a Contract if any of the following happens:

- (1) the Buyer fails to perform a Contract precondition for Delivery of the Goods;
- (2) M-C is unable to Deliver the Goods for 30 days after first attempting Delivery;
- (3) the Buyer commits an act set out in clause 5.3;
- (4) the Buyer purports to assign its rights under a Contract;
- (5) an event occurs outside the control of M-C which in M-C's opinion makes it impractical or impossible for it to fulfil its obligations under the Contract.

## 12. FORCE MAJEURE

12.1 M-C will not be liable for any delay or any breach or default under the Contract incircumstances where these result from causes beyond M-C's reasonable control.

## 13. MISCELLANEOUS

13.1 Any indulgence which M-C may grant to the Buyer will not prejudice or interfere with M-C's rights under a Contract and will not constitute a waiver.

13.2 The Buyer is not a partner, joint venturer or agent of M-C and is not authorised to hold itself out as a partner, joint venturer of or agent of M-C or purport to incur any obligation, undertaking or warranty or representation on behalf of M-C.

13.3 Any notice to be given to a party must be in writing.

13.4 M-C may assign the benefit of any Contract to any person.

13.5 The Contract is governed by the laws of New South Wales.