

TERMS AND CONDITIONS OF TRADE



1. **Interpretation:** In these Terms and Conditions:
 - (a) "Supplier" shall mean and include Piave Premix Concrete Pty Ltd, its employees and agents.
 - (b) "Customer" shall mean the purchaser of the Goods, and includes and any servant, agent, partner, contractor or employee of that person and in the case of two or more persons shall refer to each of them jointly and severally.
 - (c) "Goods" means the products and, if any, services specified herein.
 - (d) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, light, remedy implied by law (including the Trade Practices Act 1974) and which by law cannot be excluded or modified.
2. **General:** These Terms and Conditions (which shall 'only be waived in writing signed by the Supplier) shall prevail over all conditions of the Customer's order to the extent of any inconsistency. The Customer acknowledges that by taking delivery of the Goods the Customer shall be deemed to have accepted these Terms and Conditions.
3. **Specifications:**
 - (a) All specifications, and particulars of ingredients, formulae, and additives submitted to the Supplier are approximate only and any deviation from any of these things does not vitiate any contract with the Supplier or form the grounds for any claim against the Supplier.
 - (b) The description and performance contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.
 - (c) Where specifications and particulars of ingredients, formulae, and additives are submitted to the Supplier by the Customer the Supplier's price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by the Supplier and set out in any quotation, then any such increase or decrease are to be adjusted on a unit rate basis according to the unit prices set out in this document or in the quotation.
4. **Payment:** Payment for Goods must be made in full on delivery. If credit terms are provided by the Supplier, payment must be made in full within 30 days of the date of invoice. Payment by cheque will not be deemed made until clearance of the cheque. The Supplier is under no obligation to provide credit, and is not obliged to provide reasons for refusing credit. The Supplier may refuse, cancel, suspend or change any provision of credit to the Customer at any time, including raising or lowering the credit limit. Any other payment terms must be agreed in writing and signed by the Supplier.
5. **Stop Credit and charges:** Where the Supplier notifies the Customer that it has stopped credit, the Supplier is not be required to supply any Goods ordered or deliver any Goods which are in transit until the outstanding amount has been paid or a suitable arrangement reached between the Supplier and the Customer.

If the Customer defaults in payment by the due date of any amount payable to Supplier, or credit is cancelled by the Supplier for any reason, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any other remedy available to it:

 - (a) charge the Customer compounding interest on any sum due at the rate of 18% per annum on all unpaid monies for the period from the due date until the date of payment in full;
 - (b) charge the Customer for all expenses and costs (including legal costs and disbursements on an indemnity basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
 - (c) cease or suspend for such period as the Supplier thinks fit, supply of any further Goods or Services to the Customer;
 - (d) by notice in writing to the Customer, terminate any agreement with the Customer so far as unperformed by the Supplier; without effect on the accrued rights of the Supplier under any agreement.

TERMS AND CONDITIONS OF TRADE



Clauses S (b). and (c) above, may also be relied upon, at the option of the Supplier:

- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution of the Customer.

6. Delivery:

- (a) The delivery times to the Customer are estimates only and the Supplier is not liable for the late delivery or non-delivery.
- (b) The Supplier is not liable for any loss, damage or delay occasioned to the Customer arising from the late delivery or non-delivery of the goods.
- (c) The Supplier may at its option deliver the goods to the Customer in any number of installments.
- (d) If the Supplier delivers any of the goods by installments, and any one of those installments is defective for any reason:
 - i. it is not a repudiation of the contract of sale formed by these conditions; and
 - ii. the defective installment is a severable breach that gives rise only to a claim for compensation.

7. Warranty:

- (a) The Supplier's liability for the goods manufactured by it is limited to making good any defects by repairing the defects or at the Supplier's option by replacement, so long as:
 - i. defects have arisen solely from the faulty materials or workmanship of the Supplier; or
 - ii. the goods have not received maltreatment, in attention, interference or used in another process; and
 - iii. the defective goods are immediately notified to the Supplier.
- (b) The Supplier is not liable for and the Customer releases the Supplier from any claims in respect of faulty or defective design of any goods supplied unless such design has been wholly prepared by the Supplier and the responsibility for any claim has been specifically accepted by the Supplier in writing. In any event the Supplier's liability is strictly limited to the replacement of defective parts in accordance with para 7(a) of these conditions.
- (c) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Supplier is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly installation or operation of the goods or arising out of the Supplier's negligence or in any way whatsoever.
- (d) The Supplier's liability for a breach of a condition or warranty implied by Part 3-2 Div I of the Australian Consumer Law is limited to:
 - 1. in the case of goods, any one or more of the following:
 - i. the replacement of the goods or the supply of equivalent goods;
 - ii. the repair of the goods;
 - iii. the payment of the costs of replacing the goods or of acquiring equivalent goods;
 - iv. the payment of having the goods repaired: or
 - 2. in the case of services:
 - i. the supply of the services again;
 - ii. the payment of the costs of having the services supplied again.
- (e) The Supplier's liability under s. 274 of the Australian Consumer Law is expressly limited to a liability to pay the Customer an amount equal to:
 - i. the cost of replacing the goods;

TERMS AND CONDITIONS OF TRADE



- ii. the cost of obtaining equivalent goods; or
- iii. the cost of having the goods repaired, whichever is the lowest amount.

8. Claims:

- i. The Customer is deemed to have accepted the goods as being in accordance with its order unless it notifies the Supplier in writing within 48 hours of delivery of the goods to the Customer.
- ii. No return of goods will be accepted by the Supplier unless the Supplier has given prior written authorisation for the return.

9. **Force Majeure:** If for any reason beyond the control of the Supplier (including without limitation as a result of any strike, trade dispute, fire, tempest, theft or breakdown), orders cannot be filled or completed at the time stipulated by the Customer, the Supplier shall be entitled to determine the Contract and the Customer shall not have any claims for damages arising out of such cancellation, without prejudice to the rights of the Supplier to recover all sums owing to it in respect of deliveries made or services provided prior to the date of such determination.

10. **Prices:** Unless otherwise stated all prices quoted by the Supplier are net, exclusive of Goods and Services Tax (GST).

11. **Freight Costs:** The supplier shall not be liable for freight costs on goods returned by the Customer unless otherwise agreed.

12. **Change of Ownership:** The Customer agrees to notify the Supplier in writing of any change of ownership of the Customer within 7 days from the date of such change and indemnifies the Supplier against any loss or damage incurred by it as a result of the Customer's failure to notify the Supplier of any change.

13. **Cancellation:** Orders placed with the Supplier cannot be cancelled without the written approval of Supplier. In the event that the Supplier accepts the cancellation of any order placed with it the Supplier shall be entitled to charge a reasonable fee for any costs incurred to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation and the Customer shall indemnify the Customer against all losses arising from the cancellation.

14. **Lien:** The Customer hereby acknowledges and accepts that the Supplier has a lien over all goods in the Supplier's possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.

15. **Title to Goods/ & Monies:** Property in the goods delivered to the Customer shall not pass to the Customer until such time as the Supplier has received payment in full of all monies owing to the Supplier including but not limited to monies owing in respect of any goods specified on any particular invoice, together with any other monies outstanding. If the goods are delivered prior to payments being made by the Customer to the Supplier, the Customer shall have possession of the goods by bailee only and such bailment shall be terminable by the Supplier at any time. The Supplier may terminate such bailment either by oral or written notice being given to the Customer. Until the date of payment of all monies owing to the Supplier, the Customer, if the Supplier desires, is required to store the goods in such a way to show that they are clearly the property of the Supplier. If the Customer sells the goods to any third party the consideration, he receives partly shall be held by him in a separate account on trust for the Supplier. If the Customer mixes the goods with any other goods or products or deals with the goods in such a way that they become a constituent of any other product or goods then ownership in any such new product or goods is to be transferred to the Supplier as security for full payment of all monies owing to the Customer, including but not limited to monies owing in respect of the goods, and until such time as the Supplier receives such payment the Applicant shall hold such products or goods in which the goods have been mixed or incorporated as fiduciary owner for the Supplier. The Customer hereby irrevocably empowers and gives to the Supplier a license in addition to and without the limitation of any other right the Supplier as its own. This license endures so long as any monies whatsoever is owed by the Customer to the Supplier.

16. **Power to Sell Goods:** Nothing herein contained shall prevent the Customer from selling the goods to any third party provided that the proceeds of any such sale shall be held in trust by the Customer for the Supplier until the Supplier has received payment in full for the goods.

TERMS AND CONDITIONS OF TRADE



- 17. Jurisdiction:** The proper law of all contracts arising between the Supplier and the Customer is the law of the State of Victoria and the parties agree that all claims and disputes relating to the goods sold shall be determined in a Court of competent jurisdiction in the State of Victoria.
- 18. Credit Information:** The Customer irrevocably authorises the Supplier, its servants & agents to make such enquiries as they deem necessary to investigate the credit worthiness of the Customer from time to time, including the making of enquiries with persons nominated as trade references, the bankers of the Customer any credit provider or Credit Reporting Agency and including personal credit and consumer credit information (herein after called "the information sources"). The Customer hereby authorises the information sources to disclose to the Supplier such information concerning the Customer which is within their possession. The Customer agrees that the information provided on its Credit Application concerning the Customer & any relevant trading information arising from any dealings between the Customer & the Supplier may be disclosed to a Credit Reporting Agency or any other interested person. All information gathered by the Supplier may be used for purposes other than originally intended.