



**Vic Mix Pty Ltd**

**(ABN 92 149 268 226) (ACN 149 268 226)**

**TERMS AND CONDITIONS (effective from 1<sup>st</sup> July 2008)**

These Terms and Conditions shall apply to the exclusion of all others including any Terms and Conditions of the Applicant (whether on the Applicant's order form or otherwise). No goods or services will be supplied by Vic Mix Pty Ltd on any terms or conditions other than those set out herein and by taking delivery of the goods the Applicant shall be deemed to agree to these Terms and Conditions. For the purposes of these Terms and Conditions Vic Mix Pty Ltd shall mean and include the party named above and/or in whose name an Account is maintained by Vic Mix Pty Ltd.

**A. CONCRETE STRENGTH, ETC.**

A1. The Concrete ordered under Australian Standard Ready Mixed Concrete No. AS1379-1997 including amendments, will be supplied of a standard not less than prescribed by the relevant specification.

A2. Testing will not be automatically carried out, however, if instructed a testing programme will be arranged at the Customer's expense. Charges for this service will be in accordance with the Company's scale of rates. The company does not recognize and will not be bound by test results by others unless concrete is sampled at the agitator chute and sampled in accordance with Australian Standard No. 1379-1997 and tested strictly in accordance with AS No's. 1012, 1991+ and amendments.

A3. The Company will not be liable and the Customer agrees to indemnify the Company in respect of any claims made by the Customer or any third party which arises out of any defects which may develop in the concrete which are due to:

A3a. Faulty handling, placing or curing of the concrete or faulty job practice by the Customer or its Subcontractors or any other person. Claims will not be recognized unless received in writing not later than five weeks after the date of the pouring of the concrete.

A3b. The addition of any water or other material to the concrete either before or after the discharge from the delivery unit without the express instruction of a representative of the Company. Drivers of the delivery vehicles shall not be deemed to be a representative of the Company for this purpose.

A3c. The addition of any additives to the concrete at the request or specification of the Customer, unless the Company confirms the same in writing.

A3d. Any negligent act or omission of the Customer in the handling and treatment of the concrete in situ.

A3e. Any act or omission of any third party which could have been reasonably foreseen by the Customer

A4. The strength characteristics of the concrete are those shown on the face of the delivery docket and upon signing the docket, the Customer becomes bound by the information shown thereon. Customers are solely responsible for ensuring the strength shown accords with the specification and the Company will not be held liable for any loss or damage incurred by reason of the Company's failure to provide concrete according to specification if such failure could have been discovered by the Customer upon reasonable inquiry.

A5. The Company make no guarantee or warranty as to the strength of the concrete if the concrete is not in situ within 1¾ hours of leaving the plant or if any of the events referred to in Clause 3 above shall occur. The time of leaving the plant is shown on the delivery docket.

A6. Although the Company undertakes to supply concrete in accordance with Clause 1 above, if to do so necessitates the addition of a cooling or heating agent, the cost thereof will be charged as an extra.

A7. Unless otherwise stated in the question, prices are based upon slumps not exceeding 80mm, using 20mm nominal size aggregate. Slumps in excess of 80mm are subject to an extra charge.

## **B. DELIVERY**

B1. The Company will not be liable in any manner whatsoever for the delay in delivery of concrete provided that due care and responsibility is exercised by the Company in attempting to meet scheduled requirements.

B2. Delivery must be accepted and effected by the Customer within the discharge time allowance provided in the selling price. If delivery is not effected within the time allowed then excess discharge time will be charged at the ruling rate.

B3. In the event of the orders being placed and then cancelled, the Customer will pay to the Company all costs incurred by the Company up to the time of cancellation and any costs yet to be incurred by Company in relation to the cancelled order. The Company's assessment of these costs shall be binding on the Customer.

B4. In the event of the concrete (part or whole load) being returned by the Customer. The Customer agrees to pay in full for all concrete ordered and to reimburse the Company for any costs incurred as a result of such returns including costs of return of cartage and disposal.

B5. Unless prior agreement is reached, the Company undertakes to deliver and the Customer to receive the concrete at the kerb alignment. The delivery vehicle will only enter the job area to facilitate unloading at the Customer's sole risk and responsibility and at the absolute discretion of the truck driver.

B6. Delivery is specified at Kerb Side Only. Delivery of materials is at the Customer's risk. The Company is not responsible for and the Customer agrees to indemnify the Company against any consequential damages arising from delivery. Any consequent claims arising from the truck entry on to properties is subject to settlement as between Customer and cartage sub-contractor.

## **C. PRICE AND PAYMENT**

C1. The price quoted is net per cubic metre minimum load and GST exclusive. Extra cartage is chargeable for loads less than the minimum.

C2. Deliveries outside normal working hours will be subject to surcharges as from time to time defined by the Company.

C3. Prices referred to herein are based on current material, labour, administrative and transport costs as determined by the Company and its contractors from time to time. In the event of any increase in any of these costs the quotation shall be no longer valid and prices charged shall increase in accordance with the increase in such costs or otherwise at the discretion of the Company.

C4. The amount charged is based upon the quantity shown on the face of the delivery docket. Upon signing the docket, the Purchaser becomes bound by the information shown thereon and no claims for short deliveries will be entertained by the Company.

C5. The Customer will pay the price of the concrete either prior to discharge, or, if credit arrangements have been made, on or before the last day of the month next following the month in which the concrete is delivered. If the Customer defaults in any payment or in complying with its obligations elsewhere contained in these conditions of sale and delivery all credit arrangements shall, unless the Company at its complete discretion decides otherwise, forthwith cease and all monies owing for concrete delivered shall be payable forthwith and the Company may sue to recover such monies forthwith and without notice to the Customer. Amounts not paid by the Customer by the due date shall bear interest at the rate of 20% per annum from the date of delivery to the date of payment. All amounts received by the Company shall be credited first against such interest.

C6. In the event of the Customer defaulting on any payment due and payable to the Company:

C6a. then all money which would become payable by the Customer to the Company at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Company may, without prejudice to any other remedy available to it proceed to recover the whole amount;

C6b. the Customer shall pay all unpaid accounts, and all expenses and costs (including legal costs and disbursements on an indemnity basis) incurred by the Company in enforcing or seeking to enforce or recover moneys owed, including in taking whatever action it deems appropriate to recover or defend any action instituted by the Customer relating to any sum due to the Company.

C7. To better secure payment of any monies owed by the Customer to the Company;

C7a. if the Customer is incorporated pursuant to the Corporations Act 2001 or previous corresponding legislation,

C7a1. grants a fixed and floating charge over the assets of the Customer in favour of the Company and to allow the registration of that charge by the Company to secure all monies owing to the Company;

C7a2. grants a charge to the Company in respect of all right, title and interest in and to any interest in land held either wholly or jointly by the Customer as security for all monies owed to the Company;

C7b. if the Customer is a natural person, to grant a charge to the Company in respect of all right, title and interest in and to any interest in land held either wholly or jointly by the Customer as security for all monies owed to the Company and further agrees and consents to the registration by the Company, pursuant to the charge, of a registered mortgage against the title to property owned either wholly or jointly by the Customer and to do all things necessary to register the mortgage, including signing all necessary documents to secure the charge.

C7c. The Customer shall pay all costs and expenses, including legal costs and disbursements, incurred by the Company associated with the granting, registration and enforcement of the charge and/or mortgage.

C8. In the event of any dispute arising between the Company and the Customer, the Customer will pay to the Company the amount then owing to the Company which amount will be held by the Company until the determination of the dispute and the Customer shall not commence any action or claim against the Company in any court whatsoever before paying such amount to the Company. The Company and/or his agents shall not be liable for any damage caused to the premises or property of the Customer and/or his agent caused whilst the Customer and/or his agent was assisting the Company's agent in the delivery of the goods the subject of this Delivery Docket.

C9. Terms of payment are strictly 30 days. After that period, the Seller shall charge interest at the rate of 20% per annum. Interest shall be added to each monthly account after the first monthly account.

#### **D. GENERAL**

D1. Any reference to the Customer in these terms and conditions means and includes the Customers, his employees, agents and sub-contractor. The actions or signatures of any person appearing to have the authority of the Customer so to do shall bind the Customer.

D2. All warranties whether expressed or implied and whether statutory or otherwise with regard to the goods/services supplied by the Company as to quality, fitness for purpose or any other matter are hereby excluded except insofar as any such warranties are incapable of exclusion at law.. These terms and conditions cannot be altered except by the Company's duly authorised representative in writing.

D3. The Applicant agrees to notify the Company in writing of any change of ownership of the Customer within 7 days from the date of such change and indemnifies the Company against any loss or damage incurred by it as a result of the Applicant's failure to notify Company of any change.

D4. Failure by The Company to enforce any of these Terms shall not be construed as a waiver of its rights.

D5. If any term or condition is unenforceable it must be read down so as to be enforceable, or if it cannot be read down, the term or condition may be severed from these Terms without effecting the enforceability of the remaining Terms.