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APJ Concrete's Terms & Conditions of Sale

When these Terms are in force

1. These Terms apply whenever Goods or Services are quoted for, sold, supplied, delivered or laid by APJ Concrete to a Customer.
2. Requesting or accepting a Quotation from, placing an Order with or accepting a supply or Delivery of Goods or Services from APJ Concrete by a Customer constitutes acceptance by the Customer of these Terms.
3. To the extent permitted by Law, it is a condition of the Quotation, sale, supply and Delivery of Goods and Services by APJ Concrete to a Customer that the Customer accept that these Terms apply as provided in Clause 1, regardless of the provisions of any other document or instruction of the Customer, including any purchase order terms subsequently given to APJ Concrete by the Customer.
4. Where APJ Concrete and a Customer enter into a supply agreement for Goods or Services, these Terms shall continue to apply to the extent they are not inconsistent with the terms of the supply agreement.

Conditions of Quotation or ordering

5. The Customer warrants that:
 - a. the Customer will provide all Relevant Information to APJ Concrete when seeking a Quotation or placing an Order for Goods or Services from APJ Concrete;
 - b. any Relevant Information supplied by the Customer to APJ Concrete is accurate and complete;
 - c. in giving any Quotation, accepting any Order or supplying or delivering any Goods or Services, APJ Concrete will be entitled for all purposes to rely upon the accuracy and completeness of any Relevant Information provided by the Customer;
 - d. subject to any Law to the contrary, unless APJ Concrete makes an express representation to the contrary in writing, the Customer will not allege or in any circumstances maintain:
 - i. that APJ Concrete had, or should be taken to have, approved of or represented any specification (whether supplied by the Customer, by APJ Concrete or by a third party) as being suitable for any particular purpose; or
 - ii. that APJ Concrete is liable for any Loss to the extent that the Loss results from or is attributable to any defects in, or unsuitability of, the specification;
 - e. the Customer has formed its own opinion as to the correctness or otherwise of any information or advice provided by or any representation made by APJ Concrete (including as to product design and application) in connection with any Goods or Services quoted for, ordered from or supplied or Delivered by APJ Concrete and does not rely on APJ Concrete in respect of such information, advice or representation or maintain or allege that it has so relied; and
 - f. unless the Customer notifies APJ Concrete to the contrary prior to or when placing an Order for the Goods, the Customer is, and has held itself out to be, acquiring the Goods for either the purpose of re-supply (in an altered form or condition or to be incorporated into other goods) or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.
6. Testing of concrete and/or Aggregates or other technical Services will not necessarily be carried out or provided, unless ordered by the Customer.

Delivery of Goods

7. The Customer shall take full responsibility for assessing any requirements for traffic management associated with a Delivery to the Customer and for putting in place all traffic management measures which the Customer ought reasonably to know are required in all the circumstances of the Delivery.
8. Unless the Customer otherwise requires, Delivery will be made to the kerbside nearest the Delivery address. If the Customer requires the Delivery vehicle to leave a public road to gain access to the discharge or unloading location, the Customer shall:

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- a. ensure that the vehicle has a safe, suitable and unrestricted route between the kerbside nearest to the Delivery address and the discharge or unloading location; and
 - b. indemnifies APJ Concrete against any Loss arising from events occurring while gaining such access unless solely caused by APJ Concrete negligent act or omission.
9. APJ Concrete may refuse to deliver if it is of the opinion that the Customer has failed to perform its obligations under Clause 7 or 8(a) and will be indemnified by the Customer against any Loss arising from the refusal.
10. Subject to Clause 13, the Customer shall, before the Delivery of any Goods, check for any difference between the Goods as delivered, the description or quantity of the Goods appearing on the Delivery Docket and the Customer's Order placed with APJ Concrete.
11. If the Customer disagrees with any of the details on the Delivery Docket or if there is a difference between the Goods as delivered, the description or quantity of the Goods appearing on the Delivery Docket or the Goods Ordered, then the Customer must elect whether to accept or reject the Goods in whole or in part, and, thereafter:
- a. if the Customer accepts all or some of the Goods, the Customer will be taken to have Ordered what is delivered; and
 - b. if the Customer rejects all or some of the Goods, the Customer shall record in writing on the Delivery Docket details sufficient to accurately identify the nature of such disagreement or difference before the Delivery vehicle departs from the Delivery address.
12. If the Customer accepts the Goods then:
- a. before delivering the Goods, APJ Concrete shall complete the then relevant Delivery Details on the Delivery Docket and the Customer shall sign the Delivery Docket; and
 - b. after Delivery, APJ Concrete shall complete the Delivery Details and enter the quantity of any returned Goods on the Delivery Docket and give a copy of the completed signed Delivery Docket to the Customer.
13. If the Customer is not present at the Delivery location at the time of Delivery, or being so present, fails or refuses to sign as required by Clause 12, APJ Concrete may, in its absolute discretion, elect to refuse to deliver the Goods but, in those circumstances, the Customer will none the less be liable to pay for those Goods as if they had been delivered.
14. Notwithstanding any other provisions of these Terms, if the Customer is not present at the Delivery location at the time of Delivery, or the Customer is present but does not sign the Delivery Docket in accordance with Clause 12(a) or, having so signed, recorded details of any disagreement or difference on the Delivery Docket in accordance with Clause 11 and the Goods are discharged then, to the extent permitted by Law:
- a. the Customer shall be deemed to have unreservedly accepted both the Delivery and the accuracy of the Delivery Details;
 - b. APJ Concrete shall have no Liability to the Customer for Loss in respect of any difference between the description and quantity of the Goods appearing on the Delivery Docket and the Customer's Order;
 - c. the Customer irrevocably waives all of its rights to reject the Goods referred to in the Delivery Docket; and
 - d. the Delivery Docket shall be prima facie evidence of all matters recorded thereon including the Delivery Details and the application of Delivery related surcharges.
- Sub-clause (c) shall not apply in relation to any defect, non-conformity or failure which would not have been apparent upon reasonably diligent inspection at the time of Delivery.

Payment

- 15a. The amount payable by the Customer to APJ Concrete shall be calculated by reference to the quantities of Goods and Services shown on the relevant Delivery Docket, at an Applicable Rate.
- b. Unless otherwise quoted, all prices are for supply, delivery and/or installation, (work) undertaken during the Suppliers business hours, Monday to Friday. Any work undertaken by the supplier outside these hours may incur a service fee and the Customer will be responsible for payment of this service fee.
- c. The Customer will be charged for delivery unless the quoted price includes an amount for delivery

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D. The suppliers may;

- I. Charge a waiting time or an hourly hire where a delivery vehicle is unable to unload promptly and without delay on arrival at the delivery site; and/or
- II. Charge a minimum load service fee for delivery of loads smaller than the minimum load size for each particular type of goods

16. When Aggregates are sold by volume rather than weight, their volume will be determined by their loose uncompacted volume as measured on the Delivery vehicle at the time of loading.

17. The Customer shall pay the amount payable to APJ Concrete prior to Delivery or within any agreed credit period.

18. APJ Concrete is entitled to charge the Customer interest on amounts not paid at the time they are payable under Clause 17 at the interest rate payable from time to time on unsatisfied judgement debts under the Governing Law from invoice date until payment and the Customer shall be liable to APJ Concrete for all Costs.

19. The Customer hereby irrevocably agrees that it is not entitled to withhold payment of the whole or any part of an amount payable to APJ Concrete under these Terms by the way of retention or set-off for any reason whatsoever.

20. In the event of any dispute arising between APJ Concrete and the Customer as to whether an amount is payable, the Customer shall, within the relevant period under Clause 17, pay to APJ Concrete the amount claimed by APJ Concrete to be payable (including any amount charged by APJ Concrete under Clause 18), to be held by APJ Concrete until settlement of the dispute.

21. A statement signed by APJ Concrete certifying any amount payable by the Customer to APJ Concrete, including any Costs, interests or other claims whether under these Terms or otherwise, shall, in the absence of manifest error, be prima facie evidence of the amount payable.

22. Each amount payable by the Customer under these Terms in respect of a Taxable Supply is exclusive of GST and the Customer must, in addition to that amount and at the same time and manner, pay the GST payable in respect of that supply upon receipt of a tax invoice. "Taxable Supply" and "GST" have the meanings set out in the A New Tax System (Goods and Services) Act 1999.

Special conditions for concrete and Aggregates

23. Unless otherwise agreed in writing by APJ Concrete and the Customer, pre-mixed concrete will comply generally with AS1379.

24. a. Unless otherwise stated in the Quotation, concrete is supplied as, and prices are based on, "Normal Class Concrete" as specified in AS1379, having a nominal slump not exceeding 80mm and using a nominal 20mm maximum size aggregate. If the Customer requires a slump other than 80mm or aggregate with a maximum size other than 20mm, a surcharge at the Applicable Rate may apply. If compliance with AS1379 requires the addition of a cooling agent, a surcharge to the quoted price at the Applicable Rate will apply.

b. APJ Concrete will charge a load fee for all orders that fall below minimum load quantity's.

25. APJ Concrete may charge for any concrete and for the return cartage, handling and disposal costs relating to any concrete Ordered by the Customer and batched by APJ Concrete which is returned or rejected by the Customer because:

a. the Customer cancels or does not accept Delivery even though the concrete was batched in accordance with the Customer's Order;

b. the Customer was unable to use the full quantity Ordered; or

c. the time between batching and discharge exceeds the time permitted by AS1379 or the specification that covers the project being supplied, provided that the excess time was not due to APJ Concrete acts or omissions.

26. APJ Concrete shall not be liable in any circumstances for any Loss arising from any alleged defect, non-conformity or failure in any concrete and/or Aggregates delivered, caused by, contributed to or arising from:

a. preparing, handling, placing, working, curing, pumping, compacting, surface finishing, rolling or levelling of the concrete and/or Aggregates not being in accordance with any applicable Australian Standard, specification or guidelines applying to the work.

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b. the addition, without the written instructions of a representative of APJ Concrete other than the driver, of any water, admixtures, additives or other material to the concrete or Aggregates:

i. prior to Delivery commencing:

A. by the Customer or a third party; or

B. by APJ Concrete at the request or specification of the Customer or a third party; or

ii. after Delivery has commenced (either before or after discharge from the Delivery vehicle):

A. by the Customer or a third party; or

B. by the Delivery vehicle driver on the instruction of the Customer or a third party;

c. the effect of any weather conditions or temperature including heat, cold, rain, wind or hail; or

d. any act or omission (including construction or site practices) of the Customer or a third party.

Special conditions for Consumer Ordering

27 APJ Concrete takes no, and Disclaims all, responsibility for:

a. any information provided by the Customer;

b. any decision or recommendation by APJ Concrete based on any information provided by the Customer including whether a particular product is suitable for a Customer's requirements or whether the quantity of products is suitable for a Customer's requirements;

c. the adequacy, accuracy, completeness or veracity of any information or advice, whether technical in nature or not, provided by APJ Concrete to the Customer or for any interpretation, opinion or conclusion that a Customer may place on this information or advice;

f. the delivery address or delivery location including whether they are suitable for delivery of any products;

g. whether the selection of a particular delivery vehicle is suitable for the delivery of the products; and

h. any handling of the product after the product has been delivered to the kerbside nearest to the delivery address.

Special conditions for Decorative Concrete

28. The Customer acknowledges and agrees that it understands and accepts that:

a. APJ Concrete supplies decorative concrete in a plastic or semi liquid form comprised of assorted materials including cement, Aggregates, colour pigments, additives and admixtures mixed in accordance with the Customer's selections or directions and the relevant Australian Standards.

b. APJ Concrete can only supply a mix capable of being laid and finished in a way that achieves a finish depicted in any brochures or other materials published by APJ Concrete, if the Customer accurately specifies the selected finish. Achieving the selected finish is the responsibility of the Customer or the Customer's selected contractor.

c. Aggregates vary in their reaction to exposure to the elements and that because of this APJ Concrete has no Liability for any future colour changes or oxidation of Aggregates that have been so exposed unless the Customer or the Customer's selected contractor has, before placing an Order for decorative concrete, informed APJ Concrete that the Customer or the Customer's selected contractor, proposes to achieve a finish that involves exposure of the Aggregates to the elements.

d. A honed or polished finish can only be achieved using mixes that have been formulated so as to make the achievement of these finishes possible, and that because of this APJ Concrete has no Liability flowing from a failure to achieve a honed or polished finish unless the Customer or the Customer's selected contractor has, before placing an Order for decorative concrete, informed APJ Concrete that the Customer or the Customer's selected contractor proposes to achieve such a finish.

e. The Aggregates and other materials used in decorative concrete are subject to natural variations which could cause colour variation to the finished product and that because of this the colours depicted in any brochures or other materials published by APJ Concrete can be indicative only of the finished colours that can be achieved by the Customer or the Customer's selected contractor.

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f. This Clause does not affect or limit the operations of Clause 26.

29. To the extent permitted by Law, APJ Concrete accepts no responsibility for poor placement or finishing practices or for the final appearance, texture or colour of any finished decorative concrete product

Special Terms applying to Pre-Mixed Concrete placing services including Housing Slabs

30. Clauses 6 to 14, inclusive, of the terms of sale are not applicable to pre- mixed concrete placing.

31. All quotations will be in writing and will stipulate the scope of materials and work covered by the quotation.

32. The Supplier will not be obliged to perform any variations or additions to the quoted work unless the full cost of the variation has been agreed in writing by the Customer and the Supplier.

33. The Customer will provide access to the site where the quoted work is to be undertaken. If APJ Concrete is required to obtain access, the cost of materials and labour involved will be identified in writing as a variation to the original quotation and when agreed by the Customer will be added to the previously quoted price. If the Customer does not provide access or agree to pay the cost of providing access the Supplier may withdraw from the contract without liability to the Supplier.

34. Unless expressly stated in the quotation, the following are not allowed for in the price:

- a) additional, increased or more difficult work or rework resulting from any of the following: subsidence, unsatisfactory or unsuitable base work, foundations, nearby structures or redesigns; latent conditions as defined in Australian Standard AS 2124 (General Conditions of Contract); and the location of or interference by any underground drain, pipe, tank, sewer, cable, tunnel, void, service or other underground work;
- b) work not reasonably anticipated by the Supplier due to insufficient, absent or misleading information provided to the Supplier.
- c) The Customer is responsible for:
 - d) obtaining surveys and setting out and continuously maintaining survey pegs and levels necessary for the works;
 - e) obtaining all necessary permits, approvals and consents from any person or statutory authority; and
 - f) providing comprehensive and detailed location and marking on site of any underground works.

35. The Supplier will not be liable for, and the Customer will indemnify the Supplier against, any damage or loss in connection with the work caused by:

- a) subsidence, landslip or other adverse geotechnical conditions;
- b) unsatisfactory or unsuitable base work or foundations not constructed by the Supplier.

36. The Supplier may subcontract any portion of the works, but any subcontracting will not relieve the Supplier of any of its obligations to the Customer under the contract.

37. If at any time the Supplier advises the Customer against proceeding with any work on the basis that the Supplier expects inclement weather conditions to damage the work, and despite the Supplier’s advice the Customer instructs the Supplier to continue, the Supplier will not be responsible for any damage caused to the work by any inclement weather conditions which occur subsequent to the Supplier’s advice to the Customer not to proceed.

38. Materials used in the quoted works that are not manufactured by the Supplier will be sourced from reputable suppliers. To the extent permitted by law, the Customer shall not hold the Supplier liable for any defects in these other products but rely on the warranty (if any) offered by the manufacturer of those materials.

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Limitations on APJ Concrete liabilities

39. The Supplier warrants that the Goods delivered are those specified in the delivery docket and the Goods delivered are owned by the Supplier, are free from third party claims, undisclosed securities and are of acceptable quality as defined in the Australian Consumer Law.

40. To the maximum extent permitted by law, all terms, conditions or warranties that would have been implied into this agreement or in connection with the supply of any Goods and/or services by the Supplier under law, statute or custom are excluded.

41. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions the Competition and Consumer Act 2010 or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified. Limitation of Liability

42. Pursuant to sections 64A and 276A of the Australian Consumer Law, the following clause applies in respect of any of the Goods and/or services supplied under this agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this clause will not apply if the Customer establishes that reliance on it would not be fair and reasonable.

53. The Supplier’s liability in respect of breaches of expressed or implied terms and conditions, warranties and guarantees (other than the guarantees under section 51 (title), section 52 (undisturbed possession) and section 53 (undisclosed securities) of the Australian Consumer Law) is limited to:

a) where the Customer is a consumer (as defined in the Australian Consumer Law – “consumer”) and the Supplier has supplied Goods to the Customer, any one of the following as determined by the Supplier: the replacement of the Goods or the supply of equivalent goods; or the repair of the Goods; or the payment of the cost of replacing the Goods or of acquiring equivalent goods; or the payment of the cost of having the Goods repaired; or

b) where the Customer has supplied the Goods to a consumer: an amount equal to the lowest of the costs of the actions in paragraph (a); or

c) where the Customer is a consumer and the Supplier has supplied services to the Customer, either of the following as determined by the Supplier, the supply of the services again or the payment of the cost of having the services supplied again; or

d) where the Customer is not a consumer and has not supplied the Goods to a consumer, the GST exclusive aggregate price paid by the Customer for the specific Goods and/or services that gave rise to the Customer’s claim for breach.

54. The Supplier will not be liable for any damages arising out of or in connection with, special, consequential, direct or indirect loss, damage, cost, expense, harm or injury including loss of revenue, loss of profits, loss of anticipated savings or business, loss of opportunity or loss of reputation suffered or incurred as a result of such breach unless such liability is mandatorily imposed on the Supplier by statute, notably the Australian Consumer Law.

55. In addition to the Australian Consumer Law, the limitations of the Supplier’s liability in respect of breaches of express or implied terms or conditions and warranties and guarantees as expressed in the previous clause will be varied to the extent required to limit the Customer’s liability to the extent permitted by relevant state and territory legislation covering sale of goods and consumer protection. Termination and Suspension

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56. If the Supplier is not satisfied as to the Customer’s ability to pay for the Goods and/or services, it may suspend or terminate supply and shall not be liable for any claim, damage, loss, expense or cost arising therefrom and all monies then outstanding by the Customer shall immediately become due and payable.

Claims

57. To the extent permitted by Law, APJ Concrete shall not be liable for any claim by the Customer alleging a Loss arising out of the Quotation, sale, supply or Delivery of Goods or Services under these Terms unless:

- a. APJ Concrete is notified by the Customer in writing of any alleged defect, non-conformity or failure giving rise to the claim as soon as possible and, in any event, within 7 days, detailing the way in which the Goods do not conform;
- b. Failure to give such notification within 7 days of the date of supply, the Customer will be deemed to accept the Goods and that they are in accordance with the order and quotation.
- c. The Customer shall be deemed to have accepted the Goods as supplied if it fails to keep the Goods in the condition they were in when supplied or declines a reasonable request from the Supplier to inspect the goods.
- d. the Customer allows APJ Concrete reasonable facilities to investigate any such defect, non-conformity or failure promptly, to advise the Customer of any appropriate remedial action and follows any such reasonable advice;

58.

- a. In pursuing a claim against APJ Concrete a Customer may only rely upon test results if they have been arrived at by a NATA certified laboratory using tests carried out in accordance with all applicable Australian Standards.

General

59. If the Customer fails whatsoever or howsoever to comply with any of these Terms, APJ Concrete shall have the right at its option to suspend further performance of its obligations to the Customer and/or to terminate any contract with the Customer without affecting any other right or remedy of APJ Concrete.

60. To the maximum extent permitted by Law, the Customer indemnifies APJ Concrete against any Loss to the extent the same was caused or contributed to by any negligent or wilful act or omission of, or any breach of or failure to comply with these Terms by, the Customer.

61. Property in the Goods shall not pass until the Customer has paid all moneys payable to APJ Concrete under these Terms in full. Risk in the Goods passes to the Customer at the time of Delivery. Until payment of all moneys payable by the Customer to APJ Concrete, the Goods are subject to the following terms:

- a. The Customer holds the Goods as fiduciary, bailee and agent for APJ Concrete and must keep the Goods physically separate from all other goods of the Customer, and clearly identified as owned by APJ Concrete.
- b. If an Event of Default occurs, then without prejudice to APJ Concrete other rights, APJ Concrete may without notice to the Customer enter any premises occupied by the Customer or any other place where the Goods may be and recover possession of them. If the Customer sells any of the Goods while money is owed to APJ Concrete, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- c. If the Customer uses the Goods in some manufacturing or construction process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to such Goods in trust for APJ Concrete. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to APJ Concrete and at the time of payment of such proceeds the Customer’s obligation to pay the amount owed for such Goods will be discharged.
- d. If the Goods are resold, or products using the Goods are manufactured and resold by the Customer, the Customer holds the entire book debts owed in respect of such sales and proceeds of such sales in trust for APJ Concrete. Such part of the book debts and proceeds shall be deemed to equal in dollar terms the amount owed by the Customer to APJ Concrete at the time of the receipt of such book debts.

62. In the event that there is failure to deliver or any time delay in Delivery due to any cause whatsoever beyond APJ Concrete control including weather, fire, labour dispute, strike or due to the inability of APJ Concrete to obtain raw materials in a timely fashion from APJ Concrete planned source (whether or not such source is known to the Customer):

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- a. APJ Concrete will not be liable for any Loss sustained by reason of any such failure or delay; and
 - b. APJ Concrete will be entitled to suspend deliveries for such period as it may think fit or terminate the agreement immediately after suspending deliveries and shall not be liable for any Loss sustained by reason of such suspension or termination.
63. To the extent permitted by Law, the actions or signatures of any person appearing to have the Customer’s authority shall bind the Customer.
64. If the whole or any part of a provision of these Terms is unenforceable, the provision (or part thereof, as the case may be) is to be read down so as to be enforceable, and if it cannot be so read down, severed to the extent necessary to make these Terms enforceable.
65. A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise or that of any other right, power or remedy. A party is not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising the right, power or remedy.
66. A right may only be waived in writing, signed by the party giving the waiver, and no other conduct of a party operates as a waiver of the right or otherwise prevents the exercise of the right.
67. A single or partial exercise or waiver of a right or a delay in the exercise of a right conferred on a party by these Terms or by Law does not prevent any other exercise of that or any other right.
68. These Terms are governed by and are to be construed in accordance with the Laws of:
- a. the State or Territory of Australia in which the Goods are delivered or the Services supplied; or
68. These Terms are not to be interpreted against the interests of a party because that party proposed these Terms or some provision of it or because that party relies on a provision of these Terms to protect itself.
69. The Customer consents to APJ Concrete recording and disclosing telephone conversations between the Customer and APJ Concrete.
70. The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Customer. The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).
71. The Customer will pay the Supplier’s costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Customer to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
72. The Customer acknowledges and agrees that payments by the Customer will be applied by the Supplier as follows;
- a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 26 and 30.
 - b) Secondly, in payment of any interest incurred in accordance with clause 2.
 - c) Thirdly, in payment of the outstanding invoice(s).
73. In circumstances where the Supplier seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Customer will be allocated in a manner at the Suppliers sole discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which the Supplier seeks to enforce its purchase money security interest.

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74. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at any time at the Supplier’s absolute discretion at any time, including in a manner inconsistent with clause 30 in this agreement.

75. Payments allocated (and/or reallocated) under clause 30 and/or 31 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.

Duty of Disclosure

76. The Customer declares that the information given in this application is true and correct. The Customer is not aware of any information, notice or court proceedings that may lead to bankruptcy, appointment of an administrator or managing controller, receiver manager or liquidator.

77. The Customer has not entered into and does not intend to enter into any scheme of arrangement with any creditors either formally through a court or otherwise.

78. None of the Customer, directors, partners or proprietors has any outstanding liability to the Australian Taxation Office.

79. None of the directors, partners or proprietors has been a director of a company placed into liquidation or has been declared bankrupt or has entered into an arrangement under the Bankruptcy Act 1966 (as amended).

80. If the Customer is a company, the company is solvent and able to pay its debts.

Interpretation

81. In these Terms, unless the contrary intention appears: “Act” means the Competition and Consumer Act 2010. “Aggregates” includes quarry products and sand. “Applicable Rate” means;

- a. where a Quotation has been accepted, the quoted rate, charges and surcharges; and
- b. where no Quotation has been given, or if given accepted, either:
 - i. the relevant rate, charges and surcharges shown in a Rate Schedule; or
 - ii. if no such rate is shown, a rate determined by APJ Concrete or as otherwise advised by APJ Concrete.

“AS1379” means the Australian Standard “AS1379 - Specification and supply of concrete” as in force at the date of Delivery.

“Consequential Loss” includes;

- a. any direct or indirect loss of overhead costs, administrative expenses, revenue, profits, anticipated savings, business, data and value of equipment (other than direct cost of repair);
- b. any direct or indirect loss of opportunity, expectation loss or delay loss;
- c. any form of consequential, special, punitive or exemplary loss or damages; and
- d. liquidated damages - howsoever it arises or is claimed (including as a result of negligence or by the operation of Law).

“Consumers” means ‘consumers’ as defined by Section 4B or Section 3 of Schedule 2 of the Act.

“Costs” means all costs, charges and expenses actually incurred by APJ Concrete or the Customer in relation to the reasonable exercise or attempted exercise of any power, right or remedy under these Terms or in remedying or attempting to remedy a failure of APJ Concrete or the Customer to comply with these Terms.

“Customer” means a person or entity seeking or accepting a Quotation for, placing an Order or accepting the supply or Delivery of Goods or Services from APJ Concrete and includes that person’s or entity’s employees, agents, contractors, sub-contractors, successors, substitutes (including persons taking by novation), assigns and any person or entity claiming under or through that person or entity.

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“Delivery” includes a delivery or supply of Goods and Services in response to an Order of the Customer or which the Customer accepts whether or not APJ Concrete and the Customer have reached a concluded agreement about all of the terms of the delivery or supply including the price payable for the Goods or Services Ordered.

“Delivery Details” includes, in respect of a Delivery, details of:

- a. A number uniquely identifying a Delivery to be used as a reference
- b. Customer name and account number with delivery address and any specific instructions
- c. Date and times of loading and delivery stages (arrival and finish time)
- d. Purchase order number from the Customer
- e. Water quantity that has been added after loading and slumping at the plant
- f. Water quantity that has been designed to be included as part of the batching process
- g. Description and system codes of Goods or Services that are being supplied
- h. Quantity of Goods or Services
- i. For cash sales - the rate and value of Goods or Services supplied

“Delivery Docket” means a document prepared by APJ Concrete which records Delivery Details in respect of a Delivery.

“Disclaimer” means the statements in clause 27 which apply to Orders made via the Consumer Online Ordering Portal.

“Event of Default” means any of the following events:

- a. the Customer fails to pay for the Products;
- b. the Customer is in breach of these Terms;
- c. if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer;
- i. the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or administrator is appointed;
- ii. the Customer goes into liquidation or makes an assignment or an arrangement or composition with its creditors; or
- iii. the Customer stops payment or is deemed unable to pay its debts within the meaning of the Corporations Act 2001; and
- d. if the Customer is a natural person, an order is made for the Customer’s bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs or an order is applied for or made to place the assets and affairs of the Customer under administration; the Customer ceases or threatens to cease carrying on the business.

“APJ Concrete” means PF & CJ Brown Pty Ltd ATF the Brown Family Trust Trading as APJ Concrete ABN 28675679168 and includes APJ Concrete employees, agents, contactors, sub- contractors, successors, substitutes (including persons taking by novation), assigns and any person or entity claiming under or through APJ Concrete.

“Goods” includes concrete, Aggregates, cement, tools, concrete additives and admixtures and products for use in finishing concrete.

“Governing Law” means the Law governing the operation of these Terms under Clause 45 in respect of a Delivery.

“Law” includes the common law of Australia, rules of equity and the provisions of any relevant statute or statutory instrument including a bye-law.

“Loss” means any Liability incurred or alleged to have been incurred by APJ Concrete, the Customer or a third party in respect of, arising from or connected with any supply of Goods or Services by APJ Concrete or by APJ Concrete failure to supply any Goods or Services or of a breach of these Terms, whether arising in Law or otherwise.

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“Liability” includes any demand or claim (including a demand or claim for direct or indirect Consequential Loss) in respect of any damage, cost, expense, harm, injury or death or any fine or penalty imposed by or under a Law or by any authority. Order” means any order of Goods or Services placed by a Customer by any means which includes, but is not limited to, orders via telephone, in person, facsimile, email or via the Consumer Online Ordering Portal.

“Quotation” includes:

a. any document titled “Project Confirmation” provided by APJ Concrete to the Customer Itemising Goods or Services and the rates therefore which APJ Concrete is willing to supply to the Customer for a project or in an area nominated by the Customer; or

“Rate Schedule” means, a schedule of rates, charges or surcharges for Goods or Services published by APJ Concrete in force at the date a Quotation is accepted, or if no Quotation is accepted, at the date of Delivery or supply, copies of which are available upon request.

Relevant Information” includes all specifications relating to the Goods or Services, the application of the Goods or Services, Site Details and other matters that may affect APJ Concrete ability to supply the Goods or Services in a manner that conforms to the Customer’s requirements as to performance or compliance with a standard communicated to APJ Concrete by the Customer or with which the Customer ought reasonably to be aware that APJ Concrete will be bound by contract, Law, custom or usage to conform.

“Services” includes:

- a. the testing of concrete, Aggregates, additives or admixtures whether in respect of compliance with a relevant standard or otherwise;
- b. the provision of other technical or design services or advice;
- c. the provision of vehicles and drivers to Customers on a temporary basis
- d. weighbridge services

“Site Details” includes all relevant details concerning gradients, substructures, surface conditions, and obstructions (including gates), width of access ways, footpath and pavement strengths at on or under the delivery site and any Laws that regulate or affect the time or manner of safe, timely and lawful delivery to the site.

“Terms” means these Terms and Conditions of Sale.

82. In these Terms, unless the contrary intention appears:

- a. a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- b. headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this document;
- c. where an expression is defined, another part of speech or grammatical form of that expression (whether capitalised or not) has a corresponding meaning; and
- d. where the expression ‘including’ or ‘includes’ is used it means ‘including but not limited to’ or ‘including without limitation’.

83. Charge Granted by the Customer

To the extent permitted at law the Customer hereby charges with repayment of all amounts which become due and payable to APJ Concrete from time to time the following;

- a. Any estate or interest it holds in and to any land to which the Goods supplied by APJ Concrete become affixed;
- b. Where the Customer on charges the cost of Goods or Services supplied by APJ Concrete to any third party, both;
 - i. All rights it has as against the third party to be paid in respect of the Goods or Services supplied by APJ Concrete; AND

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ii. Any funds (in whatever form) received by the Customer from the third party

The Customer hereby consents to APJ Concrete making any and all registrations of the foregoing charges necessary or desirable to preserve its position as chargee under this clause.

84. Guarantee

(a) Guarantor means;

INSERT FULL NAMES AND ADDRESSES OF CUSTOMER COMPANY DIRECTORS HERE;

_____ of _____;

_____ of _____;

_____ of _____;

(b) In consideration of APJ Concrete entering into this agreement and/or supplying Goods and Services from time to time in respect of which these terms apply (at the request of the Guarantor as is evidenced by their execution hereof) the Guarantor covenants with APJ Concrete to guarantee to APJ Concrete the due and punctual payment to APJ Concrete of any moneys which may become due and payable to APJ Concrete by the Customer directly or indirectly pursuant to this Agreement or otherwise and also hereby indemnifies APJ Concrete and agrees to keep APJ Concrete indemnified from and against all loss, damage, costs and expenses suffered or incurred by APJ Concrete by reason of any breach or non-performance by the Customer of this Agreement on the part of the Customer to be observed or performed or otherwise due to any action or omission of the Customer in the course of the supply of Goods or Services to the Customer by APJ Concrete subject to these terms.

**EXECUTION
EXECUTED BY THE CUSTOMER**

IF THE CUSTOMER IS A COMPANY
BY ITS DIRECTORS

OR

IF THE CUSTOMER IS A NATURAL PERSON/S

DIRECTOR SIGNATURE

DIRECTOR NAME

DIRECTOR SIGNATURE

DIRECTOR NAME

CUSTOMER SIGNATURE

CUSTOMER NAME

CUSTOMER SIGNATURE

CUSTOMER NAME

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EXECUTION BY THE GUARANTORS

 GUARANTOR SIGNATURE

 GUARNATOR NAME

 GUARANTOR SIGNATURE

 GUARANTOR NAME

 GUARANTOR SIGNATURE

 GUARANTOR NAME

 WITNESS SIGNATURE

 WITNESS NAME

 WITNESS SIGNATURE

 WITNESS NAME

 WITNESS SIGNATURE

 WITNESS NAME

NOTE; WITNESS SHOULD BE INDEPENDENT AND OVER THE AGE OF 18