

Terms of Sale



Definitions and Inconsistency

1. In these Terms of Sale:

“Terms” means these Terms of Sale (including the Special Terms applicable to the type of goods being supplied);

“Company” means HydroCon Australasia Pty Ltd (ABN 98 003 175 362); and

“Customer” means the customer placing an order and any agent or representative of that customer.

2. Placement of an order with the Company by the Customer for goods and/or services indicates acceptance by the Customer of these Terms for the provision of those goods and/or services. In the event of any inconsistency between these Terms and any terms and conditions on the Customer's order, the Customer agrees that these Terms shall prevail.

Quotations and Prices

3. All quotations on supply and delivery will be made in writing and are valid until a date advised.

4. All prices quoted are strictly net of all discounts. Any goods and services tax (GST) or other similar government taxes, if applicable, are additional to the quoted price, and will be shown on the quotation.

Delivery and Surcharges

5. All prices are for supply and delivery during the Company's business hours, 8.30am to 5.30pm Monday to Friday, unless otherwise quoted in writing. Work by the Company outside of these hours may incur a surcharge.

6. Unless the quoted price is inclusive of delivery to a nominated delivery site, the Customer will be charged for delivery.

7. A waiting time or hourly hire surcharge may apply when a delivery vehicle is unable to unload promptly and without delay upon arrival at the delivery site.

8. A minimum load surcharge may apply for delivery of loads smaller than the minimum load size for delivery of each particular type of goods.

9. Goods will be delivered to the roadside adjacent to the delivery site. If, at the Customer's request, the delivery vehicle leaves the road and enters the delivery site to unload, the Customer is responsible for providing suitable and safe access for the Company delivery vehicle and Company agents.

In addition, the Customer agrees to indemnify the Company and its agents for all damage and injury to any person and to any public or private property which may result including any costs associated with enabling the delivery vehicle to leave the site, and the cost of any returned product as a result of the Customer failing to provide suitable and safe access to the delivery site.

10. The Customer must be present at the delivery site and must sign the Company delivery docket to acknowledge that the products and quantities described on the delivery docket have been delivered and comply with the Customer's order and that the Customer also accepts any applicable delivery surcharges.

11. Where the Customer or a representative of the Customer does not sign or is not available to sign the delivery docket, the signature of the driver on the delivery docket shall be prima facie evidence of delivery to the Customer of the products and quantities described on the delivery docket.

12. If the Customer is not present at the delivery site, the goods may be unloaded at that location, in which case the Company will no longer be responsible for loss or damage to the goods.

13. If the goods are delivered on pallets, the pallets remain the property of the Company. The Customer will be charged for such pallets but the Company will give a credit when the pallets are returned in good condition.

14. When the Customer has arranged the unloading of the concrete products from the delivery vehicle, the Company accepts no responsibility for any damage to the concrete products that occurs during unloading. The Company's responsibility for the goods ceases upon attachment of any lifting device to the concrete products.

15. The Company will accept return, within 30 days of supply, of concrete products (other than products manufactured to the Customer's design) subject to the concrete products being clean, free from defects, of saleable quality and the Customer arranging and paying for return delivery to the Company. A restocking fee of 15% of the original invoice price will be charged.

Payment

16. Unless prior arrangements have been made, payment of 30 per cent of the ex factory value of the ordered product is due on placement of the order or as otherwise advised on the payment schedule attached to the quotation. Where there is more than one load to be delivered, any surcharges will be added to the next schedule payment and must be paid in full as invoiced.

17. Payment terms are as advised to the Customer at the time of quotation, being either "Net 21 days" (meaning the Company must receive payment in full within 21 days of date of invoice) or according to the schedule of payments issued. Any variation to these payment terms must be agreed in writing by the Company.

18. Acceptance by the Company of any late payment by the Customer shall not amount to a waiver by the Company of its right to payment "Net 21 days" or according to the schedule of payments as applicable, nor is it an agreement to provide credit other than in accordance with these Terms.

19. The Company may require the Customer to provide security for payment in a form acceptable to the Company prior to the supply of goods and/or services.

20. The Customer is not entitled to withhold any payment by way of retention unless the terms and conditions of the retention are agreed to in writing by the Company prior to supply.

21. The Customer must pay the Company the cost of any bank fees arising from dishonoured cheques paid by the Customer to the Company, and must also pay an administrative charge and for any legal or other debt collection costs incurred by the Company.

22. The Customer must notify the Company in writing within 7 days of any change in the beneficial ownership of the Customer.

23. The Company can vary or withdraw any credit arrangements at any time and without any liability whatsoever to the Customer or any party claiming through the Customer.

24. The Company may charge the Customer interest on overdue amounts at the Small Business Variable Overdraft Rate of the Reserve Bank of Australia.

25. Where interest is charged, it will be calculated daily on amounts outstanding from the date on which they were due and payable, until the Company receives full payment of the outstanding amounts.

Risk

26. The Customer will become responsible for loss of or damage to the goods immediately upon delivery of the goods to the nominated delivery site or to a carrier nominated by the Customer.

Title

27. Goods supplied to the Customer remain the property of the Company until payment in full is received by the Company. The Customer acknowledges that until full payment is made, the Customer holds the goods as custodian of the Company and that a fiduciary relationship exists between the Customer and the Company.

28. Until payment is made, the Customer shall hold the goods in such a manner that they are clearly identifiable as the property of the Company. The Customer acknowledges that if it sells any of the Company's goods, it sells the goods as a fiduciary agent of the Company provided that such sales shall not give rise to any obligations on the part of the Company.

Installation

29. For goods supplied to a Customer who is undertaking the installation of those goods, the Customer agrees to indemnify the Company against any liability the Company may incur as a result of the failure of the Customer to follow generally accepted good practice, or due to a lack of ability, expertise, or skill with the particular type of goods being installed.

Dispute

30. If the Customer believes that the goods and/or services supplied do not conform with the order placed or that the price charged does not conform with the quotation given by the Company, the Customer shall notify the Company in writing as soon as practicable, detailing the way in which the goods or price do not conform.

31. Failure to give such notification within seven days of the date of supply or date of invoice (as applicable) shall raise the inference against the Customer that the goods are in accordance with the order and quotation.

32. 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 Company to inspect the goods.

Warranties

33. The Company warrants that the goods delivered are those specified in the delivery docket and the goods delivered are free from defects in material and workmanship except such defects as are normally regarded as being commercially acceptable.

34. All other warranties which would be imported into these Terms by statute are negated except to the extent that such negation is specifically forbidden by statute.

Limitation of Liability for Breach of a Condition or Warranty

35. Pursuant to section 68A of the Trade Practices Act 1974 the following clause applies in respect of any of the goods and/or services supplied under this contract 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.

36. The Company's liability in respect of breaches of express or implied conditions and warranties, other than the warranty as to title, is limited to any one of the following as determined by the Company: 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. The Company will not be liable for any damage arising out of or in connection with, special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred as a result of such a breach unless such liability is imposed on the Company by the Trade Practices Act 1974.

37. In addition to Trade Practices Act 1974, the limitations of the Company's liability in respect of breaches of express or implied conditions and warranties as expressed in the previous clause shall be varied to the extent required to also limit the Company's liability to the extent permitted by relevant State and Territory legislation covering sale of goods and consumer protection.

Termination and Suspension

38. If the Company 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 in any way for any claim, damage, expense or cost arising therefrom and all monies then outstanding by the Customer shall immediately become due and payable.

Agreement

39. These Terms, the quotation (if any) and any other documents specified in the quotation, form the agreement between the Company and the Customer and any variations, alterations or additions must be acknowledged in writing by the Company.

40. The Company may make partial deliveries of the goods ordered and invoice the deliveries separately. The supply of goods and/or services in more than one delivery shall be subject to separate agreements for the sale of each delivery.

Severance

41. In the event that it is held that one or more of these Terms are not enforceable, the remaining Terms shall apply.

Force Majeure

42. Unless otherwise stated in the quotation, penalties for time delays by the Company will not apply. In the event that there is failure to deliver or any time delay in delivery, commencement of site works or completion of site works due to weather, fire, labour dispute, strike or other cause whatsoever beyond the Company's control or due to the inability of the Company to obtain raw materials from the source expected by the Company:

- a) The Company will not be liable for any loss or damage sustained by the Customer or by any other person by reason of any such delay or failure; and
- b) The Company 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 or damage sustained by the Customer or by any other person by reason of such suspension or termination.

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