

## SUMMARY OF SPECIAL CHARGES

All Rates Are Exclusive of GST | Effective 1st April 2022

ITEM	CONDITION	CHARGE
<b>WAITING TIME</b>	Waiting Time applies after 30 minutes on site. No waiting time is payable for the first 30 minutes of any delivery.	\$2.20 / min
	For a truck detained onsite beyond 30 minutes outside "Normal Hours of Operation"	\$3.80 / min
<b>EXTRA CARTAGE</b>	An additional charge applies for loads delivered more than 7km from our nearest plant.	Sealed Roads \$2.90/km/m <sup>3</sup> Unsealed Roads \$3.50/km/m <sup>3</sup>
<b>MINIMUM CARTAGE ON SMALL LOADS</b>	A fee applies for a delivered load size less than 3m <sup>3</sup> and is calculated on the undelivered part of the load.	\$40.00 undelivered m <sup>3</sup>
<b>ENVIRONMENTAL LEVY</b>	This fee applies per cubic metre or part thereof to all concrete delivered	\$2.50 per m <sup>3</sup>
<b>RETURNED CONCRETE FEE</b>	This fee is charged per m <sup>3</sup> with a minimum charge of 1.0m <sup>3</sup> for concrete returned from site.	\$120.00 m <sup>3</sup> (or part thereof)
<b>AFTER NORMAL OPERATING HOURS</b> Normal working hours are Monday to Friday 6am to 4pm. After hours surcharges do not apply to continuous pours that commenced prior to 1.00pm Monday-Friday and delivery is completed by 6pm.	<ol style="list-style-type: none"> <li>Monday-Friday 4.00am-6.00am</li> <li>Monday –Friday 4.00pm-6.00pm</li> <li>Monday-Friday 6.00pm-4.00am</li> <li>Saturday 12.00 noon-4.00pm</li> <li>Saturday 4.00pm-midnight</li> <li>Sunday Midnight Saturday-4amMonday</li> <li>Public Holidays</li> </ol>	\$35.00/m <sup>3</sup> / min 4m <sup>3</sup> load \$35.00/m <sup>3</sup> / min 4m <sup>3</sup> load \$70.00/m <sup>3</sup> / min 4m <sup>3</sup> load \$45.00/m <sup>3</sup> / min 4m <sup>3</sup> load \$60.00/m <sup>3</sup> / min 4m <sup>3</sup> load \$60.00/m <sup>3</sup> / min 4m <sup>3</sup> load \$60.00/m <sup>3</sup> / min 4m <sup>3</sup> load
<b>PLANT OPERATIONAL FEE</b> (Minimum 48hours notice required)	Fee to operate plan per period of 8 hours, or part thereof, outside normal opening hours. (after Normal Operating Hours charges apply)	\$1500.00 per plant
<b>TRUCK OPERATIONAL FEE</b> (Minimum 48hours notice required)	Fee to provide trucks for Outside Normal Operating Hours work. The fee is per truck, for a four-hour period.	\$300.00 /truck/hour
<b>STANDBY</b>	Applies where deliveries scheduled out of hours are, cancelled, interrupted, or delayed in excess of one hour from the scheduled start time	\$150.00 /truck /hour
<b>CANCELLATION FEES</b>	A fee will be charged if a pour is cancelled or postponed/delayed for more than 3 hours with insufficient notice. The deadline for notice is 3pm the previous work day.	Less than 15m <sup>3</sup> \$500.00 15m <sup>3</sup> to 75m <sup>3</sup> - \$1000.00 More than 75m <sup>3</sup> - \$1500.00
<b>ADMINISTRATION FEE</b>	Printing of replacement delivery dockets, invoices and/or statements at customers' request.	\$5.00 / copy
<b>ADDITIONAL BALANCE/PLUS LOAD FEE</b>	A fee applied to unplanned deliveries required over and above one 'balance or plus' load. The fee will apply for 'balance or plus' loads with an allowance of 1 'balance or plus' for orders <50m <sup>3</sup> For orders over 50m <sup>3</sup> , the fee applies on all loads after a 20% increase of order volume.	\$150.00 per load

ITEM	CONDITION	CHARGE
<b>SLUMP MODIFICATION</b>	For slump requested in excess of 80mm on all N Class Grades up to 40Mpa, a charge applies per 20mm slump increase	N Class Grades up to 40Mpa \$5.50/m <sup>3</sup> /20mm All other mixes P.O.A.
<b>SMALL AGGREGATE PREMIUM</b>	Fee to cover additional costs associated with production of smaller aggregates and increased cement costs to maintain strength.	10mm - \$10.00m <sup>3</sup>
<b>HANDLING, MIXING AND WASHOUT FEE – OXIDES/FIBRE</b>	Fee for the handling, mixing and washout of prescribed additives, special aggregates, oxides and fibres per m <sup>3</sup>	\$8.00 m <sup>3</sup>
<b>ACCELERATOR / RETARDER</b>	Low Dose Medium Dose High Dose	\$6.00 / m <sup>3</sup> \$9.00 / m <sup>3</sup> \$18.00 / m <sup>3</sup>

## TECHNICAL SERVICES CHARGES

All Rates are Exclusive of GST | Effective 1<sup>st</sup> April 2022

DESCRIPTION	Normal Hours Charge Mon-Fri 6am-4pm	AFTER HOURS CHARGE #1 Mon-Fri 4pm-6am the following day Saturday afternoon 12 noon-12 midnight	AFTER HOURS CHARGE #2 Sat 6am-12pm	AFTER HOURS CHARGE #3 Sundays and Public Holidays
Standard concrete three (3) 100mm cylinder test. AS 1012.1, 3.1, 8.1, 9 & 12.1	\$380.00	POA	POA	POA
Extra single (1) 100mm cylinder specimen AS 1012.1, 3.1, 8.1, 9 & 12.1	\$170.00	POA	POA	POA
Flexural strength 100 * 100 * 350mm (per) beam Flexural strength 150 * 150 * 550mm (per) beam AS 1012 Parts 1, 3, 8.2, 11	POA POA	POA POA	POA POA	POA POA
Indirect tensile strength (Brazil) per cylinder AS 1012 Parts 1, 3, 8, 10	POA	POA	POA	POA
Drying shrinkage test (one set of 3 prisms) AS 1012.13	POA	POA	POA	POA
Air Content (per test) if already on site AS 1012.14	POA	POA	POA	POA
Cores: Condition, prepare, crush and report only. (does not include cutting of cores) price per core.	POA	POA	POA	POA
Tester travel per klm outside metropolitan / town area. Contact your Sales Manager for details	POA	POA	POA	POA
Tester waiting time per minute (in excess of one hour per test). Applies where testing frequency is less than the equivalent of:- *One (1) set of cylinders per hour *One (1) sample/hour or *Five (5) slump tests/hour	POA	POA	POA	POA
Test Cancellation Fee. Applies to testing cancelled after 3pm the previous work day.	\$200.00 per test cancellation			
Opening Fee. Applies where the laboratory is required to open outside normal work hours.	POA per lab opening			
Re-issue of Test Report	\$5.00 per re-issued report			

^POA – Price On Application

For other tests not mentioned above, please contact your account managers  
Prices specifically relate to account customers in commercial quantities

# TERMS AND CONDITIONS OF SALE

## 1. Application

These T&Cs, and no terms and conditions of the Customer, will apply to any order for and any supply of Goods and/or Services by the Supplier to the Customer.

## 2. Order for Goods / Services

2.1 Any quotation by the Supplier does not constitute an offer to supply.  
2.2 Unless otherwise stated by the Supplier, any quotation by the Supplier will remain valid for 30 days from the date of the quotation provided that the Supplier may withdraw or vary a quotation at any time prior to the Supplier's acceptance of an Order.

2.3 Any Order by the Customer to the Supplier and/or any acceptance of any Goods and/or Services by the Customer will constitute agreement to these T&Cs by the Customer.

2.4 No Order by the Customer will be binding on the Supplier unless the Supplier accepts the Order.

2.5 If the Supplier accepts an Order, the parties will have created a binding Contract and the Supplier will supply the Goods and/or Services to the Customer, and the Customer will pay the Price to the Supplier in accordance with the terms of the Contract (which will include these T&Cs), but the Contract will be subject to:

(a) the availability of the materials necessary to supply the Goods; and  
(b) the Customer completing the Supplier's application for commercial credit and the Supplier agreeing to grant credit to the Customer (if the Customer is seeking credit terms).

2.6 The Customer is not entitled to cancel any Order or Contract and must pay to the Supplier any costs associated with the Customer purporting to cancel any Order or Contract.

2.7 The Customer must provide the Supplier with all information, instructions, reports, drawings, specifications and properties of Goods and/or Services, and all facts and things relevant to the Goods and/or Services and performance of the Supplier's obligations, at the time the Customer requests any quotation from the Supplier and prior to providing any Order to the Supplier.

2.8 If at any time the Supplier considers that any information, document or other thing provided by the Customer to the Supplier is not sufficient to enable the Supplier to supply the Goods and/or Services to the Customer in accordance with the Contract, the Customer must, at the Customer's cost, provide such further information, documents or assistance as the Supplier considers reasonably necessary.

2.9 The Customer must ensure the specifications and properties of Goods and/or Services stated in any Order by the Customer will be fit for the intended purpose of the Goods and/or Services.

2.10 The Supplier will be entitled to rely on the accuracy of any plans, specifications or other information provided by the Customer.

2.11 If there are any errors in any plans, specifications or other information provided by the Customer to the Supplier, the Supplier will, in addition to the Supplier's other rights under these T&Cs or at law, be entitled to vary the Price.

2.12 The Customer will be responsible for the quantity of any Goods and/or Services in any Order and the Supplier will not have any liability to the Customer if there is any excess or shortfall of the Goods and/or Services for the intended purpose.

2.13 The Supplier may cancel any Contract at any time prior to delivery of the Goods and/or Services with no liability other than to repay any amount of the Price paid in advance of the cancellation.

## 3. Price

3.1 Unless otherwise agreed by the Supplier in writing, the Price will be the Supplier's list price on the date of despatch of the Goods and/or Services and is subject to variation (whether before or after the acceptance of an Order or before or after the formation of a Contract or during the term of a Contract).

3.2 Unless otherwise agreed by the Supplier in writing, the Supplier may invoice the Customer for Goods and/or Services on the date the Supplier supplies the Goods and/or Services.

3.3 Unless otherwise stated by the Supplier in writing, the Price is exclusive of any delivery charges and exclusive of GST.

3.4 The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier for any reason.

3.5 The Supplier may charge, in addition to the Price, any other fees, charges and surcharges that the Supplier notifies to the Customer from time to time.

3.6 The Price will be increased by the amount of any Carbon Costs which are applicable from time to time.

## 4. Delivery of Goods

4.1 If the Supplier agrees to deliver Goods, the Supplier:

(a) will charge delivery charges, demurrage, waiting time and other charges in the Supplier's price list or otherwise nominated by the Supplier from time to time;

(b) will endeavour to deliver the Goods to the Delivery Address on the Delivery Date; and

(c) may charge further delivery charges if the Customer is unable to receive delivery of the Goods at the Delivery Address or on the Delivery Date or in accordance with any other delivery arrangements.

4.2 The Supplier will only deliver Goods during the Supplier's usual business hours unless the Supplier agrees otherwise in writing.

4.3 The Supplier will not be liable for any delay in the delivery of Goods to the Delivery Address.

4.4 The Supplier may deliver Goods in separate installments.

4.5 The Customer will ensure a member of the Customer's Personnel will be at the Delivery Address on the Delivery Date to sign the delivery docket on the Customer's behalf.

4.6 The Supplier may deliver Goods to the Delivery Address regardless of whether there is anyone at the Delivery Address at the time of delivery.

4.7 The Customer agrees:

(a) the Supplier's responsibility for delivery of Goods will cease at the kerbside or public roadway frontage of the Delivery Address;

(b) the Customer must provide safe access for delivery of Goods including but not limited to providing safety measures such as traffic control; and

(c) the Supplier may refuse to deliver Goods, and return the Goods at the Customer's cost, if the Supplier or a member of the Supplier's Personnel considers it would be unsafe to deliver the Goods.

4.8 The signature of a member of the Customer's Personnel on the delivery docket will represent the Customer's acknowledgement that the Goods comply with the Contract and these T&Cs.

4.9 A certificate signed by a director or secretary of the Supplier in relation to delivery of the Goods will be prima facie evidence of the fact and the Customer will not object to the admissibility of such a certificate in any legal proceedings.

4.10 The Customer must inspect any Goods immediately on collection or delivery of the Goods.

## 5. Risk

5.1 If the Supplier agrees to deliver Goods, the Customer will be deemed to have accepted the Goods, and the risk in the Goods will pass to the Customer, immediately when the Goods are delivered to the Delivery Address regardless of whether there is anyone at the Delivery Address at the time of delivery.

5.2 If the Supplier agrees to supply the Goods on an ex-bis or ex-works basis, or the Customer otherwise agrees to collect the Goods, the Customer will be deemed to have accepted the Goods, and the risk in the Goods will pass to the Customer, immediately when the Goods are placed on any vehicle or means of conveyance.

## 6. Title

6.1 The Customer will not receive title to Goods until the Customer makes full payment of the Price and any other amounts payable to the Supplier.

6.2 Until title in the Goods passes to the Customer in accordance with these T&Cs, the Customer will:

(a) be only a bailee of the Goods;

(b) ensure the Goods are kept separate and identifiable from other goods;

(c) not grant any Security over the Goods to any third party;

(d) return any Goods to the Supplier immediately on request;

(e) authorise the Supplier or any agent of the Supplier to enter any land and premises owned, occupied or controlled by the Customer where the Goods are located and take possession of the Goods; and

(f) hold the proceeds from any sale or disposal of the Goods on trust for the Supplier, and the Supplier may repossess, retain, deal with and/or sell the Goods as the Supplier determines in the Supplier's absolute discretion if the Customer does not pay the Price and any other amounts

payable to the Supplier by the due date for payment or the Customer is the subject of Administration. The Supplier may, for the purposes of exercising the Supplier's rights under clause 6.2, enter any premises owned, occupied or controlled by the Customer and remove the Goods including but not limited to by detaching or unfixing the Goods from any goods or land to which the Goods are attached or fixed.

## 7. Credit and Personal Property Securities

7.1 The Customer must make full payment of the Price and any other amounts payable to the Supplier before the Supplier supplies Goods and/or Services to the Customer unless the Supplier has granted credit terms to the Customer in which case the Customer must make full payment of the Price and any other amounts payable to the Supplier within 30 days after the end of the month in which the Supplier supplied the Goods and/or Services to the Customer (or such alternative period agreed by the Supplier in writing).

7.2 If the Supplier grants credit terms to the Customer, then to secure the punctual payment of all amounts owed by the Customer to the Supplier, the Customer grants to the Supplier:

(a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act); and

(b) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be a grantor of a security interest under the PPSA.

7.3 The Customer agrees and acknowledges the Supplier may (without limiting the Supplier's other rights under these T&Cs, at law or otherwise) lodge caveats over the Customer's property and take any other action to secure and enforce the Supplier's Security Interest.

7.4 The Customer must reimburse the Supplier for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses incurred by the Supplier associated with any action by the Supplier to recover money from the Customer.

7.5 The Customer:

(a) agrees with the Supplier that neither the Customer, nor the Supplier, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);

(b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;

(c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following provisions of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;

(d) acknowledges that the Supplier may, at the Customer's cost, register one or more financing statements in relation to the Supplier's Security Interest or any other Security;

(e) waives, if permitted under the PPSA, the Customer's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and

(f) will not, without prior written notice to the Supplier, change the Customer's name or initiate any change to any documentation registered under the PPSA.

7.6 The Security Interest will immediately become enforceable (whether or not the amounts owed by the Customer to the Supplier have become payable) if an Event of Default occurs, without the need for any demand or notice under a document, and the Supplier may appoint a Receiver to property the subject of the Security Interest (and fix the Receiver's remuneration) or exercise any power exercisable by a Receiver even if a Receiver has not been appointed.

## 8. Force Majeure

The Supplier will not be liable to the Customer for any failure to perform, or delay in performing, the Supplier's obligations under these T&Cs if the failure or delay is due to any cause beyond the Supplier's reasonable control and if any such failure or delay continues for a period of 14 days the Supplier may terminate any affected Contract.

## 9. Confidential Information and Intellectual Property

9.1 The Customer will not use, or disclose, any Confidential Information disclosed to the Customer.

9.2 All Intellectual Property Rights in all designs, drawings, technical information and documents created by the Supplier in relation to the Goods and/or Services will remain with the Supplier and will not be assigned to the Customer and no supply of Goods and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods and/or Services or such designs, drawings, technical information or documents.

9.3 If the Supplier supplies any designs, drawings, technical information or documents to the Customer as part of the Goods and/or Services, the Supplier grants the Customer a non-exclusive, non-transferable, right to use the designs, drawings, technical information and documents strictly and only for the purposes of the Customer's use of the Goods and/or Services.

9.4 The Customer warrants that the Supplier's use of any designs, instructions or documents provided by the Customer to the Supplier will not infringe the Intellectual Property Rights of any other party.

## 10. Approvals

The Customer must, at the Customer's expense, obtain all Approvals necessary for and incidental to the supply of the Goods and/or Services.

## 11. Security

The Supplier will not be required to provide a bank guarantee or any other form of Security and the Customer will not be entitled to retain any retention money from the Price for any reason.

## 12. Warranties

12.1 The Supplier does not warrant the Goods and/or Services are fit for any purpose whether or not made known to the Supplier or any member of the Supplier's Personnel.

12.2 The Supplier excludes all express and implied conditions and warranties in relation to the Goods and/or Services except those conditions or warranties that cannot be excluded by law and the Supplier's liability under any such conditions or warranties is limited to, at the Supplier's option, arranging to replace or repair the Goods and/or the outcome of the Services or resupplying the Goods and/or Services.

12.3 Nothing in these T&Cs is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or any Fair Trading Act except to the extent permitted by such Acts.

## 13. Liability

13.1 The Supplier's liability for any Liability or Claim in relation to these T&Cs, any Contract, and any supply of Goods and/or Services (whether under statute, contract, tort, negligence or otherwise) will be limited to the amount of the Price paid by the Customer to the Supplier.

13.2 The Supplier will not be liable to the Customer for any Liability or Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.

## 14. Release and Indemnity

The Customer indemnifies the Supplier and each member of the Supplier's Personnel from and against any Liability or Claim arising directly or indirectly in relation to:

(a) the accuracy of all information provided by the Customer to the Supplier in relation to the Services, the Delivery Address or any other matters;

(b) the Customer's breach of these T&Cs or any Contract;

(c) the negligence or willful misconduct of the Customer or any member of the Customer's Personnel;

(d) the Supplier or any member of the Supplier's Personnel delivering the Goods in accordance with the Customer's instructions;

(e) the Supplier or any member of the Supplier's Personnel entering the Delivery Address;

(f) damage to the property of the Customer or any third party during any delivery of Goods;

(g) any spillage, breakage or contamination of Goods during any transport or delivery;

(h) the Goods and/or Services not being fit for any particular purpose;

(i) any tests in relation to Goods and/or Services;

(j) the Customer or any member of the Customer's Personnel directly or indirectly causing any delay in the supply of any Goods and/or Services;

- (k) the Supplier having to resupply the Goods and/or Services, or undertake any rework, as a result of the actions or omissions of the Customer or any third party;
- (l) the Customer or any member of the Customer's Personnel refusing to accept any delivery; and
- (m) the Customer or any member of the Customer's Personnel purporting to cancel any Order or Contract and

(n) any proceedings, claims and demands in relation to any secured property.

#### 15. Termination

The Supplier may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to the Supplier if:

- (a) the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach within 7 days of receiving a notice from the Supplier requiring the Customer to do so;
- (b) the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy;
- (c) there is any change in the Control of the Customer; or
- (d) an Administration occurs in relation to the Customer.

#### 16. Definitions

In these T&Cs:

"Administration" means any of the following, or any analogous, events:

- (a) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator to the Customer or to the whole or any part of the Customer's assets, operations or business;
- (b) any person, or agent of a person, who holds any Security takes possession of any of the Customer's property (including but not limited to seizing the Customer's property within the meaning of section 123 of the PPSA);
- (c) a court or other authority enforces any judgment or order against the Customer for the payment of money or the recovery of any property;
- (d) the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business;
- (e) the Customer ceases, or threatens to cease, carrying on business;
- (f) the Customer is unable to pay the Customer's debts as the debts fall due; or
- (g) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors.

"Approvals" means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by any Authority to permit the full and proper performance of the Supplier's obligations under these T&Cs;

"Authority" means any government or governmental, semi-governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, statutory corporation, instrumentality or entity;

"Carbon Costs" means the costs of the Supplier or a related body corporate acquiring any emissions permits or carbon offsets required under any emissions trading legislation or paying any carbon tax in relation to supply of the Goods and/or Services to the Customer;

"Claim" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

"Confidential Information" means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;

"Contract" means a contract formed as a result of the acceptance of an Order by the Supplier;

"Control" has the meaning set out in the Corporations Act;

"Corporations Act" means the Corporations Act 2001 (Cth);

"Customer" means the customer set out in any quotation, offer or other document provided by the Supplier (or, in the absence of such information, the customer who placed the Order);

"Delivery Address" means the address for the delivery of the Goods and/or Services in a Contract;

"Delivery Date" means the date for the delivery of the Goods and/or Services in a Contract;

"Event of Default" means any of the following, or any analogous, events:

- (a) the Customer fails to pay any amount due and payable when the amount is due and payable;
- (b) the Customer fails to comply with any obligations under any document;
- (c) any representation, warranty or statement by the Customer in connection with any document is untrue or misleading (whether by omission or otherwise); or
- (d) the Customer becomes subject to Administration;

"Goods" means the goods in a Contract;

"Hy-Tec Entity" means any of the following entities that supplies Goods and/or Services to the Customer pursuant to these T&Cs: Aus-10 Rhyolite Pty Ltd (ABN 79 002 325 144), Hurd Haulage Pty Ltd (ABN 61 001 738 709), Hy-Tec Industries Pty Ltd (ABN 90 070 100 702), Hy-Tec Industries (Northern Territory) Pty Ltd (ABN 11 096 310 824), Hy-Tec Industries (Queensland) Pty Ltd (ABN 54 102 801 061) and/or Hy-Tec Industries (Victoria) Pty Ltd (ABN 43 096 310 520);

"Intellectual Property Rights" means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain

names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;

"Liability" means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

"Order" means any written or verbal order by the Customer to the Supplier for Goods and/or Services;

"Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;

"PPSA" means Personal Property Securities Act 2009 (Cth);

"Price" means the price of the Goods and/or Services as nominated by the Supplier from time to time;

"Security" means:

- (a) a security interest that is subject to the PPSA;
- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property;

"Security Interest" means the Supplier's security under clause 7.2;

"Services" means the services in a Contract and any services associated with the Goods;

"Supplier" means the Hy-Tec Entity that accepts the Order to supply Goods and/or Services to the Customer; and

"T&Cs" means the terms of these Terms and Conditions and the terms of the Special Conditions (and if there is any inconsistency between the terms of these Terms and Conditions and the terms of the Special Conditions, then the terms of the Special Conditions will take precedence).

#### 17. Miscellaneous

17.1 The parties agree:

- (a) no Contract will create any partnership, joint venture, agency or relationship of employment between the parties;
- (b) these T&Cs or any Contract may only be amended with the Supplier's express written agreement;
- (c) any waiver by the Supplier must be express and in writing;
- (d) the Supplier's rights under these T&Cs or any Contract do not exclude any other rights of the Supplier;
- (e) no Contract will be a sale by sample;
- (f) in the event of any dispute, the Supplier's records will be conclusive evidence;
- (g) the actions of any person claiming to have the Customer's authority will bind the Customer to the extent permitted by law;
- (h) if any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply;
- (i) the Customer must immediately provide written notice to the Supplier if there is any change in the Control of the Customer;
- (j) the Supplier may assign any rights or benefits under any Contract or these T&Cs or any Contract to any third party;
- (k) the Customer may only assign any rights or benefits under any Contract or these T&Cs or any Contract with the Supplier's prior written consent; and
- (l) these T&Cs and any Contract will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, the state in which the Goods and/or Services are delivered.

17.2 In these T&Cs:

- (a) the headings will not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) any other grammatical form of a word or expression defined in these T&Cs has a corresponding meaning;
- (d) a reference to a document includes the document as novated, altered, supplemented or replaced;
- (e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- (g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
- (h) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
- (i) the meaning of general words is not limited by specific examples introduced by "including," "for example" or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- (k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these T&Cs; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

## SPECIAL CONDITIONS - CONCRETE AND QUARRY PRODUCTS

### 1. Supply of Concrete

1.1 Unless otherwise agreed in writing, if the Supplier agrees to supply concrete to the Customer, the Supplier:

- (a) may use any raw materials to manufacture and supply the concrete;
- (b) will supply slumps of a maximum of 80mm for 20mm nominal size dense aggregate; and
- (c) will supply concrete in accordance with Australian Standard AS1379-1997.

1.2 If the Supplier agrees in writing to test concrete for the Customer:

- (a) the Supplier will arrange for the concrete to be tested at the Delivery Address after the delivery of the concrete;
- (b) the Customer will provide the Supplier's Personnel with access to the Delivery Address for the purposes of testing the concrete;
- (c) the Customer will provide copies of all test results to the Supplier; and
- (d) the Supplier will not be liable for any tests performed by any third party.

1.3 The Supplier will not be liable for, and the Customer will indemnify the Supplier in relation to, any Liability or Claim as a result of:

- (a) the Supplier adding additives or other materials to concrete at the Customer's request;
- (b) the Customer or any other person handling, placing, curing or otherwise dealing with the concrete;
- (c) the Customer or any other person, including but not limited to any member of the Supplier's Personnel, adding water or any other substance to concrete whether before, during or after the delivery of the concrete;
- (d) the actual time discharge time (being the time between the arrival of the Supplier's delivery vehicle at the Delivery Address and the completion of the discharge of the Goods) exceeding the Supplier's standard or stated discharge time; and
- (e) the effect of weather conditions on concrete including but not limited to heat, rain, wind or hail.

### 2. Supply of Exposed or Coloured Concrete

2.1 The Customer acknowledges:

- (a) the raw materials used to manufacture exposed concrete and coloured concrete are natural products and subject to variations;

(b) exposed concrete and coloured concrete may also contain iron stone which could cause rust stains in finished products;

(c) the colour, texture, appearance and quality of exposed concrete and coloured concrete in any brochure, display or other promotional material are indicative only;

(d) the colour, texture or appearance of exposed concrete and coloured concrete might not match the selections in any order; and

(e) the Supplier does not represent, warrant or guarantee that the colour, texture, appearance or quality of exposed concrete or coloured concrete will match the selections in any Order or Contract.

2.2 The Customer acknowledges:

- (a) the Supplier's exposed concrete have been designed with a high volume of aggregate;
- (b) the Supplier does not recommend placing exposed concrete using a concrete pump;
- (c) the Customer should obtain advice from the Customer's contractor as to how best to place and finish concrete;
- (d) the Customer's contractor's advice and actions may affect the quality of exposed concrete and the depth or consistency of exposure; and
- (e) the Customer will be responsible for the onsite preparations or placement techniques (including the adding of water or sugar or other additives) or finishing techniques (including the hosing or polishing of concrete) used by contractors.

2.3 The Customer agrees that if a contractor uses water to wash off the top surface of exposed concrete or coloured concrete, the contractor must ensure the contractor captures the water as the water could be high in cementitious material and the Supplier has no responsibility for such water entering drainage systems or waterways.

### 3. Supply of Quarry Products

If the Supplier agrees to supply quarry products to the Customer:

- (a) the Supplier will supply the quarry products by weight and in accordance with Australian Standard AS2758; and
- (b) the Customer may test the quarry products which are the subject of an Order at the Supplier's plant provided that the Customer provides at least 7 days written notice to the Supplier and provides copies of all test results to the Supplier.