

# TERMS AND CONDITIONS OF SUPPLY

## 1. DEFINITIONS AND INTERPRETATION

"AS1379-2007" means S.A.A. "Specifications and Supply of Concrete" AS 1379-2007 as amended from time to time.

"**Australian Consumer Law**" means Schedules 1 and 2 of the Competition and Consumer Act 2010 (Cth) and any other relevant provisions contained in that Act.

"**Consequential Loss**" means loss of revenue, loss of profits, loss of anticipated savings or business, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any form of consequential, special, indirect, punitive or exemplary loss or damages, however it arises (including as a result of negligence).

"**Collection Expenses**" means any legal and/or other expenses incurred by Us, including debt collection agency expenses, in obtaining or attempting to obtain payment of any amount due by You to Us.

"**Consumer**" has the meaning in the *Australian Consumer Law*.

"**Goods and Work**" means the materials or the materials and services supplied or to be supplied as described on the Quotation or delivery docket including but not limited to concrete, rock, sand and minerals.

"**Intellectual Property**" all registered and unregistered rights in relation to present and future copyright, trade marks, designs, know-how, patents, confidential information, moral rights and all other intellectual property.

"**Loss**" means any liability, however it arises (including as a result of negligence) and includes any loss, claim, damage, demand, injury or death and a fine or penalty imposed by a statutory or other authority.

"**PPSA**" means the PPS Act and any other legislation and regulations dealing with the PPS Act. The following words in clause 22 have the meanings given to them in the PPS Act: *financing change statement, financing statement, purchase money security interest (PMSI), register, registration, security interest and verification statement*. For the purposes of section 20(2) of the PPS Act, the collateral is the Goods and Work.

"**PPS Act**" means the *Personal Property Securities Act 2009* (Cth) (as amended).

"**Quotation**" means the document named "Quotation" provided by Us to You outlining important information concerning the supply of the Goods and Work, but not limited to, a description of the Goods and Work, charge rates, additional associated charges, the address for supply of the Goods and Work, or in the event that there is no such document the oral terms agreed between You and Us for the supply of Goods and Work.

"**Rates**" means the unit rate shown on the face of the Quotation, or otherwise, used to calculate the prices for the Goods and Work.

"**Representative**" means an engineer or other person nominated by Us,

"**Site**" means the location for the supply / performance of the Goods and Work specified on the Quotation and/or delivery docket.

"**Terms and Conditions**" means these terms and conditions any additional matters agreed in writing between the parties.

"**We/Us/Our**" means Southern Quarries Pty Ltd ACN 007 726 909 and/or Direct-Mix Concrete Pty Ltd ACN 007 621 892 and/or Agripeta Pty Ltd ACN 060 322 250.

"**You/Your**" refers to the person, partnership, corporation, trust or other entity whom We are Supplying the Goods and Work, as named in the Quotation and/or delivery docket. The reference to "You" includes any of Your employees, agents and contractors.

## 2. SUPPLY AGREEMENT

The supply agreement ("Supply Agreement") between You and Us is comprised of these Terms and Conditions of Supply, together with:

- the Quotation
- the delivery docket;
- any credit application or credit guarantee (if applicable); and
- any specifications provided by Us to You.

It is important that You read and understand all of the Terms and Conditions of the Supply Agreement prior to supply of the Goods and Work by Us.

## 3. AGREEMENT

Except to the extent otherwise explicitly agreed in writing between the parties, these Terms and Conditions (and any credit application or credit guarantees, if applicable) govern the relationship between You and Us in connection with the Goods and Work and will prevail over any other document (including purchase order terms or procurement terms provided by You or terms on the back of delivery dockets to the extent inconsistent with these Terms and Conditions) from time to time. To the extent of any inconsistency between the credit application, the credit guarantees and these Terms and Conditions, these Terms and Conditions prevail. You acknowledge that You have not relied on any representation, inducement, warranty or promise which is not set out below. These Terms and Conditions may only be varied by both parties agreement in writing.

## 4. VALIDITY

The Quotation is an offer open to acceptance by You within 30 days from the date on the Quotation. The offer is made subject to You meeting Our credit approval requirements. Your written order to commence the supply/performance of the Goods and Work or such commencement by Us constitutes acceptance of the offer.

## 5. POINT OF SUPPLY

The Quotation is based on all materials being available from Our normal point of supply with respect to the locations of the supply / performance of the Goods and Work (as determined by Us) or as otherwise specified in these Terms and Conditions. Should conditions beyond Our control necessitate supply from any other point of supply any resultant increase in cost will be paid for by You.

## 6. EXTENT OF GOODS AND WORK

The Quotation is based on supply/performance of all of the Goods and Work at the Site. Should the quantities supplied or location of the Site vary from the Quotation We reserve the right to adjust the Rate. You also acknowledge that the materials included in the Goods and Work shall generally be supplied in accordance with the relevant sections of AS 1379-2007 and/or other relevant industry standards and statutory requirements (where applicable), unless otherwise stated on the face of the Quotation. If the materials are to be placed by pump, You must notify in advance, and while We will use reasonable endeavours to accommodate such request, We do not warrant that such materials will be able to be pumped due to the variations in pumps and the materials.

## 7. BASIS OF PAYMENT

The Goods and Work will be paid for by You at the Rates according to the actual quantities supplied as shown on the delivery docket, subject to these Terms and Conditions. You acknowledge that, unless otherwise specifically stated on the face of the Quotation or applicable delivery docket, the Rates are subject to additional charges pursuant to the Fees and Charges Sheet. You acknowledge that the Goods and Works will be paid for in full without any retention or set-off.

## 8. LIMITATION OF LIABILITY AND INDEMNITY

If You are not a Consumer, We shall not be liable in any circumstances:

(a) for any damages to any property of whatsoever kind situated in, or on adjacent to the Site resulting from Goods and Work supplied or performed in accordance with these Terms and Conditions;

(b) for any defects in the Goods and Work unless You notify Us within 7 days of the date of delivery of the materials or the supply of the services specifying the defect, which notice shall be a condition precedent to any right to recovery by You;

(c) for any Loss arising from delay;

(d) for any Consequential Loss;

(e) for any defect which may develop in any concrete supplied if:

- water is added to concrete either before or after discharge from the delivery unit without the approval of Our Representative;
- an admixture is used at the purchaser's request or specification; or
- discharge from the agitator occurs more than 90 minutes from the time ex-plant;

(f) for any Loss arising from materials supplied by Us being placed or installed by others,

and, subject to clause 9, Our total aggregate liability in all circumstances is limited (to the extent permitted by law) to the amount paid by You for the Goods and Work.

To the maximum extent permitted by law, You hereby indemnify and forever holds Us harmless from all Losses caused or contributed to by any negligent and/or willful act or omission or any breach of these Terms and Conditions by You, or by Us arising from supplying or performing the Goods and Works in accordance with these Terms and Conditions.

## 9. LIMITATION OF LIABILITY – AUSTRALIAN CONSUMER LAW GUARANTEES

Unless You indicate otherwise below, You acknowledge that the Goods and Work You will acquire from Us will be obtained 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.

By ticking this box, You notify Us that You are acquiring the Goods for a purpose other than that stated immediately above, in which event the provisions below may apply.

If You are a Consumer and any of the Goods supplied by Us are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, You agree that Our liability for a failure to comply with a consumer guarantee under the *Australian Consumer Law* in relation to those Goods (other than a guarantee under sections 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities) of the *Australian Consumer Law*, is limited to, at Our option, to one or more of the following:

- the replacement of the Goods or the supply of equivalent goods;
- the repair of the Goods;
- 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.

If You are a Consumer and any of the Work services supplied by Us are not services of a kind ordinarily acquired for personal, domestic or household use or consumption, Our liability for a failure to comply with a consumer guarantee under the *Australian Consumer Law* in relation to those Work services is limited to, at Our option:

- the supply of the Work services again; or
- the payment of the cost of having the Work services supplied again.

## 10. SITE ACCESS

We will deliver, and You will receive, the Goods and Work at the kerb alignment in a timely manner. You will be responsible for providing adequate, and timely access to the Site for Our materials, personnel and equipment and You will indemnify Us for all Loss (including delivery and establishment costs) incurred Us as a result of failure to provide such access. If We, or Our agents, enter the Site for the purposes of delivering the Goods, You shall indemnify Us for any Loss incurred by Us arising out of or in connection with such. Where We leave equipment on the Site in connection with the supply and performance of the Goods and Works, You shall take all reasonable precautions to secure the Site to prevent loss or damage to the equipment or any injury to persons entering upon the Site.

## 11. DELIVERY

We will use reasonable endeavours to supply/execute Goods and Work in accordance with Our nominated timeframe. However, should supply/execution of the Goods and Works be early or delayed for any reason beyond Our control, or as a result of any cause which You are or should reasonably have been aware of, all Loss arising will be Your responsibility and You shall indemnify Us in respect of such Loss. Please refer to our website [www.southernquarries.com.au](http://www.southernquarries.com.au) for more information, including our Fees and Charges Sheet.

Prior to discharge from the delivery vehicle You shall check that the Goods and Work description and quantity on the delivery docket conforms with Your requirements, and You must record any discrepancies in writing on the delivery docket including discrepancies in quantity, specification, discharge records, or that the addition of water was done other than at Your request. Failure to make such notations on the copy of the docket retained Us is deemed to be conclusive evidence that the delivery docket is accurate. You accept the Goods and Work, and that any water added was done at Your request.

## 12. SITE VISITS AND HOURS

Unless otherwise stated on the Quotation, the Quotation is based on

(a) the whole of the Goods and Work being available for completion at one Site visit;

(b) the whole of the supply/performance of the Goods and Work being conducted during normal business hours. Should it be necessary to supply/performance the Goods and Works or any necessary establishment work outside normal business hours, then additional charges may apply which will be calculated in accordance with the variations clause. Our normal hours of business for loading are listed on the Our Fees and Charges Sheet.

## 13. VARIATIONS

We are not obliged to carry out any variation which is outside the scope of the Goods and Works. Any variation that We do carry out shall be subject to these Terms and Conditions and shall be charged to and paid for by You at an agreed rate or failing agreement at the rate determined by Us.

## 14. TERMS OF PAYMENT

(a) You must pay for the Goods and Work in immediately available funds prior to the discharge of the Goods and Work unless We agree otherwise in writing.

(b) If We agree to provide Goods and Work on credit terms, You acknowledge and agree that if You breach the credit terms, you will pay Us any Collection Expenses and interest charges that may apply.

(c) You hereby agree to charge in Our favour all Your estate and interest in any land and in any other assets, whether tangible or intangible in which You now have any legal or beneficial interest or in which You later acquire any such interest, with payment of all monies owed by You and consent to the lodging by Us of a caveat or caveats which not Our interest in that real property.

## 15. TAXES AND OTHER CHARGES

(a) The prices quoted do not include any statutory or Government charges. Should any such charges or any other tax become applicable to the materials the subject of the Quotation such tax or charge shall be charged to and paid for by You in addition to the price otherwise payable under the Quotation.

(b) Notwithstanding anything else in these Terms and Conditions, We have any liability to pay the Goods and Services Tax ("GST") on any materials and/or services supplied here to You, You shall pay to Us the amount of such GST at the same time as amounts otherwise payable to Us.

(c) If the introduction or variation of a regime in relation to the emission, removal, mitigation, reduction, avoidance or sequestration of greenhouse gases ("Carbon Scheme") results in any additional financial burden whatsoever to Us arising from the manufacture or supply the Goods and Work, We may increase Rates to recover the reasonable net costs incurred arising from such Carbon Scheme.

## 16. FORCE MAJEURE

We shall not be liable in any way for any delay in the supply / performance of Goods and Works where such delay occurs by reason of any cause whatsoever beyond Our reasonable control, including without limiting the generality thereof, restrictions of Government or other statutory authorities, wars, fires, epidemics, failure or fluctuation in any electrical power supply, storm, flood, earthquake, accident, labour dispute, plant breakdown, materials or labour shortage, the change or introduction of any law or regulation or an action or omission of any supplier or other third party or any failure of any equipment owned or operated by them.

## 17. MAINTENANCE

This quotation does not cover any maintenance after completion of the supply/performance of the Goods and Work.

## 18. TESTING

We will, at Your request, use reasonable endeavours to arrange testing priced in accordance with the Fees and Charges Sheet. Any testing conducted or arranged by You will be by sampling at the discharge chute performed in accordance with Australian Standard 1012 and carried out by a National Association of Testing Authorities ("NATA") accredited laboratory. You will provide Us with copies of any such third party testing conducted.

## 19. INFORMATION AND IP

(a) You acknowledge and agree that:

(i) You must provide all relevant information (including all specifications relating to the Goods and Works, details relating to the Site, and other matters that may affect Our ability to complete the Goods and Works) to Us to enable Us to supply / perform the Goods and Works; and

(ii) in giving the Quotation We have relied upon the accuracy and completeness of such information, and You hereby warrant to Us the accuracy and completeness of all information supplied.

(b) If We have provided You with any information (including any design services or other advice) in connection with the Goods and Works, You acknowledge that You have formed Your own opinion as to the correctness or otherwise of the information and has not and will not rely on Us in respect of such information.

(c) All Our Intellectual Property, including any developed during the course of supply/performance of the Goods and Work, shall remain Our sole property and no licence, right or other interest of any kind in respect of such Intellectual Property is granted, created or transferred to You.

## 20. RISK

Upon delivery of any Goods and Work to the Site or any temporary stockpiles, all risk in relation to the Goods and Work shall pass to You. Title in the Goods and Work shall not pass to You until We have been paid in full. Where Goods are sold ex-bin, risk passes to You when the material is loaded on Your vehicle.

## 21. SAFETY

(a) You are responsible for ensuring safe and adequate access to the Site for delivery and all other aspects of Site safety.

(b) You shall notify Us prior to delivery, of any obstacles or peculiarities in relation to the Site.

(c) The driver making any delivery may refuse to complete the delivery, if not satisfied with Your compliance with (a) and (b) above, however, making a delivery shall not constitute an assessment of the safety of the Site and in no way releases You of Your obligations under these Terms and Conditions, including those relating to safety.

(d) You acknowledge that the Goods and Work (including in the case of freshly mixed cement, mortar, concrete, grout, materials, rubble or rock) may cause skin irritation. You shall ensure that all personnel involved in the Goods and Work avoid contact with exposed skin areas and eyes and wear appropriate protection such as impervious clothing, safety goggles and gloves. The following are general guidelines relating to exposure, and should not be treated as exhaustive. You acknowledge that You have appraised Yourself of these risks and that You will take appropriate safety precautions and training of Your personnel. Should exposure occur, immediately rinse eyes and wash affected skin areas with clean fresh running water for 10 minutes. Seek medical advice if symptoms persist. Avoid breathing dust generated from drilling, sawing or chiseling hardened concrete or quarry products as they may contain crystalline silica. Wear appropriate protective clothing, gloves, safety goggles and particulate respirator. Should exposure occur, immediately rinse eyes with fresh clean running water for a minimum of 10 minutes. If dust is inhaled, immediately remove to fresh air. Seek medical advice should inhalation occur or if symptoms persist. Contact Us for more information or visit our website for more information at [www.southernquarries.com.au](http://www.southernquarries.com.au).

## 22. PPSA

(a) You agree that for the purpose of the PPSA, until we are paid in full, We have a security interest in the Goods and Work and the proceeds ("Proceeds") from any dealings with the Goods and Work by You ("Security Interest").

(b) You agree that the Security Interest:

i. where possible, will enable but not obligate Us to register a Purchase Money Security Interest ("PMSI") in any other case, will enable but not obligate Us to register the Security Interest on the PPS register in accordance with the provisions of the PPS Act.

(c) You undertake to do anything required by Us so that We:

i. acquire and maintain one or more perfected security interests under the PPSA in respect of the Goods and Work and the Proceeds;

ii. can register a financing statement or financing change statement;

iii. not register a financing change statement in respect of the Security Interest without Our prior written consent; and

iv. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and Work in favour of a third party without Our prior written consent.

(d) You consent to Us effecting and maintaining a registration on the register (in any manner We consider appropriate) in relation to the Security Interest.

(e) Upon Our request, You will execute any documents required by Us and do anything else required by Us to ensure that any security interest created and maintained under this Supply Agreement constitutes a first ranking perfected security interest over the Goods and Work and the Proceeds.

(f) You waive the right to receive notice from Us of a verification statement in relation to any registration on the register of a security interest in respect of the Goods and Work.

(g) You will immediately notify Us in writing of any change in your name or any other information We may need in order to complete a financing change statement.

(h) We may apply amounts received in connection with this Supply Agreement to satisfy obligations secured by a security interest contemplated or constituted by the Supply Agreement in any way We determine in Our absolute discretion.

(i) You agree to reimburse Us for all expenses incurred or payable by Us in registering, maintaining or releasing any financing statement or any other document in respect of any Security Interest under this Supply Agreement.

## 23. GENERAL

(Severance) Any provision of these Terms and Conditions which is unenforceable or partly unenforceable is, where possible, to be read down so as to be enforceable, and if it cannot be read down, severed to the extent necessary to make these Terms and Conditions enforceable, unless this would materially change the intended effect of these Terms and Conditions.

(Waiver) A right may only be waived in writing, signed by the party giving the waiver, and no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.

(No Implied Terms) You may have the benefit of certain statutory guarantees relating to the Goods and Work services pursuant to the *Competition and Consumer Act 2010* (Cth). Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Conditions or in connection with the supply of the Goods and Works by law, statute, custom or international convention (including those relating to quality or fitness for purpose) are excluded.

(Governing Law) These Terms and Conditions are governed by the laws of the State or Territory in which the Goods and Work is supplied/performed. If Goods and Work are supplied/performed outside Australia, the Conditions are governed by the laws of South Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals from these courts.

(Insurance) You must take out and maintain those policies of insurance that would be held by a reasonably prudent customer in Your position.

(No Adverse Interpretation) These Terms and Conditions are not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of these Terms and Conditions to protect itself.