

A CONCRETE STRENGTHS, etc

1. At the time of ordering concrete the Purchaser shall specify those properties such as strength, durability, water cement ratio and any other properties which are referred to in Australian Standard AS3600. Concrete supplied shall comply with the specification made by the Purchaser. Testing and Assessment for Compliance of Concrete is specified by compressive Strength to Australian Standard AS1379.
2. Testing will not automatically be carried out. Testing will be arranged if requested by the Purchaser and will be charged to the Purchaser in accordance with the Company ruling rates. If the results of any testing of Concrete which has been supplied by the Company, are used in any claim against the Company, the testing shall be performed strictly in accordance with Australian Standard AS1379 and AS1012 and the results shall be furnished forthwith to the Company.
3. The Company shall not be liable for and is hereby indemnified by the Purchaser in respect of any claims made by or through the Purchaser or any third party which arise out of any defects, shrinkages or other faults which may develop in the concrete and which are due to:
 - (a) faulty handling, placing or curing of the concrete by the Purchaser, or any other person;
 - (b) the addition of any water or other material to the concrete either before or after discharge from the delivery unit, without the written instruction of an authorised representative of the Company. Drivers of delivery vehicles shall not, for any purpose arising under this contract, be deemed to be representatives of the Company; and/or
 - (c) the addition of any additives to the concrete at the request of the Purchaser, unless an authorised representative of the Company confirms the request in writing.
4. Concrete contains materials of the Company's choice unless otherwise stated. The strength characteristics of the concrete are those shown on the face of the delivery docket. Purchasers should ensure that the strength shown accords with the required specifications.
5. The Company's guarantee of the strength of the concrete (Subject to Clause F.2 below) ceases if the concrete is not on site within 1½ hours of leaving the plant, or if any of the events referred to in Clause 3 above shall occur. The time of leaving the plant is shown on the face of the delivery docket.
6. Unless otherwise agreed in writing the Company, when giving any quotation or supplying any concrete, shall not be taken to have approved any specification as being suitable for any particular purpose, and shall not be liable for any loss or delay (or any costs associated therewith) resulting from any defect in, or unsuitability of the specifications. The Purchaser shall be liable to the Company for any costs arising from the specifications, as shown on the order or quotation, being changed to that shown on the delivery docket.
7. Although the Company undertakes to supply concrete in accordance with Clause 1 above, if to do so requires the addition of a cooling or heating agent the costs thereof will be charged as an extra.
8. Unless otherwise stated prices are based upon slumps not exceeding 80mm. Slumps in excess of 80mm will be charged at the Company's ruling rate.

B QUARRIED MATERIALS

All materials extracted from the Company's Dredging and Quarry operations are naturally occurring products and the Company has no control whatsoever over the average mineral composition, which may vary from time to time to that stated in our published Petrographic Report. Additionally the Company will not warrant that the product to be free from naturally occurring impurities.

C DELIVERY

1. The Company shall not be liable in any manner whatsoever for delay or non-delivery (or any costs associated therewith) which is attributable to transport delays, plant or equipment breakdown, unavailability or shortage of materials, industrial stoppages or any other cause whatsoever, which is beyond the direct control of the Company.
2. Delivery must be accepted by the Purchaser and discharge completed as soon as possible after the arrival of the delivery vehicle on site. If discharge is not completed within 30 minutes after arrival on site, waiting time in excess thereof will be charged at the Company's ruling rate.
3. Delivery will only be made to the kerbside. If at the request of the Purchaser the delivery vehicle enters the job area, the Company shall not be liable for, and is hereby indemnified by the Purchaser, in respect of any claims made by or through the Purchaser or any third party which arises out of effecting such entry or by the presence of the vehicle in the job area.
4. Returned concrete will be charged to the Purchaser at the Company's ruling rate.

D PRICE AND PAYMENT

1. The price stated is based on current costs for transport, labor and materials and the Company may adjust the price accordingly in the event of any variation to any of these costs prior to delivery.
2. Surcharges at the Company's ruling rates are payable in the event of:
 - (a) the Purchaser requiring delivery before 6.00am or after 5.15pm Monday to Friday
 - (b) the Purchaser requiring delivery on Saturdays, Sundays or Public Holidays and/or
 - (c) the Purchaser requiring delivery of less than 3.0 cubic metres.
3. The amount charged is based upon the quantities shown on the face of the delivery docket. Prior to delivery the Purchaser shall sign the delivery docket and by signing, the Purchaser becomes bound by the information shown thereon and any claims in relation to the quantity and quality of the Product delivered must be made in writing to the Company within 7 days of delivery.
4. (a) The Purchaser shall pay the price to the Company prior to delivery or within any credit period agreed in writing. At the Company's discretion, all amounts not paid within the agreed credit period shall bear interest at the overdraft rate charged by the Company's principal bankers. If payment is not paid when due, the buyer shall pay interest calculated on daily balances on the amount unpaid from the date of supply. All amounts received by the Company will be credited first against interest.
(b) If the Purchaser fails to make due payment or if any other dispute arises, the Company shall have the right at its option:
 - (i) to suspend further performance of its obligations hereunder until the later of payment (plus interest as aforesaid) or settlement of the dispute; and/or
 - (ii) to terminate the contract at any time. In either case without affecting any right or remedy of the Company whether arising before, after, or as a result of the dispute of the Purchaser's failure to make due payment.
5. Until payment is made in full the Company retains full legal and equitable title to, and the Purchaser remains bailee of, the material supplied, and, to the extent of the Company's interest, and other objects into which the materials supplied may be incorporated and any proceeds from the sale of the materials supplied or the other objects.
6. In the event of any dispute arising between the Company and the Purchaser, the Purchaser shall forthwith pay to the Company the amount claimed by the Company to be held by the Company until the determination of the dispute.
7. Any liability of the Company for payment of Goods and Services Tax in respect of the supply of goods or services under this contract shall be borne by the Purchaser.

E GUARANTEE

1. The Guarantor shall hereby guarantee the due performance by the Purchaser of its obligations to Byrne Bros Pty Ltd pursuant to the supply by Byrne Bros Pty Ltd to the Purchaser of the goods, and the Guarantor hereby guarantees the payment of monies becoming due from the Purchaser to Byrne Bros Pty Ltd in accordance with Byrne Bros Pty Ltd normal terms and conditions of the sale.
2. The Guarantor shall, upon request by Byrne Bros Pty Ltd so to do, execute a Mortgage over any real property owned by him/her.
3. This guarantee shall be a continuing guarantee to the Company for all debts whatsoever and whensoever contracted by the Purchaser with Byrne Bros Pty Ltd in respect of goods to be supplied to the Purchaser.
4. Byrne Bros Pty Ltd shall be at liberty without notice to the Guarantor at any time and without in any way discharging the Guarantor from any liability hereunder to grant time or other indulgences to the Purchaser and to treat the Guarantor in all respects as though he were jointly and severally liable with it to the supplier instead of being merely surety for it.
5. The Guarantor(s) agree(s) that Byrne Bros Pty Ltd may seek from any referees or credit providers named in the attached Credit Application, and any referees or fit providers that may be named in a credit report agency, information about the Guarantor's credit arrangements. The Guarantor understands that this information can include any information about his credit worthiness, credit standing, credit history or credit capacity, that credit providers are allowed to give or receive from each other under the Privacy Act.
6. The Guarantor understands the information may be used for the following purpose:
 - (i) To access an Application by the Guarantor for credit
 - (ii) To access the Guarantor's worthiness
7. The Guarantor declares the particulars contained herein to be true and correct. The Guarantor agrees that the supply by Byrne Bros Pty Ltd of the goods shall always be on the terms and conditions of sale contained herein.
8. The parties hereto agree to the payment terms of Byrne Bros Pty Ltd contained herein and acknowledge that credit facilities may be withdrawn on any account at Byrne Bros Pty Ltd discretion. The Guarantor agrees that interest at the rate of 2% above the bank's indicator rate together with collection expenses including costs of Mercantile agents or solicitors shall be payable on over due accounts.

F GENERAL

1. Any reference to the Purchaser in these terms and conditions includes the employees, agents, sub-contractors, successors, assignees of, and any entity claiming through or under the Purchaser. The actions or signature of any person appearing to have the authority of the Purchaser so to do shall bind the Purchaser.
2. In the event of any materials supplied by the Company under this contract being defective, the liability of the Company (if any) shall be limited to the replacement of such defective material. All other guarantees, warranties, undertakings of representatives express or implied, whether arising by statute or otherwise are hereby expressly excluded (except to the extent only that such exclusion is prohibited by statute). Subject to the last mentioned exception, these terms and conditions are the only terms and conditions of contract between the Company and the Purchaser, and cannot be altered except in writing by the Company's authorized representative.
3. The Company shall not in any circumstances in any dispute be liable for any indirect or consequential loss or damage of any nature whatsoever.
4. The Company will not be liable for any claim resulting from the use of the Product by the Purchaser, or any improper, defective or damaged materials.
5. A statement signed by the Company's authorized representative certifying the amount of any increased costs or other claim by the Company shall in the absence of manifest error be conclusive and binding.
6. The Purchaser shall not, and shall not be entitled to, claim against the Company in connection with any act, omission or event arising hereunder, unless the claim is made to the Company in writing within the time period specifically stipulated in these terms and conditions or if no such period is stated, within 7 days of the occurrence of the act,
7. All reasonable steps and precautions are taken by the Company and its employees to complete and abide by all health and safety laws, anti discrimination laws and equal opportunity laws and it is assumed that the Purchaser and its employees do likewise.