**HOLCIM (AUSTRALIA) PTY LTD**
**ABN 87 099 732 297**

Head Office, Sydney
Level 40, 100 Miller Street
NORTH SYDNEY NSW 2060

Web: www.holcim.com.au

## IMPORTANT INFORMATION

**Are there any indemnities provided under these Terms?**

Yes. You may be required to indemnify us for any loss or damage in connection with:

- Your cancellation of an Order (see clause 28);
- A request by you for our delivery vehicle to enter a delivery location to unload (see clause 37); and
- Any failure to perform your obligations (see clause 79).

**Is any liability limited or excluded under these Terms?**

Yes. Our liability is capped to the sum you pay us under the relevant Contract (see clause 87).

We also exclude liability for any consequential loss (see clause 89).

**Are any additional fees payable?**

You will be charged:

- a restocking charge of up to 30% of the Price, reasonable cartage fees and other amounts we incur in relation to the manufacture of Goods under an Order you cancel (see clause 29);
- additional fees if a delivery vehicle is unable to promptly unload Goods upon arrival at a delivery location or the quantity of Goods delivered is smaller than the minimum load size for that type of Goods (see clause 38);
- reasonable storage charges if you defer delivery and, where delivery has previously been attempted, you will also be charged a re-delivery fee (see clause 40);
- additional concrete service fees may be charged for pre-mixed concrete services as set out in the Concrete Service Fee Summary or Concrete Testing Fee Schedule (see clause 60); and
- a handling and administration charge of up to 25% of the Price of returned Goods, except in certain circumstances (see clause 50). In the case of returns of Goods which are precast and structural concrete products, a restocking fee of up to 30% of the original invoice Price plus a one-off $75 administration fee which may be increased from time to time (see clause 69).

**Are there any unusual obligations?**

If you conduct any testing on delivered Goods, you must, upon written request, provide us with copies of the test results accompanied by explanations of the testing methodologies applied within seven (7) days of our request (see clause 53).

These Terms of Sale of Holcim (Australia) Pty Ltd (ABN 87 099 732 297) will be effective from 1 October 2026 and will replace those which came into effect on 1 December 2023. A soft copy of them can be accessed via the legal link on the web site, www.holcim.com.au

# TERMS OF SALE

**Application of Terms**

1. These Terms set out the contractual basis upon which we agree to supply you with Goods and Services and apply whenever Goods and Service are quoted for, sold, supplied, or delivered by us to you.
2. These Terms apply to each and every Contract between us and you for the supply of Goods and Services. Any terms or conditions included in, attached to, or referenced in your Order including any purchase order terms subsequently given to us by you, or any other document provided by you deviating from, or inconsistent with, these Terms (even if any representative of Holcim signs the document), are expressly rejected by us and will not vary or supplement these Terms.
3. Each supply which we make following our acceptance of an Order will be regarded as a separate Contract, which is subject to these Terms.
4. Where we have granted you a credit facility, our Credit Terms apply. In the event of any conflict, ambiguity, or inconsistency between these Terms and our Credit Terms, our Credit Terms prevail to the extent of the conflict, ambiguity, or inconsistency.

**Quotations**

5. Quotations made by us are estimates only and will not be construed as an offer or obligation to supply any Goods or perform any Services.
6. Unless specified otherwise, quotations made by us:
   (a) are exclusive of GST;
   (b) are exclusive of the costs of delivery, and if and when required, any Testing; and
   (c) will remain valid for a period of thirty (30) days from the date of quotation.
7. You acknowledge and agree that quotations made by us may include additional terms or conditions, which will supplement (and are intended to be read in conjunction with) these Terms.
8. Unless specified otherwise, insofar as quotations made by us relate to the performance of Services, the Price will be based upon Services being performed during Normal Working Hours on Business Days. If requested by you, we may from time to time agree to perform Services outside of Normal Working Hours or Business Days, in which case such Services will be deemed a variation and we will provide you with an estimate of the additional charges that will apply and you will have the right to accept or reject those charges. If you reject those charges, we will not perform the Services outside Normal Working Hours or Business Days.
9. We reserve the right to withdraw, vary, or extend the time for acceptance in respect of any quotation made by us at any time prior to the formation of a Contract in accordance with clause 12.

**Formation of Contract**

10. You may accept these Terms (and you will be deemed to accept these Terms) if you, following receipt of a copy of these Terms:
    (a) confirm your acceptance of these Terms; or
    (b) place an Order with us.
11. We reserve the right to not accept your Order, without having to provide reasons to you for doing so. For clarity, nothing in these Terms obliges us to supply you with any Goods or perform any Services at any time.
12. Any Order placed by you will be construed as an offer. A binding Contract will only come into existence if:
    (a) we communicate our acceptance of your Order, whether in writing or by electronic means; or
    (b) we supply you with any Goods or perform any Services following receipt of your Order.
13. For clarity, a Contract is formed at the location where your Order is placed.

**Price and Payment terms**

14. Subject to clause 15, the Price payable for the Goods or Services will be in accordance with our then prevailing price list (as notified by us to you from time to time), as applicable as at the date of your Order.
15. Where we have issued you a quotation, the Price will be our quoted price (subject to clauses 6, 16, 20 and 23 to 26) which will be binding on us provided you accept our quotation in writing within the period it is valid for acceptance.
16. Notwithstanding any other provision of these Terms, including any Special Terms, Holcim may change the Price at its discretion by giving the Customer no less than 4 weeks' notice at any time if there has been a material increase in for example but not limited to the cost of supply of the Goods and Services. In doing so Holcim must act reasonably.
17. Unless otherwise agreed in writing, the terms of payment are strictly cash on delivery. We may, in our sole discretion, withhold the despatch of any Goods if you fail to make any payment due in accordance with the terms of any Contract of which these Terms form part.
18. Payment may be made by cash transfer, EFTPOS, credit card, or by using your credit facility with us (where applicable) and we reserve the right, at our sole discretion, to accept, reject or change a payment method that we accept or do not accept at any time.
19. We reserve the right to require payment of a deposit. The amount of the deposit will be specified in our quotation or will be advised by us and will immediately become due and payable upon the formation of a Contract in accordance with clause 12, unless otherwise agreed in writing. For clarity, where we require payment of a deposit, we are under no obligation to procure or supply Goods or Services until the deposit has been received by us in cleared funds.
20. If GST is imposed on a Taxable Supply made by us to you under any Contract of which these Terms form part, the price of the Taxable Supply will be equal to the GST-exclusive consideration that you must pay to us for the Taxable Supply under the Contract increased by an amount (the "**GST Amount**") equal to the amount of GST payable on that Taxable Supply. The GST Amount is, subject to us issuing a Tax Invoice to you, payable at the same time and in the same manner as the consideration to which it relates. If we become liable to pay any tax, duty, excise, or levy in connection with any Contract of which these Terms form part, you must pay us these additional amounts upon written demand.
21. You must check all Tax Invoices and advise us of any errors or omissions within seven (7) days of receipt. Failing advice from you that a Tax Invoice contains any errors or omissions, the Tax Invoice may be deemed accepted by you.
22. Any sums owed under any Contract of which these Terms form part will be made free of any set-off, or counterclaim, and without deduction or withholding (including by way of cash retention).

**Default**

23. If you default in the payment of any money due to us pursuant to any Contract of which these Terms form part by the date specified in our Tax Invoice, we are entitled to, without prejudice to any other rights which may be conferred upon us by law or equity, do any or all of the following:
    (a) charge you interest on the outstanding amount at the rate of 10% per annum, which interest will accrue and will be recoverable for each day (or part thereof), that the money remains outstanding until payment is received by us in full;
    (b) require you to pay, in advance, for any Goods or Services (or any part of the Goods or Services) which have not yet been supplied; and
    (c) suspend or cease the supply of any further Goods or Services to you.

**Variations**

24. If you request or direct that any Goods or Services be supplied that are not strictly in accordance with an Order which we have accepted under clause 12, then such Goods or Services will constitute a variation.
25. A notice of variation must be submitted in writing and is only effective if agreed by both Parties.
26. You understand and agree that:
    (a) all variations must be agreed between the Parties in writing prior to the Goods or Services being supplied; and
    (b) all variations will be, in our discretion, invoiced at the rates specified in our quotation, as specifically quoted, or in accordance with our then current price list.
27. Notwithstanding clauses 25 and 26, and subject to any rights you might have under the *Competition and Consumer Act 2010* (Cth) or any other legislation, we reserve the right to vary the quoted Price, if:
    (a) the Goods or Services specified in your Order are varied from the Goods or Services specified in our quotation (or are otherwise varied following the formation of a Contract); or
    (b) otherwise as provided for in these Terms.

**Order cancellations**

28. You may not cancel an Order (or any part of an Order) once a Contract has been formed, delivery of the Goods cannot be deferred, and Goods ordered cannot be returned (unless permitted by law), except with our prior written consent, and then only upon terms that you reimburse and indemnify us against all reasonable losses we have incurred or may incur as a result of the cancellation, deferral, or return, including but not limited to third-party supplier restocking fees, cartage, bank charges, other incidental expenses incurred on any part of your Order, and loss of profits, except to the extent to which the loss was caused or contributed to by the negligence or wilful act or omission of us or our Personnel.
29. Without limiting clause 28, you acknowledge and agree that any cancelled Order whether in whole or in part (if accepted by us) may be subject to a restocking charge of up to 30% of the Price, reasonable cartage fees (to the extent to which we have incurred such fees) and that you may also be required to pay any amount incurred by us for all or part of the Goods manufactured pursuant to the cancelled Order prior to the date of cancellation, provided that we will undertake reasonable endeavours to mitigate our loss in such circumstances.

**Delivery**

30. Unless our quotation states otherwise, you will be liable for all costs associated with packaging and delivery, including cartage/freight, handling, and other charges. Where you have engaged a carrier to deliver the Goods, you will also be responsible for the cost of insuring the Goods.
31. You must make all arrangements necessary to take delivery of the Goods when they are tendered for delivery provided we have given you reasonable notice of actual delivery.
32. You acknowledge and accept that any period or date for delivery stated by us is intended as an estimate only and is not a contractual commitment. We will undertake reasonable endeavours to meet an estimated delivery date but will not in any circumstances be liable for any loss or damage suffered by you or any third party for failure to meet an estimated delivery date.
33. Delivery will be made within Normal Working Hours on Business Days, unless otherwise agreed in writing.
34. Delivery is deemed to occur at the time:
    (a) you, or any third party on your behalf, collects the Goods from us;
    (b) the Goods are delivered to the delivery location specified in your Order (or to such other location as otherwise agreed in writing);
    (c) your nominated carrier takes possession of the Goods, in which event the carrier will be deemed to be your agent; or
    (d) upon commencement of unloading of the Goods by you or your representative whether by attachment of plant, materials, items or any apparatus to the Goods for the purpose of unloading.
35. For clarity, the Goods will be delivered to the roadside adjacent to the delivery location, unless otherwise agreed in writing.
36. If requested by us, you or your duly authorised representative must sign our delivery docket as confirmation that the Goods ordered by you have been received by you in apparent good order and condition.
37. If, at your request (or the request of your Personnel), our delivery vehicle leaves the road and enters the delivery location to unload, you warrant and represent to us that the delivery location is suitable and safe for our delivery vehicle and our Personnel. You are liable for and, to the extent permitted by law, indemnify us and our Personnel from and against any liability, claims, damages, losses, costs, and expenses whatsoever (including legal costs on a full indemnity basis) arising from or in connection with the entry of our delivery vehicle onto the delivery location, including injury to any person, damage 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 Goods as a result of you failing to provide suitable and safe access to the delivery site, except to the extent to which the loss was caused or contributed to by the negligence or wilful act or omission of us or our Personnel.
38. You acknowledge and agree that we may, acting reasonably:
    (a) charge for waiting time or impose an hourly hire fee where a delivery vehicle is unable to unload Goods promptly upon arrival at the delivery location; and
    (b) charge a minimum load service fee for delivery of Goods smaller than the minimum load size for each particular type of Goods.
39. If the Goods are delivered on Pallets, the Pallets remain our property. You may be charged for the use of such Pallets. On the return of the Pallets to us:
    (a) if the Pallets are returned to us in good condition (as determined by us, acting reasonably), we agree to give you a credit in an amount equal to the fee charged by us in respect of the Pallets; or
    (b) if the Pallets are returned to us in a damaged condition (as determined by us, acting reasonably), we will be entitled to charge you a reasonable amount for the cost of repairing or replacing the Pallets.
40. If we have provided you with notice of delivery of the Goods and delivery is deferred:
    (a) at your request; or
    (b) due to you being unable to accept delivery of the Goods (for whatever reason),

    when:
    (c) (where no date for delivery has been specified by you) we are ready to deliver the Goods;
    (d) (where a delivery date has been specified by you) the Goods are due to be delivered,

    then we will be entitled to charge you, and you must pay to us:
    (e) reasonable storage charges (which will accrue on a daily basis until such time as the Goods are delivered); and
    (f) a charge to re-deliver the Goods (where delivery has previously been attempted).
41. You acknowledge and accept that we may, acting reasonably, deliver Goods by instalments and reserve the right to require payment for each separate instalment in accordance with these Terms.
42. You acknowledge and accept that you are not relieved from any obligation arising under these Terms, or any Contract of which they form part, by reason of any delay in delivery, and delay in delivery will not entitle you to rescind the Contract.

**Risk**

43. Risk of loss or damage to the Goods passes to you upon delivery to you or to your agent or to a carrier commissioned by you in accordance with clause 35.

44. You must insure the Goods on or before delivery against all losses which may be sustained as a result of the loss, damage, or destruction of the Goods (or any part thereof) by accident, theft, fire, explosion, flood, negligence, and such other insurable causes as may be available and must include us as co-insured.
45. If you request that Goods are to be delivered either to an unattended location, left outside your premises, or left outside our premises for collection, you acknowledge that we will deliver the Goods as requested at your sole risk.

**Retention of title**

46. Until such time as you have made payment in full for the Goods title in the Goods does not pass to you, and you agree that property and title in the Goods will not pass to you, and we retain the legal and equitable title in those Goods supplied and not yet sold.

**Returns**

47. You must, within seven (7) days of the date of delivery, give us written notice, with particulars, of any claim that the Goods delivered are not in accordance with your Order. If you fail to provide us with such notice, then to the extent permitted by law, the Goods must be treated as having been accepted by you.
48. Unless otherwise agreed in writing and to the extent permitted by law, you must pay all costs associated with the return of any Goods (either to us or from us to you or any third party) including freight, insurance, handling, and other charges.
49. To the maximum extent permitted by law, Goods cannot be returned to us without our prior written consent and Goods that have been specifically produced or procured at your request cannot be returned in any circumstances.
50. Any return (except for Goods which have been incorrectly supplied by us or determined by us, acting reasonably, to be defective or Goods which are precast and structural concrete products in which case the relevant special terms apply) will incur a handling and administration charge of up to 25% of the purchase Price of the returned Goods, unless otherwise agreed in writing or otherwise required by law.
51. Goods to be returned to us must be unsoiled, undamaged, packed and wrapped appropriately, and must include all original packaging and documentation.
52. To the extent permitted by law, we accept no liability for any damage that occurs to any Goods in return transit.

**Test Results**

53. If you conduct any tests whatsoever on the Goods after the Goods have been delivered and we make a written request for those tests, you must give us copies of the test results accompanied by explanations of the testing methodologies applied, within seven (7) days of our request.

**Special terms applying to the sale and delivery of pre-mixed concrete**

54. Unless our quotation states otherwise, Prices are based on "Normal Class Concrete" as specified in the current issue of Australian Standard AS1379 (Specification & Supply of Concrete) and having a nominal slump not exceeding 100mm and using a nominal 20mm maximum size aggregate. If you require a slump in excess of 100mm or aggregate with a maximum size other than 20mm, a service fee may apply.
55. We reserve the right to charge for return cartage, handling and disposal costs, to the extent to which we have or will incur such costs, for:
    (a) any pre-mixed concrete ordered for which you do not accept delivery (except where non-acceptance is due to the pre-mixed concrete not complying with the specification);
    (b) pre-mixed concrete which is returned from the delivery location due to you being unable to use the full quantity ordered; and
    (c) pre-mixed concrete rejected because the time between batching and discharge is greater than the time permitted by AS1379 or the specification that covers the project being supplied, provided that the delay was not caused by us.
56. Unless otherwise agreed in writing, pre-mixed concrete will comply with AS1379. If compliance with AS1379 requires the addition of a cooling agent, a service fee to the quoted price may apply.
57. Pre-mixed concrete is sold in the plastic state and the subsequent in-situ performance when set is greatly affected by your work practices in handling, placing, and curing of the concrete. To the maximum extent permitted by law, we accept no responsibility for:
    (a) the performance of pre-mixed concrete other than with respect to the criteria specified in AS1379 (when tested in strict accordance with the relevant Australian Standard by a NATA-accredited construction materials testing facility);
    (b) if water or any other material is added to the plastic concrete before or after discharge from the delivery vehicle, unless there is prior approval by us or our authorised representative;
    (c) if you have specified or prescribed a pre-mixed concrete mix design other than a mix design devised by us;
    (d) the surface texture and colour of hardened pre-mixed concrete, including where the aggregate in the concrete has been exposed by you, and for any future colour change or oxidation of aggregates that have been exposed to the atmosphere.
58. For the avoidance of doubt, you are responsible for ensuring that the ambient temperature at the time of delivery is in accordance with the applicable Australian Standard.
59. Production Assessment' (as described in AS1379) will be carried out by us in accordance with AS1379. Where 'Project Assessment' (as described in AS1379) is requested by you, we will provide that service at the ruling price at the date of supply. If you wish to perform independent tests at your own expense, you will only consider the results of samples and tests performed in accordance with the current issue of AS1012 (Methods of Testing Concrete) and tested in a National Association of Testing Authorities (NATA) approved laboratory.
60. You acknowledge receipt of our Concrete Service Fee Summary and Concrete Testing Fee Schedule provided in conjunction with our quotation and understand the additional fees that may be charged.

**Special Terms applying to the sale and delivery of Quarry Products**

61. When quarry products are sold by volume rather than weight, the volume will be determined by the loose uncompacted volume as measured on the delivery vehicle at the time of loading at the quarry.
62. Upon request, we will make the relevant quarry product available for inspection and sampling by you prior to supply.
63. If quarry products are returned at your request, we reserve the right to charge for return cartage, handling, and disposal costs.
64. Unless otherwise agreed in writing, quarry products covered by Australian Standard AS2758, will comply with this standard.

**Special Terms applying to sale and delivery of Precast & Structural Concrete Products**

65. When the concrete products quoted are described as "seconds", "rejects" or "not first class" (NFC), you acknowledge that any defects in these concrete products have been specifically drawn to your attention prior to purchase.
66. Unless our quotation states otherwise, concrete products will be manufactured to the relevant definition of "finishes" as set out in the current edition of Precast Concrete Recommended Practice of the Concrete Institute of Australia and to the relevant permissible tolerances specified in the current issue of Australian Standard AS3600 (Concrete Structures). If you require testing of the concrete product prior to delivery, our obligation will be limited to preparation and testing of standard concrete test cylinders to indicate concrete strength for the purposes of determining twenty-eight (28) day compressive strength, transfer of pre-stress, or lifting of reinforced concrete components. The cost of additional or different tests including testing by a NATA approved laboratory will be charged to you.
67. Unless our quotation states otherwise, we will not be responsible for removing or patching cast-in fittings or holes provided for lifting or hoisting the concrete products supplied.
68. When you have arranged the unloading of the concrete products from the delivery vehicle, we accept no responsibility for any damage to the concrete products that occurs during unloading. Our responsibility for the Goods ceases upon attachment of any lifting device to the concrete products.
69. We will accept "change of mind" return, within thirty (30) days of supply, of concrete products (other than products manufactured to your design) subject to the concrete products being clean, free from defects, of saleable quality, and you arranging and paying for return delivery to us. A restocking fee of up to 30% of the original invoice Price may be charged plus a one off $75.00 administration fee which may be increased by us, acting reasonably, from time to time to reflect our actual costs.
70. The specification of Goods manufactured by us to your design must be supplied in writing by you and we will be entitled to rely upon those specifications as being correct for the production of the shop drawings required for manufacture.
71. We, at our sole discretion, may submit shop drawings and details (Specifications) to you for approval. When you have given written approval that the Specifications meet your requirements, we will not be liable for any errors or divergences from the Specification, provided that the concrete products supplied are in accordance with the approved Specifications.
72. You acknowledge and agree that any steel reinforced concrete pipe (SRCP) will be manufactured to AS4058 unless agreed otherwise.
73. We will not be liable for any delays caused by you not providing any specifications required to prepare shop drawings, or delays caused by you in failing to approve shop drawings.

**Description of Goods**

74. It is a condition of sale that any description or specification contained in our printed literature is for general indicative purposes only and does not render us responsible in any way, except to the extent that the Goods shall comply with the standards set out in such description or specification and that such description or specification shall not be taken as implying or giving any undertaking as to fitness for any particular purpose.
75. Where you have ordered Goods to comply with particular specifications, you warrant that you have verified those specifications and have satisfied yourself that the Goods are fit for purpose.

**Intellectual property**

76. All right, title and interest in the Intellectual Property Rights in and to all Works, and all Goods sold or supplied by us are, and will at all times, remain our property.
77. All improvements, derivatives and modifications to the Intellectual Property Rights contemplated by clause 75 (the "**Improvements**") vest in us immediately on creation. To the extent necessary to give effect to this clause 76, you assign to us all right, title and interest in the Improvements.
78. You acknowledge and agree that you have no rights to use our Intellectual Property Rights under these Terms, except as expressly set out herein, unless otherwise agreed in writing.

**Indemnity**

79. Each party (**indemnifying party**) is liable for and indemnifies the other party (**indemnified party**) in respect of all liability, claims, damage, loss, costs, and expenses (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that the indemnified party may suffer or incur at any time, directly or indirectly, as a result of any default by the indemnifying party in the performance or observance of its obligations under any Contract of which these Terms form part.
80. The indemnifying party's liability under clause 79 will be reduced proportionally only to the extent that:
    (a) any negligent act or omission by the indemnified party or a breach of its obligations under any Contract of which these Terms form part has contributed to the liability, claim, damage, loss, cost, or expense which is the subject of the indemnity; or
    (b) these Terms make the indemnified party specifically liable for any cost or expense or rectifying or repairing any defect in, malfunction of, or damage to the Goods.
81. The obligation under clause 79 is a continuing obligation separate and independent from the indemnifying party's other obligations and survives the performance or termination of any Contract of which these Terms form part.
82. It is not necessary for the indemnified party to incur any expense or make any payment before enforcing its rights of indemnity conferred by these Terms.
83. The party's must take all reasonable steps to mitigate any liability, claim, damage, loss, costs, and expenses the subject of an indemnity under clause 79.

**Nature of relationship**

84. We will perform our obligations under the Contract as an independent contractor. Nothing in these Terms, or any Contract of which they form part, is to be construed as creating a relationship of employment, agency, joint venture, or partnership.

**Suitability of Goods**

85. You are responsible for examining and testing the Goods, at your own expense, to ensure they are fit or suitable for your purposes. To the maximum extent permitted by law, we accept no liability for the fitness or suitability of the Goods for any particular purpose of yours.

**Limitation of liability**

86. We will not be liable for any loss or damage suffered or incurred by you in connection with any incorrect information contained in an Order or otherwise provided by or on behalf of you to us from time to time, except to the extent to which we have caused or contributed to that loss or damage through our negligence or wilful acts or omissions.
87. Subject to clauses 84, 86, 87, and 89, our liability for any loss or damage, however caused (including by our negligence or wilful acts or omissions), suffered or incurred by you in connection with any Contract of which these Terms form part is limited to the sum paid to us by you in respect of that Contract prior to the date you first suffered loss or damage in connection with that Contract.
88. The limitation contemplated in clause 86 is an aggregate limit for all claims, whenever made.
89. Subject to clause 88, we are not liable for any Excluded Loss suffered or incurred by you in connection with any Contract of which these Terms form part.
90. For clarity, and without limiting clauses 84 to 87, the Parties agree that clauses 84 to 87 are to apply in connection with a breach of a Contract, anticipated breach of a Contract, and other conduct regardless of the seriousness or nature of that breach, anticipated breach, or other conduct.
91. If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in respect of any Goods or Services supplied in connection with any Contract of which these Terms form part and our liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 84 to 87 do not apply to that liability and instead our liability for such failure is limited to, in the case of a supply of Goods, us replacing the Goods or supplying equivalent Goods, or in the case of a supply of Services, us supplying the Services again or paying the cost of having the Services supplied again.

**Disputes**

92. If a difference or dispute between the parties arises in connection with the subject matter of these Terms, either party may give the other a notice of dispute. The notice must adequately identify and provide details of the dispute and specify a senior representative of the party who has authority to settle the dispute.
93. The parties must confer at least once after the date of service of the notice of dispute to attempt, in good faith, to resolve the dispute or agree to use an alternative dispute resolution process such as mediation. All aspects of every such conference, except the fact of occurrence, will be privileged.
94. If the dispute has not been resolved within 28 days of the date of service of the notice of dispute, either party may commence litigation regarding the dispute.
95. Despite the existence of the dispute, the parties must continue to perform their respective obligations under this Agreement.
96. Nothing in the clause will prejudice the right of a party to seek injunctive or urgent declaratory relief.

**Termination of Contract**

97. Either party may, with immediate effect, terminate any Contract of which these Terms form part by written notice to the other party if the other party commits a material or persistent breach of these Terms and does not remedy the breach within fourteen (14) days of receipt of a notice identifying the breach and requiring its remedy.
98. In addition, we may, with immediate effect, terminate any Contract of which these Terms form part by written notice to you, if:
    (a) you fail to make payment of a deposit required by us or any amount owed to us as and when due; or
    (b) we are no longer able to, for whatever reason, supply the Goods or Services (or any part of the Goods or Services).

99. For clarity, termination of any Contract of which these Terms form part will not affect the rights and remedies which have already accrued to a Party at the time of termination, whether under that Contract or otherwise.

**Costs**

100. You will pay our costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

**Force majeure**

101. We are not liable to you for any delay or failure to perform any obligation under any Contract of which these Terms form part if such delay or failure to perform is due to a Force Majeure Event.
102. If either Party is unable to carry out, wholly or in part, any of its obligations under any Contract due to a Force Majeure Event for more than fifteen (15) Business Days, then either Party may, by written notice to the other Party, terminate the Contract in whole or in part without penalty.

**Variation of Terms**

103. No variation of these Terms, or any Contract of which these Terms form part, will be effective, unless agreed in writing between the Parties as set out in Clause 25. Clerical errors (such as spelling mistakes, grammatical errors, or numerical errors) may be subject to correction by us without notification.
104. We may amend these Terms by notifying you in writing. The amended Terms will apply to any future Order placed by you following us notifying you of the amendments.

**Subcontracting**

105. You acknowledge that we reserve the right to subcontract:
    (a) the manufacturing and supply of any part of the Goods to be supplied; and
    (b) the Services to be performed (or any part of those Services),
    however, any subcontracting of the Goods or Services to be supplied will not relieve us of any of our obligations to you.

**Assignment**

106. Subject to Clause 105, neither party may assign, transfer, or novate its rights or obligations under any Contract of which these Terms form part without the prior written and fully informed consent of the other party (which consent must not be unreasonably withheld).
107. Either party may, upon written notice to the other and without its consent, assign or novate all or any part of its rights and benefits in these Terms or transfer all or any part of its obligations to a Related Body Corporate.

**Waiver**

108. A waiver of any provision or breach of these Terms, or any Contract of which these Terms form part, will only be effective if made by the affected Party in writing. If a Party elects not to enforce its rights arising as a result of a breach of a Contract, that will not constitute a waiver of any rights in relation to any subsequent or other breach.

**Severance**

109. If any part of these Terms, or any Contract of which these Terms form part, is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the Contract. Other provisions which are self-sustaining are, and will continue to be, enforceable in accordance with their terms.

**Entire agreement**

110. Subject to clause 4 and to the extent permitted by law, the Contract constitutes the entire agreement and understanding between the Parties. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of the Contract are merged in the Contract and are of no further effect. No oral explanation or information provided by a Party to another Party affects the meaning or interpretation of the Contract, or constitutes any collateral agreement, warranty, or understanding.

**Governing law**

111. These Terms, and any Contract of which these Terms form part, will be governed by and construed in accordance with the laws of the State or Territory in which Goods are delivered or Services supplied.
112. The Parties agree to submit to the non-exclusive jurisdiction of the courts of the relevant location under clause 103 and the federal courts and courts competent to hear appeals from those courts.

**PPSA**

113. You grant Holcim a security interest over the Goods and their proceeds, and acknowledge that Holcim may register this security interest on the PPSR. You waive your right to receive verification statements under s157 of the PPSA.

**Grant of Charge**

114. As continuing security for the due and punctual payment and performance of all Secured Moneys (being all moneys, debts, obligations and liabilities, owed by the Grantor to Holcim under or in connection with these Terms or any related document), the Grantor charges in favour of Holcim all of the Grantor's present property (the Charged Property).

**Power of Attorney**

115. The Grantor irrevocably appoints Holcim and any receiver or receiver and manager appointed by Holcim severally as its attorney to execute all documents and do all things necessary to perfect the charge and to exercise Holcim's rights under this clause, including but not limited to lodging caveats or registering security interests on the Personal Property Security Register (PPSR).
116. The Grantor agrees that Holcim may register its interest under this clause on any public register. Including the PPSR and the Grantor waives its right to receive a verification statement in respect of any registration. To the extent permitted by section 115 of the *Personal Property Securities Act 2009* (Cth) (provided the collateral is not used predominantly for personal, domestic or household purposes), the parties agree to contract out of sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.
117. The charge is a continuing security and remains in full force and effect until all Secured Moneys have been indefeasibly paid and all obligations of the Grantor to Holcim have been fully satisfied.

**Applicant as Trustee**

118. The Trustee warrants that it is the duly appointed trustee of the Trust and has the full power and authority under the Trust Deed to enter into these Terms and to incur the debts and obligations contemplated herein. The Trustee further warrants that these Terms are binding upon the Trust and does not violate any terms of the Trust Deed or any other agreement to which the Trust is a party.
119. The Trustee grants Holcim a security interest in all assets of the Trust, whether tangible or intangible, including but not limited to inventory, equipment, and assets proportional to the value of the of the Secured Moneys (being all moneys, debts, obligations and liabilities owed by the Trustee as Grantor to Holcim under or in connection with these Terms or any related document). The trustee agrees to sign any documents and take any action necessary to perfect and maintain this security interest, including the registration of a financing statement under the PPSA.

**Definitions**

120. In these Terms:
    "**Business Days**" means a day that is not a Saturday, Sunday, or public holiday in the State or Territory of Australia in which Goods or Services are supplied under these Terms or any day occurring within any of the following periods:
    (a) 22 to 24 December inclusive;
    (b) 27 to 31 December inclusive; and
    (c) 2 to 8 January inclusive.
    "**Contract**" means a contract for the supply of Goods or Services, as constituted by our quotation (if any), your Order, and these Terms.
    "**Credit Terms**" means our credit terms, as set out in the credit agreement executed by you (where applicable).
    "**Customer**," "**you**," "**your**" means the corporation, partnership, person, or other entity acquiring Goods or Services from us.
    "**Holcim**," "**we**," "**us**," "**our**" means Holcim (Australia) Pty Ltd (ACN 099 732 297).
    "**Excluded Loss**" means any:
    (a) consequential loss;
    (b) loss of revenues;
    (c) loss of reputation;
    (d) loss of profits;
    (e) loss of bargain;
    (f) indirect loss;
    (g) lost opportunities, including opportunities to enter into arrangements with third parties;
    (h) loss or damage in connection with claims against you by third parties; or
    (i) loss or corruption of data.
    "**Force Majeure Event**" means any act of God, acts, decrees, or regulations of government authorities, casualty, fire, explosion, storm, flood, earthquake, lightning strike, inclement weather, cyclone, embargo, industrial action, strike, lockout, civil commotion, riot, insurrection, war, epidemic or pandemic, quarantine or biological contamination, damage to or destruction of facilities, equipment or mechanical breakdown, failure of a third-party supplier or service provider, or any other cause beyond the reasonable control of a Party.
    "**Goods**" means all goods supplied by us to you (and where the context so permits includes any performance of Services, including, but not limited to any raw materials purchased, creation of any bespoke moulds, and any costs associated with design drawings), as are described on any invoices, quotations, or any other forms as provided by us to you.
    "**GST**" has the meaning given to it by the GST Act.
    "**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
    "**Intellectual Property Rights**" means all industrial and intellectual property rights throughout the world, whether present or future, and whether protectable by statue, at common law or in equity, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents and patentable inventions, including the right to apply for registration of any such rights.
    "**Normal Working Hours**" means 07:00am to 5:00pm on a Business Day.
    "**Order**" means a written or oral order placed by you offering to acquire Goods or Services from us.
    "**Pallets**" means any pallets, drums, bearers, and any other containers or dunnage supplied in conjunction with the Goods.
    "**Parties**" means Holcim and the Customer, and "**Party**" means either one of them.
    "**Personnel**" means officers, employees, and agents engaged by each Party (but does not include the other Party) and, in the case of Holcim, includes its subcontractors (and any employee of those subcontractors).
    "**Price**" means the price payable for the Goods or the Services as determined in accordance with these Terms.
    **Related Body Corporate** means any related body corporate as defined in the Corporations Act 2001 (Cth).
    "**Services**" means all services performed by us (and where the context so permits includes any supply of Goods).
    "**Tax Invoice**" and "**Taxable Supply**" have the same meaning as in the GST Act.
    "**Terms**" means these terms of trade.
    "**Testing**" tests performed in accordance with the current issue of AS1012 (Methods of Testing Concrete)
    "**Works**" means all literary, artistic, and other works, including all physical works, production materials and subject matter created solely or jointly with others, by us in the course of or in relation to any Contract in which Intellectual Property Rights may subsist and all drafts, variations, alterations, and adaptations of such works or subject matter (whether currently existing or created in the future).

**Interpretation**

121. If there is any conflict, ambiguity, or inconsistency between any of the documents which comprise a Contract, it is expressly agreed the order of precedence will be (highest to lowest):
    (a) any additional terms or conditions contained in our quotation (where applicable);
    (b) our Credit Terms (where applicable);
    (c) these Terms; and
    (d) any other documents issued by us.
122. Unless the contrary intention appears, a reference to:
    (a) these Terms or another document includes any variation or replacement of them notwithstanding any change in the identity of the Parties;
    (b) a reference to a clause is a reference to a clause contained in these Terms;
    (c) the singular includes the plural and vice versa;
    (d) a right includes a benefit, remedy, authority, discretion, or power;
    (e) a person includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority or agency, or other entity;
    (f) a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a Party by novation), and assigns; and
    (g) any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them.
123. Headings are for convenience only and will not affect the interpretation of these Terms.
124. The meaning of general words is not limited by specific examples introduced by including, for example, or similar expressions.
125. Where two or more persons are defined as a Party in these Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.
126. An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.
127. Unless specified otherwise, all reference to sums of money is in terms of Australian currency (AUD), and all documents and correspondence between the Parties will be in the English language.