

1. Definitions and Interpretation

- 1.1 "**Baines Concrete**" means Baines Transport Pty Ltd (ABN 52 000 848 484) trading as Baines Concrete), its Related Entities, its successors and assigns or any person acting on behalf of and with the authority of Baines Transport Pty Ltd or its Related Entities.
- 1.2 "**Customer**" means the person/s or entity/ies buying the Goods as specified in any invoice, document, or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "**Delivery**" means the loads of the goods upon a transport vehicle at Baines Concrete's nominated distribution centre.
- 1.4 "**Goods**" means all Goods or Services supplied by Baines Concrete to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "**Order**" means any order for Goods, placed by the Customer.
- 1.6 "**Price**" means the Price payable for the Goods as agreed between Baines Concrete and the Customer in accordance with Clause 3 below.
- 1.7 "**Related Party**" or "**Related Entities**" has the meaning set out in section 9 of the Corporations Act 2001 (Cth).

2. Acceptance

- 2.1. The Customer is taken to have accepted and is immediately bound by these terms and conditions if the Customer places an Order or accepts delivery of the Goods.
- 2.2. Each Order is a separate agreement between Baines Concrete and the Customer.

3. Price and Payment

- 3.1. The Customer acknowledges and agrees that on placing an Order, the Price shall be:
 - a. as indicated on any invoices provided by Baines Concrete to the Customer; or
 - b. Baines Concrete's current price under their price book/list, at the date of delivery of the Services, according to Baines Concrete's current price list, or
 - c. the Baines Concrete's quote price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of seven (7) days; or
 - d. any written price submitted to the Customer after the date of the quoted price and which the Customer is deemed to accept by accepting Delivery of the Goods.
- 3.2. Baines Concrete reserves the right to change the Price if:
 - a. a variation to the Customer's quotation is requested; or
 - b. the Goods are replaced with alternative Goods; or
 - c. Baines Concrete identifies an error or omission on their website or price book/list; or
 - d. Baines Concrete provides written notice of a change in Baines Concrete's price list.
- 3.3. Time for payment for the Goods being of the essence, payment of the Price is to be made by the Customer on the date/s determined by Baines Concrete, which may be:
 - a. when placing an Order
 - b. on Delivery of the Goods;
 - c. the date specified on any invoice or other form as being the date for payment;
 - d. by way of instalments/progress payments in accordance with Baines Concrete's schedule; or
 - e. if no date is specified on an invoice, the date which is seven (7) days following the date of any invoice given to the Customer by Baines Concrete
 - f. where Baines Concrete has agreed to extend credit to the Customer for the purchase of Goods, within thirty (30) days from the date of any invoice.
- 3.4. Payment will be made by cheque, bank cheque, electronic/online banking, credit card, or by any other method as agreed to between the Customer and Baines Concrete.
- 3.5. Baines Concrete may accept payment through a third-party payment provider (including but not limited to PayPal, LatitudePay, POLi, ZIP Pay), and if the Customer elects to pay through these providers, the Customer agrees that they are bound by the relevant party's terms and conditions. Baines Concrete is not liable for any issues arising from the Customer electing to pay through an optional third-party payment provider.
- 3.6. Unless otherwise stated the Price does not include GST. In addition to the price the Customer must pay to Baines Concrete an amount equal to any GST. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 3.7. If Baines Concrete pays transportation, freight, delivery, insurance, or associated costs of Delivery of Goods from Baines Concrete's nominated distribution centre to the Customer, the Customer agrees to reimburse Baines Concrete immediately upon written notice and demand of such costs. Any delivery charges are as negotiated between Baines Concrete, and the carriers and are subject to change.

- 3.8. Baines Concrete may debit from the Customer's credit card all or any payments due to Baines Concrete by the Customer where payment has not otherwise been made by the Customer using the authorisation in any credit application.

4. The Goods

- 4.1. All concrete is supplied under the relevant Australian Specifications in force from time to time.
- 4.2. Unless otherwise ordered or specified by Baines Concrete in writing:
- a. **Slump:** Standard Slump is 80mm;
 - b. **Concrete Class:** Concrete prices are based on the class, aggregate, and slump of its composition.
- 4.3. The Customer may request the Goods be tested prior to Delivery ("**Test Request**"). Any Test Request must be made in writing more than 24 hours prior to Delivery and will be at the Customer's expense. Testing is completed by an external provider retained at Baines Concrete's discretion.
- 4.4. If an Order includes coloured concrete, the Customer acknowledges that:
- a. Baines Concrete is not responsible for any colour variances;
 - b. Requests for colour must be made at time of order, or at least 24 hours prior to Delivery;
 - c. All colour charts and colour templates are examples only. Colour variation does occur between different concrete suppliers and oxide suppliers.
 - d. Colour variation can occur due to weather, site conditions and finishing procedures.
 - e. Baines Concrete is not responsible for colour added to any mix or variations in colour caused by material variances, site and weather conditions, and concreter finishing techniques.
 - f. Baines Concrete is not responsible for colour supplied by the Customer.
- 4.5. The Customer acknowledges that blue metal used in exposed concrete may exhibit rust marks under certain circumstances. Baines Concrete does not accept responsibility for any rust marks that occur.
- 4.6. The Customer acknowledged that exposed aggregate mixes can be formulated to the Customer's requirement. Baines Concrete will ensure that requested percentages of pebbles are as requested in the mix but cannot be held responsible if the Customer is not satisfied with the final result. Baines Concrete will not be responsible for finishing procedures and results of how exposed aggregate mixes are washed off, finished and cleaned, or if the Customer is unsatisfied with the final result/colour choices ordered.

5. Delivery of Goods

- 5.1. Delivery of the Goods is taken to occur at the time that Baines Concrete (or Baines Concrete's nominated carrier) delivers the Goods to the Customer even if the Customer is not present at the address where the Goods are delivered. Delivery will be at the Council kerbside with the Customer responsible for organising a suitable means of discharging or unloading the Goods.
- 5.2. At Baines Concrete's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3. The Customer must take delivery by receipt or collection of the Goods whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Baines Concrete shall be entitled to charge a reasonable fee for any costs or penalties resulting from the Customer's failure to take Delivery.
- 5.4. Baines Concrete may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5. Any time or date given by Baines Concrete to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Baines Concrete will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 5.6. The Customer agrees that they will inspect the Goods immediately upon Delivery. For concrete, the mix ordered will be detailed on the face of the delivery docket and must be checked by the Customer at the time of delivery for compliance. Claims for defective or missing Goods may only be made prior to signing the confirmation of delivery docket.
- 5.7. Baines Concrete shall not be required to consider any queries, disputes, or Claims which are notified to Baines Concrete more than seven (7) days after Delivery.
- 5.8. Risk in the Goods is passed on Delivery.
- 5.9. Baines Concrete is not responsible for damage to property beyond the Council kerbside at the Customer's nominated Delivery location, under any circumstances. Any damage caused where Baines Concrete is requested to proceed past a kerbside point is at the Customer's risk and expense. Baines Concrete will undertake best endeavours to facilitate a smooth discharge or unloading of Goods, however Baines Concrete may decide not to proceed past a point if:
- a. Baines Concrete considers it unsafe to do so; or
 - b. it will endanger the public, property, their equipment or themselves.
- 5.10. The Customer must ensure there is adequate and safe access to the Delivery location. The Customer is responsible for all aspects of site safety at the Delivery location. The Customer needs to be aware of overhanging trees, house eaves, and powerlines. Baines Concrete will accept no responsibility to damage to these items.
- 5.11. Baines Concrete is not liable for any damage, loss or deterioration to the goods in transit.

6. Default and Consequences of Default

- 6.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Baines Concrete's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 6.2. If the Customer owes Baines Concrete any money, the Customer shall indemnify Baines Concrete from and against all costs and disbursements incurred by Baines Concrete in recovering the debt (including but not limited to internal administration fees, legal costs on a full solicitor client indemnity basis, Baines Concrete's contract default fees, and bank dishonour fees).
- 6.3. The Customer acknowledges that Baines Concrete may charge a late administration fees of \$50.00 on all moneys outstanding to Baines Concrete. The Customer acknowledges that such late fees are a genuine pre-estimate of loss suffered by Baines Concrete as a consequence of late payment.
- 6.4. Without prejudice to any other remedies Baines Concrete may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions, Baines Concrete may suspend or terminate the supply of Goods to the Customer. Baines Concrete will not be liable to the Customer for any loss or damage the Customer suffers because Baines Concrete has exercised its rights under this clause.
- 6.5. Without prejudice to Baines Concrete's other remedies at law, Baines Concrete shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Baines Concrete shall, (whether due for payment or not,) become immediately payable if:
 - a. any money payable to Baines Concrete becomes overdue, or in Baines Concrete's opinion the Customer will be unable to make a payment when it falls due; or
 - b. the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - c. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

7. Personal Property Securities Act and Retention of Title

- 7.1. Notwithstanding that the risk in the Goods may have passed to the Customer pursuant to these Terms and Conditions of Sale, title to any Goods will not pass to the Customer until payment of the Price.
- 7.2. The Customer irrevocably authorises Baines Concrete to enter the Customer's property for the purposes of seizing possession of, and removing, any Goods that Baines Concrete retains title to, and these Terms and Conditions of Sale is evidence of the Customer's authorisation of Baines Concrete to enter, seize possession, and remove.
- 7.3. For the purposes of this section of these Terms and Conditions, read with reference to the PPSA, the following terms are defined:
 - a. These Terms and Conditions are a 'Security Agreement';
 - b. Baines Concrete is the 'Secured Party';
 - c. the Customer is the 'Grantor'; and
 - d. The secured property is the 'Collateral'.
- 7.4. The Customer acknowledges and agrees that:
 - a. this is a Security Agreement for the purposes of the PPSA.
 - b. in the event that Baines Concrete provides the Customer with Goods, and those Goods are not fully paid for by the Customer, the provision of those Goods creates a 'Security Interest' within the meaning of section 12 of the PPSA.
 - c. To the extent that the Security Interest is created by way of Delivery of Goods that have not been paid for, those goods will be Collateral, and the Security Interest will be a 'Purchase Money Security Interest' ("PMSI") within the meaning of section 14 of the PPSA.
 - d. Baines Concrete may register its Security Interest on the Personal Properties and Securities Register, and that the Customer shall indemnify Baines Concrete for the costs of the registration.
 - e. The Customer agree to act, and/or refrain from acting, in a manner so as to enable Baines Concrete to perfect its Security Interest.
 - f. The Customer agree that they will not enter into any agreement or arrangement that may affect Baines Concrete's Security Interest without the prior written consent of Baines Concrete.
 - g. The Customer acknowledges and agrees that Baines Concrete will have the power to seize, retain or dispose of Collateral in which Baines Concrete has a Security Interest, in accordance with Chapter 4 of the PPSA, save that:
 - i. Section 95 does not apply to the extent that Baines Concrete is required to give notice of an accession;
 - ii. Section 130 does not apply to the extent that it requires Baines Concrete to give the Customer notice of a disposal;
 - iii. Section 157 does not apply to the extent that the Customer has any right to a notice of a variation statement.
 - iv. Sections 96, 125, 129, 132(3)(d), 132(4), 135, 142, and 143 do not apply;

- h. In the event that any contracts are terminated by Baines Concrete, and/or moneys are due and payable as a result of the performance by Baines Concrete of its obligations under these Terms and Conditions of Sale, Baines Concrete may, by its servants or agents, deal with the Collateral in which it has a Security Interest in accordance with these Terms and Conditions of Sale.
- i. Baines Concrete agrees to release the Collateral, whether a perfected Security Interest or not, within 14 days of receiving payment of all outstanding money due and payable to Baines Concrete.
- j. Baines Concrete may apply payments from the Customer at its sole discretion, and for so long as a payment is outstanding, is not obliged to release any Collateral, whether as part of a perfected Security Interest or not.

8. Compliance with Laws

- 8.1. The Customer and Baines Concrete shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable.

9. Dispute Resolution

- 9.1. If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- a. referred to a single arbitrator to be nominated by the President of the Resolution Institute; and
 - b. conducted in accordance with the rules of the Resolution Institute as in place from time to time.
- 9.2. The unsuccessful party will be liable for the costs of the arbitration.
- 9.3. Any decision of an arbitrator will be binding, and will be registrable as a judgment in a Court of competent jurisdiction.

10. Privacy Act 1988 and Confidentiality

- 10.1. The Customer agrees for Baines Concrete to collect personal information to enable Baines Concrete to provide Goods to the Customer.
- 10.2. Baines Concrete may collect information from the Customer, or a person authorised to provide this information on the Customer's behalf.
- 10.3. The Customer warrants that, where the Customer provides Baines Concrete with personal information about another person, the Customer has ensured that the Customer has advised the third person what information was provided, and that the Customer has their consent to do so.
- 10.4. The Customer hereby provides its written consent to Baines Concrete to disclose the Customer's personal information to people or organisations in Australia where required to deliver the Goods.
- 10.5. The Customer shall treat all information (including, without limitation, information compromising and contained in the Ordering System, as well as these terms and conditions) disclosed to it by Baines Concrete as confidential and shall not use such information other than in accordance with the directions from time to time given by Baines Concrete either pursuant hereto or otherwise. This provision does not apply to information which was in the public domain prior to its disclosure by Baines Concrete or which after disclosure, enters the public domain through no act or omission by the customer, or to information which the Customer is required to disclose by law or the rules of any stock exchange.

11. Cancellation

- 11.1. Baines Concrete may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Baines Concrete shall repay to the Customer any money paid by the Customer for the Goods. Baines Concrete shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.2. In the event that the Customer cancels delivery of Goods, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Baines Concrete as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 11.3. At the discretion of Baines Concrete, a cancellation fee will apply if an Order is cancelled with less than 24 hours' notice, unless due to inclement weather.

12. Force Majeure

- 12.1. If either party is unable to perform part or all of any obligation (except to pay any money) under these terms and conditions due to an event beyond that party's ("Defaulting party") control and which the Defaulting party could not have reasonably foreseen, then the Defaulting Party is relieved of that obligation to the extent and for the period that it is unable to perform and is not liable in respect of such inability to perform.

13. General

- 13.1. The failure by Baines Concrete to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Baines Concrete's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable then that clause will be read down or severed and the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 13.2. These terms and conditions and any contract to which they apply shall be governed by the laws of the state of New South Wales in which Baines Concrete has its principal place of business and are subject to the exclusive jurisdiction of the courts of New South Wales.
- 13.3. Baines Concrete shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Baines Concrete of these terms and conditions (alternatively Baines Concrete 's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
14. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Baines Concrete nor to withhold payment of any invoice because part of that invoice is in dispute.
15. Baines Concrete may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
16. The Customer agrees that Baines Concrete may amend these terms and conditions at any time. If Baines Concrete makes a change to these terms and conditions, then that change will take effect from the date on which Baines Concrete notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Baines Concrete to provide Goods to the Customer.
17. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates binding and valid legal obligations on it.

Dated: 1 June 2021