Title

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

6.2 Until title in the Goods passes to the Customer in accordance with these T&Cs, the Customer will:
   (a) hold the Goods as bailees on trust for the Supplier;
   (b) ensure the Goods are kept separate and identifiable from other goods;
   (c) not grant any Security over the Goods to any third party;
   (d) not sell, transfer or otherwise dispose of the Goods to any third party;
   (e) ensure that the Goods are not modified or altered in any way without the Supplier’s prior consent;
   (f) return the Goods to the Supplier in the event of the title passing back to the Supplier.

6.3 The Customer may, for the purposes of exercising the Supplier’s rights under clause 6.2, enter any premises occupied or controlled by the Customer, seize any Goods or remove the Goods (including, but not limited to, by detaching or unfixing the Goods from any goods or land to which the Goods are attached or fixed).

Credit and Personal Property Securities

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

7.2 If the Supplier supplies credit terms to the Customer, then to secure the punctual payment of all amounts owed by the Customer to the Supplier, the Customer grants to the Supplier:
   (a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Customer in relation to which the Customer is a debtor at the time of the supplying of the Goods and/or Services except those conditions or warranties that cannot be excluded by law;
   (b) a fixed charge (as defined under section 51V of the Corporations Act) over all present and after-acquired property of the Customer in relation to which the Customer is a debtor at the time of the supplying of the Goods and/or Services.

7.3 The Customer agrees and acknowledges that the Supplier may, at its absolute discretion, if the Customer does not pay the Price and any other amounts payable to the Supplier, may repossess, retain, deal with and/or sell the Goods as the Supplier determines.

7.4 The Customer could apply for the registration of the PPSA security interest in the Goods under the PPSA and take any action to secure and enforce the Security Interest.

Warranties

9.1 All Intellectual Property Rights in all designs, drawings, technical information and documents created by the Supplier in relation to the Goods and/or Services will remain with and will still be assigned to the Customer and no supply of the Goods and/or Services to the Customer will vest any Intellectual Property Rights in the Customer or any other person.

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

9.3 The Customer agrees and acknowledges that the Supplier may, at its absolute discretion, if the Customer does not pay the Price and any other amounts payable to the Supplier, may repossess, retain, deal with and/or sell the Goods as the Supplier determines.

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

9.5 The Customer will not be liable to the Customer for any failure to perform, or delay in performing, the Supplier’s obligations under these T&Cs if the failure or delay is due to any cause beyond the Supplier’s reasonable control and if any such failure or delay continues for a period of 14 days the Supplier may terminate any agreement without paying any amount to the Supplier by the due date for payment or the Customer is the subject of Administration.

11. Security

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

12. Warranties

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

12.2 The Supplier does not warrant the Goods and/or Services are fit for any particular purpose or whether or not the Customer is or will be aware of the Supplier’s or any other person’s particular requirements

12.3 The Supplier excludes all express and implied conditions and warranties in relation to the Goods and/or Services except those conditions or warranties that cannot be excluded by law and the Supplier’s liability under any such conditions or warranties is limited to, at the Supplier’s discretion, repairing, replacing or repairing the Goods and/or Services.

12.4 Nothing in these T&Cs is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or any Fair Trading Act except to the extent permitted by such Acts.
13) Liability
13.1 The Supplier’s liability for any Liability or Claim in relation to these T&Cs, any Contract, and any supply of Goods and/or Services (whether under statute, contract, tort, negligence or otherwise) will be limited to the amount paid by the Customer to the Supplier.

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

14) Release and Indemnity
The Customer indemnifies the Supplier and each member of the Supplier’s Personnel from and against any Liability or Claim arising directly or indirectly in relation to:
(a) the accuracy of all information provided by the Customer to the Supplier in relation to the Supply of Goods and/or the Delivery Address or any other matters;
(b) the Customer’s breach of these T&Cs or any Contract;
(c) any negligence or neglect of the Customer or any member of the Customer’s Personnel;
(d) the Supplier or any member of the Supplier’s Personnel delivering the Goods in accordance with the Customer’s instructions or the Customer;
(e) the Supplier or any member of the Supplier’s Personnel entering the Delivery Address;
(f) damage to the property of the Customer or any third party during any delivery of Goods;
(g) any spillage, breakage, contamination of Goods due to use or transport or delivery;
(h) the Goods and/or Services not being fit for any particular purpose;
(i) any step is taken to appoint an administrator, receiver and manager, trustee, provisional liquidator or liquidator to the Customer;
(j) the Customer or any member of the Customer’s Personnel or a sub-contractor to the Supplier to accept any delivery;
(k) the Customer or any member of the Customer’s Personnel purporting to cancel any Order or Contract; and
(l) any proceedings, claims and demands in relation to any secured property.

15. Termination
The Supplier may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay to the Supplier:
(a) the Customer’s debts which are not disputed and are due and payable;
(b) any other amount owed to the Supplier by the Customer on any Order; and
(c) if there is any change in the Control of the Customer; or
(d) if an Administration occurs in relation to the Customer.

16) Definitions
In these T&Cs:
(“Administrative Law”) means any of the following, or any analogous, events:
(a) any step is taken to appoint an administrator, receiver, receiver and manager, provisional liquidator or liquidator to the Customer or to the whole or any part of the Customer’s assets, operations or business;
(b) any person, agent or officer of a person, who holds any Security takes possession of any of the Customer’s property (including the Customer’s goodwill in the property) within the meaning of section 123 of the PPSA;
(c) a court or other Authority enforces any judgment or order against the Customer for the payment of the money or recovery of the any property; and
(d) the Customer disposes of the whole or any part of the Customer’s assets, operations or business other than in the ordinary course of business;

“Authority” means any governmental or governmental, semi-governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, public authority, instrumentality or entity;

“Carbon Costs” means the costs of the Supplier or a related body corporate acquiring any emissions permits or carbon credits or required under any emissions trading or permitting or carbon tax in relation to supply of the Goods and/or Services to the Customer;

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

“Confidential Information” means information, whether in verbal, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to the Supplier or any related entity;

“Customer” means the person or entity in whose name or on whose behalf the Supplier has agreed to supply any Goods or Services under these T&Cs;

“Customer’s authority” means any words or expression defined in these T&Cs as having a corresponding meaning;

“CustomerId” means a customer who placed the Order;

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

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

“Event of Default” means any of the following, or any analogous, events:
(a) the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach;
(b) the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy;
(c) there is any change in the Control of the Customer; or
(d) an Administration occurs in relation to the Customer.

17) Miscellaneous
17.1 The parties agree that:
(b) these T&Cs or any Contract may only be amended with the Supplier’s express written agreement;
(c) any conflicts between these T&Cs and any Contract or these T&Cs and any other rights of the Supplier;
(d) no Contract will be a sale by sample;
(e) in the event of any dispute, the Supplier’s records will be conclusive evidence;
(f) the actions of any person claiming to have the Customer’s authority will bind the Customer to the extent permitted by law;
(g) any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and any remaining provisions will continue to apply; and
(h) the Customer must immediately provide written notice to the Supplier if there is any change in the Control of the Customer;

18) Governing Law
The Supplier may assign any rights or benefits under any Contract to the Customer or to any third party;

19) The Customer may only assign any rights or benefits under any Contract or these T&Cs or any Contract with the Supplier’s prior written consent;

20) these T&Cs and/or Contract will be governed by the laws of, and the parties submit to the jurisdiction of, the courts of, the state in which the Goods and/or Services are delivered.

21.1 If the Supplier agrees to supply machinery products to the Customer:
(a) the Supplier acknowledges that the manufacture and delivery of Goods could take up to 12 or more weeks from the date the Supplier accepts the Customer’s Order; and
(b) the Supplier’s crane trucks will not lift Goods over fences.

21.2 Any return of Goods by the Customer will be at the Supplier’s discretion and subject to:
(a) the Customer providing full details of the Customer’s claim within 7 days of the date of delivery of the collection of the Goods;
(b) the Customer making payment of delivery and all other costs associated with the return of the Goods; and
(c) any policies and procedures of the Supplier in relation to the return of Goods.

2. Colour
The Customer acknowledges that:
(a) the natural materials used to manufacture machinery products are natural products and subject to variations;
(b) machinery products may also contain iron stone which could cause rust stains in finished products;
(c) the colour, texture, appearance and quality of machinery products in any brochure, display or other form of pre-contractual material is an indication only;
(d) the colour, texture or appearance of machinery products might not match the selections any order;
(e) machinery products should be viewed before purchase and all required products should be ordered at the same time to reduce the risk of variations;
(f) machinery products should be installed from pallets in relation to help ensure even blending;
(g) the Supplier does not represent, warrant or guarantee that the colour, texture, appearance or quality of concrete machinery products will match the selections in any Order or Contract; and
(h) the Customer is responsible for checking colour variation in machinery products before installation.

3. Pallets
The Customer acknowledges all pallets remain the property of the Supplier and the Customer will advise the Supplier when the pallets are ready for collection in accordance with any requirements of the Supplier.

4. Silica
The Customer acknowledges that concrete machinery products contain silica and acknowledges that silica is a dangerous good and will obtain advice in relation to the handling of silica.

5. Seconds
5.1 The Customer acknowledges that seconds and/or redundant Goods (including but not limited to any Goods that the supplier supplies to customers “seconds” (“Seconds”)):
(a) are not graded as first quality;
(b) may have variations in colours, textures, sizes and shapes and other irregularities; and
(c) may be broken, cracked, damaged or unsuitable for use.

5.2 The Customer must thoroughly inspect Seconds prior to purchase to ensure the Customer is satisfied with the nature and condition of the Goods and to ensure the Seconds meet the Customer’s needs and are fit for the intended application.

5.3 The Customer releases the Supplier from any Claim in relation to Seconds and cannot return the Goods for any reason.

5.4 The Supplier will not provide refunds, replacements or credit in relation to Seconds in any circumstances.

SPECIAL CONDITIONS – MASONRY PRODUCTS
1) Supply of Machinery Products
1.1 If the Supplier agrees to supply machinery products to the Customer:
(a) the Supplier acknowledges that the manufacture and delivery of Goods could take up to 12 or more weeks from the date the Supplier accepts the Customer’s Order; and
(b) the Supplier’s crane trucks will not lift Goods over fences.

1.2 Any return of Goods by the Customer will be at the Supplier’s discretion and subject to:
(a) the Customer providing full details of the Customer’s claim within 7 days of the date of delivery of the collection of the Goods;
(b) the Customer making payment of delivery and all other costs associated with the return of the Goods; and
(c) any policies and procedures of the Supplier in relation to the return of Goods.

2) Colour
The Customer acknowledges that:
(a) the natural materials used to manufacture machinery products are natural products and subject to variations;
(b) machinery products may also contain iron stone which could cause rust stains in finished products;
(c) the colour, texture, appearance and quality of machinery products in any brochure, display or other form of pre-contractual material is an indication only;
(d) the colour, texture or appearance of machinery products might not match the selections any order;
(e) machinery products should be viewed before purchase and all required products should be ordered at the same time to reduce the risk of variations;
(f) machinery products should be installed from pallets in relation to help ensure even blending;
(g) the Supplier does not represent, warrant or guarantee that the colour, texture, appearance or quality of concrete machinery products will match the selections in any Order or Contract; and
(h) the Customer is responsible for checking colour variation in machinery products before installation.

3) Pallets
The Customer acknowledges all pallets remain the property of the Supplier and the Customer will advise the Supplier when the pallets are ready for collection in accordance with any requirements of the Supplier.

4) Silica
The Customer acknowledges that concrete machinery products contain silica and acknowledges that silica is a dangerous good and will obtain advice in relation to the handling of silica.

5) Seconds
5.1 The Customer acknowledges that seconds and/or redundant Goods (including but not limited to any Goods that the supplier supplies to customers “seconds” (“Seconds”)):
(a) are not graded as first quality;
(b) may have variations in colours, textures, sizes and shapes and other irregularities; and
(c) may be broken, cracked, damaged or unsuitable for use.

5.2 The Customer must thoroughly inspect Seconds prior to purchase to ensure the Customer is satisfied with the nature and condition of the Goods and to ensure the Seconds meet the Customer’s needs and are fit for the intended application.

5.3 The Customer releases the Supplier from any Claim in relation to Seconds and cannot return the Goods for any reason.

5.4 The Supplier will not provide refunds, replacements or credit in relation to Seconds in any circumstances.
SPECIAL CONDITIONS - DESIGN AND/OR INSTALL OF MASONRY PRODUCTS

6) Design and/or Installation of Masonry Products - Application

If the Services include:
(a) services for the installation of any Goods ("Works"), the provisions of clauses 7 to 17 of these Special Conditions will apply; and/or
(b) services for the design of any Goods or Works ("Design Services"), the provisions of clauses 7, 8, 9, 10 and 17 of these Special Conditions will apply.

7) Information

In addition to providing the information required under the T&Cs, the customer must provide the supplier with all geotechnical and survey information relevant to the Goods and/or Services at the time the customer requests any quotation from the Supplier and prior to providing any Order to the Supplier.

8) Quantities

The Customer agrees:
(a) any quantities in any design, drawing or quote by the Supplier will be estimates only;
(b) the Supplier will have no liability for any difference between the quantities of goods set out in a design, drawing or quote and the actual quantities of goods required for the purposes of the intended outcome of the works in the design, drawing or quote; and
(c) the Customer acknowledges the Supplier advises the Customer to engage an independent assessment of quantities.

9) Comments

Unless otherwise agreed in writing, the Customer will provide written comments to the Supplier in relation to any drawings or designs submitted by the Supplier to the Customer within 3 days of the date of submission.

10) Warranties

The Customer warrants that:
(a) the Supplier will be able to provide the Works in an orderly and continuous sequence and does not need to undertake any work in stages;
(b) the Supplier will have unimpeded access to the Delivery Address;
(c) the Delivery Address is suitable for the supply of the Goods and Works;
(d) all works on or adjacent to the Delivery Address will be completed before the Supplier commences the Works;
(e) the Customer is aware of, and have informed the Supplier of, all information relating to the risks, contingencies and other circumstances relevant to the supply of the Goods and Works to the Delivery Address; and
(f) the Customer is satisfied with the suitability and fitness for purpose of the Goods and Works for their intended use.

11) Exclusions

11.1 The Price does not include provision for:
(a) any member of the Supplier's Personnel to work any overtime, holidays or rostered days off;
(b) any quantities in any design, drawing or quote by the Supplier will be estimates only;
(c) the Supplier will have no liability for any difference between the quantities of goods set out in a design, drawing or quote and the actual quantities of goods required for the purposes of the intended outcome of the works in the design, drawing or quote; and
(d) any member of the Supplier's Personnel to work any overtime, holidays or rostered days off;
(e) any conditions in the design, drawing or quote by the Supplier will be estimates only;
(f) the Supplier will have no liability for any difference between the quantities of goods set out in a design, drawing or quote and the actual quantities of goods required for the purposes of the intended outcome of the works in the design, drawing or quote; and
(g) the Customer is aware of, and have informed the Supplier of, all information relating to the risks, contingencies and other circumstances relevant to the supply of the Goods and Works to the Delivery Address; and
(h) the Customer is satisfied with the suitability and fitness for purpose of the Goods and Works for their intended use.

12) Schedule

12.1 Any schedule, timetable, deadline or completion date for the supply of the Goods and Works will be an estimate only.

12.2 The Supplier will be entitled to a reasonable extension of time for the performance of any obligations under any Contract in the event of any:
(a) variation of the scope of Goods or Works;
(b) the actual quantity of Goods or Works being greater than the quantity in the design, drawing or quote;
(c) any cause that was not or could not have been reasonably foreseen by the Supplier; and
(d) change in law.

13) Variations

13.1 If the Customer wishes to request a variation to the scope of the Goods or Works, the Customer must provide written notice of the variation to the Supplier setting out all information relevant to the variation and all information reasonably required by the Supplier.

13.2 If the Supplier considers that:
(a) the quantity or scope of the Goods or Works in the design, drawing or quote is insufficient; or
(b) the supply of the Goods and/or Services is affected, obstructed or delayed by any cause set out in clause 12.2, or any cause outside of the reasonable control of the Supplier or any cause within the reasonable control of the Customer, the Supplier may provide written notice of a variation to the Customer.

13.3 If a party provides notice of a variation in accordance with clauses 13.1 or 13.2, the Supplier:
(a) may suspend the supply of the Goods or Works; and
(b) will notify the Customer whether or not the Supplier can effect the variation and, if the Supplier can effect the variation, the additional Price for the Supplier to effect the variation (which may include, without limitation, additional site establishment, labour, material costs and an allowance for overhead and profit).

13.4 If the Supplier provides a notice to the Customer in accordance with clause 13.3, the Customer must, within 3 days of receipt of the notice, provide written notice to the Supplier stating whether or not the Customer wishes the Supplier to proceed with the requested variation.

13.5 If the Supplier provides notice to the Customer that the Supplier cannot effect a variation, or the Customer does not provide notice in accordance with clause 13.4 stating that the Customer wishes the Supplier to proceed with a variation, the Supplier may:
(a) complete the supply of the Goods and/or Works in accordance with the Contract and the Customer must pay the Supplier the Price for the Goods and/or Works in accordance with the Contract;
(b) suspend the supply of the Goods and/or Works and the Customer must pay the Supplier the Price for the Goods and/or Works supplied or manufactured by the Supplier prior to the suspension of the Contract; or
(c) terminate the Contract and the Customer must pay the Supplier the Price for the Goods and/or Works supplied or manufactured by the Supplier prior to the termination of the Contract.

14) Setting Out

The Customer will, at the Customer's expense, supply the information, data and survey marks to enable the Supplier to set out the Works.

15) Care of the Goods and/or Services

The Customer will be responsible for the care of the Goods and the Works at the Delivery Address.

16) Testing

The Customer will pay any costs associated with opening up for inspection any part of the Goods and/or Works for inspection or testing unless the Customer proves that the Supplier has caused the need for such actions as a result of the Supplier's breach of these T&Cs.

17) Payment for Design and/or Installation Services

The Customer must make full payment of the Price for any Design Services and Works and any other amounts payable to the Supplier before the Supplier supplies such Design Services or Works to the Customer unless the Supplier has granted credit terms to the Customer in which case, unless otherwise agreed in writing:
(a) the Supplier will invoice the Customer for such Design Services or Works at the conclusion of each 30 day period after the commencement of the Design Services or Works and on the completion of the Design Services or Works; and
(b) the Customer will pay the Supplier's invoices for such Design Services or Works within 30 days of the date of such invoices.