

Terms and Conditions of Sale

When these Terms are in force

1. These Terms apply whenever Goods or Services are quoted for, sold, supplied or Delivered by Hymix to a Customer.
2. Requesting or accepting a Quotation from, placing an Order with or accepting a supply or Delivery of Goods or Services from Hymix by a Customer constitutes acceptance by the Customer of these Terms.
3. To the extent permitted by Law, it is a condition of the Quotation, sale, supply and Delivery of Goods and Services by Hymix to a Customer that the Customer accept that these Terms apply as provided in Clause 1, regardless of the provisions of any other document or instruction of the Customer, including any purchase order terms subsequently given to Hymix by the Customer.
4. Where Hymix and a Customer enter into a supply agreement for Goods or Services, these Terms shall continue to apply to the extent they are not inconsistent with the terms of the supply agreement.

Conditions of Quotation or ordering

5. The Customer warrants that:
 - a. the Customer will provide all Relevant Information to Hymix when seeking a Quotation or placing an Order for Goods or Services from Hymix;
 - b. any Relevant Information supplied by the Customer to Hymix is accurate and complete;
 - c. in giving any Quotation, accepting any Order or supplying or delivering any Goods or Services, Hymix will be entitled for all purposes to rely upon the accuracy and completeness of any Relevant Information provided by the Customer;
 - d. subject to any Law to the contrary, unless Hymix makes an express representation to the contrary in writing, the Customer will not allege or in any circumstances maintain:
 - i. that Hymix had, or should be taken to have, approved of or represented any specification (whether supplied by the Customer, by Hymix or by a third party) as being suitable for any particular purpose; or
 - ii. that Hymix is liable for any Loss to the extent that the Loss results from or is attributable to any defects in, or unsuitability of, the specification;
 - e. the Customer has formed its own opinion as to the correctness or otherwise of any information or advice provided by or any representation made by Hymix (including as to product design and application) in connection with any Goods or Services quoted for, Ordered from or supplied or Delivered by Hymix and does not rely on Hymix in respect of such information, advice or representation or maintain or allege that it has so relied; and
 - f. unless the Customer notifies Hymix to the contrary prior to or when placing an Order for the Goods, the Customer is, and has held itself out to be, acquiring the Goods for either the purpose of re-supply (in an altered form or condition or to be incorporated into other goods) or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.
6. Testing of concrete and/or Aggregates or other technical Services will not necessarily be carried out or provided, unless ordered by the Customer.

Delivery of Goods

7. The Customer shall take full responsibility for assessing any requirements for traffic management associated with a Delivery to the Customer and for putting in place all traffic management measures which the Customer ought reasonably to know are required in all the circumstances of the Delivery.
8. Unless the Customer otherwise requires, Delivery will be made to the kerbside nearest the Delivery address. If the Customer requires the Delivery vehicle to leave a public road to gain access to the discharge or unloading location, the Customer shall:
 - a. ensure that the vehicle has a safe, suitable and unrestricted route between the kerbside nearest to the Delivery address and the discharge or unloading location; and
 - b. indemnify Hymix against any Loss arising from events occurring while gaining such access unless solely caused by Hymix's negligent act or omission.
9. Hymix may refuse to deliver if it is of the opinion that the Customer has failed to perform its obligations under Clause 7 or 8(a) and will be indemnified by the Customer against any Loss arising from the refusal.
10. Subject to Clause 13, the Customer shall, before the Delivery of the Goods, check for any difference between the Goods as delivered, the description or quantity of the Goods appearing on the Delivery Docket and the Customer's Order placed with Hymix.
11. If the Customer disagrees with any of the details on the Delivery Docket or if there is a difference between the Goods as delivered, the description or quantity of the Goods appearing on the Delivery Docket or the Goods Ordered, then the Customer must elect whether to accept or reject the Goods in whole or in part, and thereafter:
 - a. if the Customer accepts all or some of the Goods, the Customer will be taken to have Ordered what is delivered; and
 - b. if the Customer rejects all or some of the Goods, the Customer shall advise Hymix of details sufficient to accurately identify the nature of such disagreement or difference before the Delivery vehicle departs from the Delivery address.
12. If the Customer accepts the Goods then:

- a. before delivering the Goods, Hymix shall complete the then relevant Delivery Details on the Delivery Docket and make it available to the Customer; and
 - b. after Delivery, Hymix shall complete the Delivery Details and enter the quantity of any returned Goods on the Delivery Docket and any water added on site at the Customer's request and make available a copy of the completed Delivery Docket to the Customer.
13. If the Customer is not present at the Delivery location at the time of Delivery, Hymix may, in its absolute discretion, elect to refuse to deliver the Goods but, in those circumstances, the Customer will none the less be liable to pay for those Goods as if they had been delivered.
14. Notwithstanding any other provisions of these Terms, if the Customer is not present at the Delivery location at the time of Delivery, or the Customer is present but does not advise Hymix of any disagreement or difference on the Delivery Docket in accordance with Clause 11 and the Goods are discharged then, to the extent permitted by Law:
- a. the Customer shall be deemed to have unreservedly accepted both the Delivery and the accuracy of the Delivery Details;
 - b. Hymix shall have no Liability to the Customer for Loss in respect of any difference between the description and quantity of the Goods appearing on the Delivery Docket and the Customer's Order;
 - c. the Customer irrevocably waives all of its rights to reject the Goods referred to in the Delivery Docket; and
 - d. the Delivery Docket shall be prima facie evidence of all matters recorded thereon including the Delivery Details and the application of Delivery related surcharges.
- Sub-clause (c) shall not apply in relation to any defect, non-conformity or failure which would not have been apparent upon reasonably diligent inspection at the time of Delivery.

Payment

15. The amount payable by the Customer to Hymix shall be calculated by reference to the quantities of Goods and Services shown on the relevant Delivery Docket, at the Applicable Rate, plus any applicable delivery fee.
16. When Aggregates are sold by volume rather than weight, their volume will be determined by their loose uncompacted volume as measured on the Delivery vehicle by using the applicable weight to volume conversion factor at the time of loading.
17. The Customer shall pay the amount payable to Hymix prior to Delivery or within the relevant credit period which Hymix has advised in writing.
18. Hymix is entitled to charge the Customer interest on amounts not paid at the time they are payable under Clause 17 at the interest rate payable from time to time on unsatisfied judgement debts under the Governing Law from invoice date until payment and the Customer shall be liable to Hymix for all Costs.
19. The Customer hereby irrevocably agrees that it is not entitled to withhold payment of the whole or any part of an amount payable to Hymix under these Terms by the way of retention or set-off for any reason whatsoever.
20. In the event of any dispute arising between Hymix and the Customer as to whether an amount is payable, the Customer shall, within the relevant period under Clause 17, pay to Hymix the amount claimed by Hymix to be payable (including any amount charged by Hymix under Clause 18), to be held by Hymix until settlement of the dispute.
21. A statement signed by Hymix certifying any amount payable by the Customer to Hymix, including any Costs, interest or other claims whether under these Terms or otherwise, shall, in the absence of manifest error, be prima facie evidence of the amount payable.
22. Each amount payable by the Customer under these Terms in respect of a Taxable Supply is exclusive of GST and the Customer must, in addition to that amount and at the same time and manner, pay the GST payable in respect of that supply upon receipt of a tax invoice. "Taxable Supply" and "GST" have the meanings set out in the A New Tax System (Goods and Services) Act 1999.

Special conditions for concrete

23. Clauses 24 to 27 inclusive apply only to the sale of concrete by Hymix.
24. Unless otherwise agreed in writing by Hymix and the Customer, pre-mixed concrete will comply generally with AS1379 and will contain materials of Hymix's choice, including where applicable recycled and returned materials.
25. Unless otherwise stated in the Quotation, concrete is supplied as, and prices are based on, "Normal Class Concrete" as specified in AS1379, having a nominal slump not exceeding 80mm and using a nominal 20mm maximum size aggregate. If the Customer requires a slump other than 80mm or aggregate with a maximum size other than 20mm, a surcharge at the Applicable Rate will apply. If compliance with AS1379 requires the addition of a cooling agent, a surcharge to the quoted price at the Applicable Rate will apply.
26. Hymix may charge for any concrete and for the return cartage, handling and disposal costs relating to any concrete Ordered by the Customer and batched by Hymix which is returned or rejected by the Customer because:
- a. the Customer cancels or does not accept Delivery even though the concrete was batched in accordance with the Customer's Order;
 - b. the Customer was unable to use the full quantity Ordered; or
 - c. the time between batching and discharge exceeds the time permitted by AS1379 or the specification that covers the project being supplied, provided that the excess time was not due to Hymix's acts or omissions.
27. Hymix shall not be liable in any circumstances for any Loss arising from any alleged defect, non-conformity or failure in any concrete delivered, caused by, contributed to or arising from:
- a. preparing, handling, placing, working, curing, pumping, compacting, surface finishing, rolling or levelling of the concrete not being in accordance with any applicable Australian Standard, specification or guidelines applying to the work;

- b. the addition, without the written instructions of a representative of Hymix other than the driver, of any water, admixtures, additives or other material to the concrete:
 - i. prior to Delivery commencing:
 - A. by the Customer or a third party; or
 - B. by Hymix at the request or specification of the Customer or a third party; or
 - ii. after Delivery has commenced (either before or after discharge from the Delivery vehicle):
 - A. by the Customer or a third party; or
 - B. by the Delivery vehicle driver on the instruction of the Customer or a third party;
- c. the effect of any weather conditions or temperature including heat, cold, rain, wind or hail; or
- d. any act or omission (including construction or site practices) of the Customer or a third party.

Special conditions for Consumer Online Ordering Portal

28. Hymix is not liable for:

- a. any information provided by the Customer;
- b. any decision or recommendation by Hymix based on any information provided by the Customer including whether a particular product is suitable for a Customer's requirements or whether the quantity of products is suitable for a Customer's requirements;
- c. the adequacy, accuracy, completeness or veracity of any information or advice, whether technical in nature or not, provided by Hymix to the Customer or for any interpretation, opinion or conclusion that a Customer may place on this information or advice;
- d. any liability (including, without limitation, any liability arising from fault of negligence) whether direct or indirect or consequential, for any loss, damage, cost, expense, charge, outgoing, interest, loss of profits or loss of any kind suffered or incurred by the Customer, as a result of or in connection with the provision, use of, or reliance on the information provided in the Consumer Online Ordering Portal;
- e. correcting, updating or revising any information provided in the Consumer Online Ordering Portal;
- f. the delivery address or delivery location including whether they are suitable for delivery of any products;
- g. whether the selection of a particular delivery vehicle is suitable for the delivery of the products; and
- h. any handling of the product after the product has been delivered to the kerbside nearest to the delivery address.

This clause 28 applies only in respect of orders placed by the Customer using the Consumer Online Ordering Portal.

Special conditions for Decorative Concrete

29. Clauses 30 and 31 apply only to the sale of decorative concrete by Hymix.

30. The Customer acknowledges and agrees that it understands and accepts that:

- a. Hymix supplies decorative concrete in a plastic or semi liquid form comprised of assorted materials including cement, Aggregates, colour pigments, additives and admixtures mixed in accordance with the Customer's selections or directions and the relevant Australian Standards.
- b. Hymix can only supply a mix capable of being laid and finished in a way that achieves a finish depicted in any brochures or other materials published by Hymix, if the Customer accurately specifies the selected finish. Achieving the selected finish is the responsibility of the Customer or the Customer's selected contractor.
- c. Aggregates vary in their reaction to exposure to the elements and that because of this Hymix has no Liability for any future colour changes or oxidation of Aggregates that have been so exposed unless the Customer or the Customer's selected contractor has, before placing an Order for decorative concrete, informed Hymix that the Customer or the Customer's selected contractor, proposes to achieve a finish that involves exposure of the Aggregates to the elements.
- d. A honed or polished finish can only be achieved using mixes that have been formulated so as to make the achievement of these finishes possible, and that because of this Hymix has no Liability flowing from a failure to achieve a honed or polished finish unless the Customer or the Customer's selected contractor has, before placing an Order for decorative concrete, informed Hymix that the Customer or the Customer's selected contractor proposes to achieve such a finish.
- e. The Aggregates and other materials used in decorative concrete are subject to natural variations which could cause colour variation to the finished product and that because of this the colours depicted in any brochures or other materials published by Hymix can be indicative only of the finished colours that can be achieved by the Customer or the Customer's selected contractor.
- f. This Clause does not affect or limit the operation of Clause 27.

31. To the extent permitted by Law, Hymix accepts no responsibility for poor placement or finishing practices or for the final appearance, texture or colour of any finished decorative concrete product.

Limitations on Hymix liabilities

32. Notwithstanding any other provision of these Terms, for sales or deliveries to Customers who are Consumers, Hymix's Liability for a breach of a guarantee arising by operation of Division 1 of Part 3-2 of Schedule 2 of the Act (other than Sections 51, 52 or 53 of that Schedule) is limited to one of the following, at Hymix's election:

- a. in the case of Goods other than Goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the replacement of the Goods or the supply of equivalent Goods, repair or payment of the cost of replacement or repair of the Goods or of acquiring equivalent Goods; and
 - b. in the case of Services other than Services of a kind ordinarily acquired for personal, domestic or household use or consumption, supplying the Services again or payment of the cost of having the Services supplied again.
33. Notwithstanding any other provision of these Terms, for deliveries to Customers who are not Consumers:
- a. All conditions or warranties which would be implied into these Terms by Law are excluded unless such exclusion is forbidden or made void by Law.
 - b. Subject to Sub-Clause 33 (c), Hymix's maximum aggregate Liability to the Customer in respect of any claim for Loss in relation to defective or non-conforming or non-complying Goods or Services is limited to one of the following, at Hymix's election:
 - i. in relation to defective or non-complying Goods, the replacement of the Goods or the supply of equivalent Goods, repair or payment of the cost of replacement or repair of the Goods or of acquiring equivalent Goods; and
 - ii. in relation to defective or non-complying Services, supplying the Services again or payment of the cost of having the Services supplied again.
 - c. Notwithstanding Sub-Clause 33 (b), Hymix shall not in any circumstances be liable for any Loss, arising directly or indirectly from delays in Delivery or failure to deliver for any cause or reason including traffic delays, equipment breakdown, unavailability of raw materials, inclement weather and labour disputes.
 - d. If the Customer agrees (whether before or after any agreed rectification) to accept defective, non-conforming or non-complying Goods or Services Hymix will have no further Liability in relation to those Goods or Services and the Customer releases Hymix and indemnifies Hymix against any further Liability in relation to those Goods or Services.
 - e. The Customer hereby irrevocably indemnifies Hymix in respect of that part of any damages Hymix may be ordered to pay to a third party:
 - i. under Division 2 of Part 5-4 of Schedule 2 of the Act which arise from the supply of Goods or Services other than Goods or Services of a kind ordinarily acquired for personal, domestic or household use or consumption to the Customer; or
 - ii. in any other case -which exceeds the lowest of the cost of replacing the Goods, supplying the Services again, obtaining equivalent Goods or Services or having the Goods repaired.
 - f. Hymix's Liability under s274 of Schedule 2 of the Act is limited to paying an amount equal to the cost of replacing the Goods concerned, obtaining equivalent Goods or having them repaired.
34. Where Goods or Services are Ordered by the Customer in reliance upon a Quotation issued by Hymix to the Customer for work to be undertaken by the Customer in respect of a project or in an area nominated by the Customer, all of the Goods and Services Ordered for that project or area shall be deemed to constitute a single acquisition and the total amount payable for all such Goods and Services shall be taken to be the amount payable for the Goods or Services so acquired for all purposes including the purposes of the Act.
35. Notwithstanding anything else contained in these Terms or in any Law, to the extent not prohibited by Law, Hymix shall not in any circumstances be liable to the Customer for Consequential Loss.

Claims

36. To the extent permitted by Law, Hymix shall not be liable for any claim by the Customer alleging a Loss arising out of the Quotation, sale, supply or Delivery of Goods or Services under these Terms unless:
- a. Hymix is notified by the Customer in writing of any alleged defect, non-conformity or failure giving rise to the claim within 14 days of the Delivery or such later date as the Customer became, or ought reasonably to have become, aware of the events or circumstances on which the claim is based;
 - b. the Customer allows Hymix reasonable facilities to investigate any such defect, non-conformity or failure promptly, to advise the Customer of any appropriate remedial action and follows any such reasonable advice;
 - c. a fully particularised claim is lodged in writing with Hymix not later than 2 months after the Customer became or ought reasonably to have become aware of the events or circumstances on which the claim is based.
37. In pursuing a claim against Hymix a Customer may only rely upon test results if they have been arrived at by a NATA certified laboratory using tests carried out in accordance with all applicable Australian Standards.

General

38. If the Customer fails whatsoever or howsoever to comply with any of these Terms, Hymix shall have the right at its option to suspend further performance of its obligations to the Customer and/or to terminate any contract with the Customer without affecting any other right or remedy of Hymix.
39. To the maximum extent permitted by Law, the Customer indemnifies Hymix against any Loss to the extent the same was caused or contributed to by any negligent or wilful act or omission of, or any breach of or failure to comply with these Terms by, the Customer.

40. Property in the Goods shall not pass until the Customer has paid all moneys payable to Hymix under these Terms in full. Risk in the Goods passes to the Customer at the time of Delivery. Until payment of all moneys payable by the Customer to Hymix, the Goods are subject to the following terms:
- a. The Customer holds the Goods as fiduciary, bailee and agent for Hymix and must keep the Goods physically separate from all other goods of the Customer, and clearly identified as owned by Hymix.
 - b. If an Event of Default occurs, then without prejudice to Hymix's other rights, Hymix may without notice to the Customer enter any premises occupied by the Customer or any other place where the Goods may be and recover possession of them. If the Customer sells any of the Goods while money is owed to Hymix, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
 - c. If the Customer uses the Goods in some manufacturing or construction process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to such Goods in trust for Hymix. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to Hymix and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Goods will be discharged.
 - d. If the Goods are resold, or products using the Goods are manufactured and resold by the Customer, the Customer holds the entire book debts owed in respect of such sales and proceeds of such sales in trust for Hymix. Such part of the book debts and proceeds shall be deemed to equal in dollar terms the amount owed by the Customer to Hymix at the time of the receipt of such book debts.
41. In the event that there is failure to deliver or any time delay in Delivery due to any cause whatsoever beyond Hymix's control including weather, fire, labour dispute, strike or due to the inability of Hymix to obtain raw materials in a timely fashion from Hymix's planned source (whether or not such source is known to the Customer):
- a. Hymix will not be liable for any Loss sustained by reason of any such failure or delay; and
 - b. Hymix will be entitled to suspend deliveries for such period as it may think fit or terminate the agreement immediately after suspending deliveries and shall not be liable for any Loss sustained by reason of such suspension or termination.
42. To the extent permitted by Law, the actions or signatures of any person appearing to have the Customer's authority shall bind the Customer.
43. If the whole or any part of a provision of these Terms is unenforceable, the provision (or part thereof, as the case may be) is to be read down so as to be enforceable, and if it cannot be so read down, severed to the extent necessary to make these Terms enforceable.
44. A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise or that of any other right, power or remedy. A party is not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising the right, power or remedy.
45. A right may only be waived in writing, signed by the party giving the waiver, and no other conduct of a party operates as a waiver of the right or otherwise prevents the exercise of the right.
46. A single or partial exercise or waiver of a right or a delay in the exercise of a right conferred on a party by these Terms or by Law does not prevent any other exercise of that or any other right.
47. These Terms are governed by and are to be construed in accordance with the Laws of:
- a. the State or Territory of Australia in which the Goods are delivered or the Services supplied; or
 - b. If they are delivered or supplied to a place outside of Australia, the State or Territory of Australia from which the Goods or Services were supplied -
- and the Customer irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that State or Territory and any courts that may hear appeals from those courts and waives any right to object to proceedings being brought in those courts in respect of any proceedings arising from or connected with a Delivery.
48. These Terms are not to be interpreted against the interests of a party because that party proposed these Terms or some provision of it or because that party relies on a provision of these Terms to protect itself.
49. The Customer consents to Hymix recording and disclosing telephone conversations between the Customer and Hymix.
50. Hymix's Applicable Rates, Surcharge Schedules, Technical Services Charges and Privacy Policy are available on request or at www.Hymix.com.au.

Interpretation

51. In these Terms, unless the contrary intention appears:
- "Act" means the Competition and Consumer Act 2010.
- "Aggregates" includes quarry products and sand.
- "Applicable Rate" means:
- a. where a Quotation has been accepted, the quoted rate, charges and surcharges; and
 - b. where no Quotation has been given, or if given, the Quotation has not been accepted, either:
 - i. the relevant rate, charges and surcharges shown in a Rate Schedule; or
 - ii. if no such rate is shown, a rate determined by Hymix or as otherwise advised by Hymix.
- "AS1379" means the Australian Standard "AS1379 - Specification and supply of concrete" as in force at the date of Delivery.
- "Consequential Loss" includes:

- a. any direct or indirect loss of overhead costs, administrative expenses, revenue, profits, anticipated savings, business, data and value of equipment (other than direct cost of repair);
- b. any direct or indirect loss of opportunity, expectation loss or delay loss;
- c. any form of consequential, special, punitive or exemplary loss or damages; and
- d. liquidated damages -

howsoever it arises or is claimed (including as a result of negligence or by the operation of Law).

“Consumers” means ‘consumers’ as defined by Section 4B or Section 3 of Schedule 2 of the Act.

“Consumer Online Ordering Portal” means an online ordering system where Customers may Order Goods or Services from Hymix.

“Costs” means all costs, charges and expenses actually incurred by Hymix or the Customer in relation to the reasonable exercise or attempted exercise of any power, right or remedy under these Terms or in remedying or attempting to remedy a failure of Hymix or the Customer to comply with these Terms.

“Customer” means a person or entity seeking or accepting a Quotation for, placing an Order or accepting the supply or Delivery of Goods or Services from Hymix and includes that person’s or entity’s employees, agents, contractors, sub-contractors, successors, substitutes (including persons taking by novation), assigns and any person or entity claiming under or through that person or entity.

“Delivery” includes a delivery or supply of Goods and Services in response to an Order of the Customer or which the Customer accepts, whether or not Hymix and the Customer have reached a concluded agreement about all of the terms of the delivery or supply including the price payable for the Goods or Services Ordered.

“Delivery Details” includes, in respect of a Delivery, details of:

- a. A number uniquely identifying a Delivery to be used as a reference
- b. Customer name and account number with delivery address and any specific instructions
- c. Date and times of loading and delivery stages (arrival and finish time)
- d. Purchase order number from the Customer
- e. Delivery vehicle identity (fleet number)
- f. Water quantity that has been added after loading and slumping at the plant
- g. Water quantity that has been designed to be included as part of the batching process
- h. Description and system codes of Goods or Services that are being supplied
- i. Quantity of Goods or Services
- j. For cash sales - the rate and value of Goods or Services supplied.

“Delivery Docket” means a document (digital or paper based) prepared by Hymix which records Delivery Details in respect of a Delivery.

“Event of Default” means any of the following events:

- a. the Customer fails to pay for the Products;
- b. the Customer is in breach of these Terms;
- c. if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer;
 - i. the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or administrator is appointed;
 - ii. the Customer goes into liquidation or makes an assignment or an arrangement or composition with its creditors; or
 - iii. the Customer stops payment or is deemed unable to pay its debts within the meaning of the Corporations Act 2001; and
- d. if the Customer is a natural person, an order is made for the Customer’s bankruptcy; or the Customer dies or becomes mentally or physically incapable of managing his or her affairs; or an order is applied for or made to place the assets and affairs of the Customer under administration; or the Customer ceases or threatens to cease carrying on business.

“Hymix” means Hymix Australia Pty Ltd ABN 35 000 582 221 and includes Hymix’s employees, agents, contractors, sub-contractors, successors, substitutes (including persons taking by novation), assigns and any person or entity claiming under or through Hymix.

“Goods” includes concrete, Aggregates, cement, tools, concrete additives and admixtures and products for use in finishing concrete.

“Governing Law” means the Law governing the operation of these Terms under Clause 47 in respect of a Delivery.

“Law” includes the common law of Australia, rules of equity and the provisions of any relevant statute or statutory instrument including a by-law.

“Loss” means any Liability incurred or alleged to have been incurred by Hymix, the Customer or a third party in respect of, arising from or connected with any supply of Goods or Services by Hymix or by Hymix’s failure to supply any Goods or Services or of a breach of these Terms, whether arising in Law or otherwise.

“Liability” includes any demand or claim (including a demand or claim for direct or indirect Consequential Loss) in respect of any damage, cost, expense, harm, injury or death or any fine or penalty imposed by or under a Law or by any authority.

“Order” means any order of Goods or Services placed by a Customer by any means which includes, but is not limited to, orders via telephone, in person, facsimile, email or via the Consumer Online Ordering Portal.

“Quotation” includes:

- a. any document titled “Quotation” provided by Hymix to the Customer itemising Goods or Services and the rates at which Hymix is willing to supply these to the Customer for a project or in an area nominated by the Customer; or

- b. any rates provided by Hymix to the Customer through the Consumer Online Ordering Portal relating to any Goods or Services which Hymix is willing to supply to the Customer.

“Rate Schedule” means, a schedule of rates, charges or surcharges for Goods or Services published by Hymix in force at the date of Delivery or supply, copies of which are available upon request from Hymix or at www.Hymix.com.au.

“Relevant Information” includes all specifications relating to the Goods or Services, the application of the Goods or Services, Site Details and other matters that may affect Hymix’s ability to supply the Goods or Services in a manner that conforms to the Customer’s requirements as to performance or compliance with a standard communicated to Hymix by the Customer or with which the Customer ought reasonably to be aware that Hymix will be bound by contract, Law, custom or usage to conform.

“Services” includes:

- a. the testing of concrete, Aggregates, additives or admixtures whether in respect of compliance with a relevant standard or otherwise;
- b. the provision of other technical or design services or advice;
- c. the provision of vehicles and drivers to Customers on a temporary basis;
- d. weighbridge services.

“Site Details” includes all relevant details concerning gradients, substructures, surface conditions, and obstructions (including gates), width of access ways, footpath and pavement strengths at on or under the delivery site and any Laws that regulate or affect the time or manner of safe, timely and lawful delivery to the site.

“Terms” means these Terms and Conditions of Sale.

52. In these Terms, unless the contrary intention appears:

- a. a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- b. headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this document;
- c. where an expression is defined, another part of speech or grammatical form of that expression (whether capitalised or not) has a corresponding meaning; and
- d. where the expression ‘including’ or ‘includes’ is used it means ‘including but not limited to’ or ‘including without limitation’.