

## Terms and Conditions

### 1. GOODS

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- 1.1 We will provide the Goods to you on the terms of the Agreement and generally in accordance with the relevant provisions of the Australian Standard noted on the Invoice.
- 1.2 You agree to purchase the Goods from us on the terms of the Agreement.
- 1.3 Any Quotation we provide to supply Goods may be accepted within 60 days of the date it is provided, following which it will expire.
- 1.4 Subject to clause 1.5 and unless otherwise stated in the Invoice we will deliver the Goods to the Delivery Point by the Delivery Date on the Delivery Terms. The time for delivery of the Goods is not of the essence of the Agreement.
- 1.5 Any date or period quoted for delivery is an estimate only and we will not be liable for any loss or damage whether direct or indirect or whether suffered by you or by a third party resulting in any delay in delivery of or failure to deliver the Goods.
- 1.6 You must insure the Goods against all risk of loss and damage until the Goods have been delivered to you.
- 1.7 Delivery of the Goods will be deemed to have occurred at the time that:
- (a) you or your nominated person takes possession of the Goods at the Delivery Point; or
  - (b) we deliver the Goods to the Delivery Point even if you or your nominated person are not present at the Delivery Point.
- 1.8 You must inspect the Goods on delivery and must immediately notify us in writing of any evident defect or damage, shortage in quantity or failure to comply with description or quote.
- 1.9 You must ensure reasonable access is given at the Delivery Point sufficient for us to deliver the Goods and indemnify us for any Loss we suffer as a result of attending the Delivery Point.
- 1.10 We retain all IP Rights in our Goods. You must not alter, modify, reverse engineer or cause damage to our IP Rights or assist others to do so.

### 2. MATERIALS AND QUALITY

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- 2.1 You acknowledge and agree that the Goods, to the extent they are quarry or recycling materials may vary as to the uniformity of grading, size, shape and moisture content, degradation factor, hardness, texture and other characteristics of the material.
- 2.2 The Goods are provided on the basis that they do not comply with any Australian Standard or specification except that shown on the Invoice.
- 2.3 Subject to clause 7, we provide no warranty in relation to the compliance of any Goods supplied with any environmental law, regulation or standard.
- 2.4 You acknowledge and agree that the Goods may settle during delivery and require further mixing on delivery. You agree this is not a fault with the Goods and no refund will be given in respect of settlement occurring during delivery.
- 2.5 You agree that you will inspect the Goods within 2 business days of delivery and report any defect prior to 5:00pm on the second business day after delivery. Any defect reported after this time may be remedied in our absolute discretion subject to clause 7.
- 2.6 We are not liable for your failure or any other person's failure to blend the Goods.
- 2.7 At your prior request and cost, we can provide a summary of traceable stockpiles of the Goods on request.

### 3. TITLE TO THE GOODS

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- 3.1 Property and title in the Goods will not pass to you until you have paid all amounts owing to us in full and you have met all of your other obligations to us.
- 3.2 Any form of payment by you other than cash will not be deemed to be payment until it has been honoured, cleared or recognised.
- 3.3 Until ownership of the Goods has passed to you according to clause 3.1:
- (a) you are only a bailee of the Goods and must return the Goods to us on request;
  - (b) you hold the benefit of insurance of the Goods on trust for us and must distribute to us the proceeds of any insurance in the event of the Goods being lost damaged or destroyed;

- (c) you must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value;
- (d) if you sell, dispose of or otherwise part with possession of the Goods, then you must hold the proceeds of any such act on trust for us and must pay or deliver the proceeds to us on demand;
- (e) you should not convert, process or intermingle the Goods with other goods, but if you do so then you hold the resulting product on trust for our benefit and must sell, dispose of or return the resulting product to us as we direct;
- (f) you irrevocably authorise us and our Associates to enter the premises where we believe the Goods are kept and recover possession of the Goods;
- (g) we may recover possession of any Goods in transit whether or not delivery has occurred;
- (h) you must not charge or grant any encumbrance over the Goods nor grant or otherwise give away any interest in the Goods while they remain our property; and
- (i) we may commence proceedings to recover the price of the Goods sold even if ownership in the Goods has not passed to you.

### 4. PAYMENT AND CONTACT

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- 4.1 You must pay us the Fees for the Goods on the terms of this Agreement.
- 4.2 We will issue you with a Tax Invoice for the Goods.
- 4.3 You must pay us the Fees for the supply of the Goods within the time specified in the Invoice without counterclaim, set off or deduction.
- 4.4 If you fail to comply with clause 4.3, interest at the rate of 12% per annum will be applied daily to the outstanding balance until payment is received in full, we may suspend supplying Goods and we may exercise any other right under this Agreement or at Law.
- 4.5 You must supply us with the contact details of a dedicated contact person for communication with you in respect of the Agreement.
- 4.6 Unless expressly stated otherwise, any amount payable in connection with the Agreement is exclusive of GST. GST must be paid at the same time and in the same manner as any money due under the Agreement.

### 5. VARIATIONS

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- 5.1 We will not be obliged to deliver any order for Goods outside of the ordered specified in the Reference Schedule.
- 5.2 Any variation to the Goods ordered will be subject to the Agreement and your acceptance of a revised or additional Fee.

### 6. PERSONAL PROPERTY SECURITIES ACT

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- 6.1 This Agreement constitutes a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by us to you.
- 6.2 You must at your own cost promptly sign any further documents and provide any further information which we may reasonably require to:
- (a) register a financing statement or financing change statement in relation to a security interest on the PPSR; and
  - (b) register any other document required to be registered by the PPSA or correct a defect in a statement referred to in clause (a).
- 6.3 You indemnify, and upon demand must reimburse us for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any security interest.
- 6.4 You must not register or permit to be registered a financing statement or a financing change statement in relation to the Goods in favour of a third party without our prior written consent.
- 6.5 You and we agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by the Agreement.
- 6.6 You waive your right:
- (a) to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA;

- (b) as a grantor or a debtor under sections 142 and 143 of the PPSA; and
- (c) to receive a verification statement in accordance with section 157 of the PPSA.
- 6.7 You must unconditionally ratify any actions taken by us under this clause 5.
- 6.8 Terms used in this clause 5 have the meaning given to them by the PPSA.

## **7. WARRANTIES AND INDEMNITIES**

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- 7.1 Subject to clause 7.1, 7.3 and 7.4 and to the extent permitted by Law, all liability, guarantees and warranties in respect of the provision of the Goods, whether express or implied, statutory or otherwise, are excluded, you possess, assemble and use the Goods solely at your own risk.
- 7.2 The Agreement does not exclude, restrict or modify any liability, warranty, right or remedy imposed by Law (including the CCA) which cannot lawfully be restricted, excluded or modified.
- 7.3 If you are a consumer within the meaning of the CCA our liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.
- 7.4 If you are not a consumer within the meaning of the CCA, our liability for Loss, defect or damage in connection with the Goods is limited to the (at our sole election):
- (a) supply of the Goods again; or
  - (b) payment of the cost of supplying the Goods again.
- 7.5 To the extent permitted by Law we are not liable for any Loss arising out of or in relation to you or you Associates:
- (a) failing to properly maintain or store the Goods;
  - (b) using the Goods for any purpose other than which they were designed;
  - (c) using the Goods after any defect becomes apparent or should have become apparent;
  - (d) failing to follow any instructions or guidelines provided with the Goods or breaching this Agreement; and
  - (e) to the extent permitted by Law, we are not liable for any indirect, special or consequential loss that is beyond the normal measure of damages, including loss of profit or anticipated profit.

## **8. TESTING**

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- 8.1 When you request we carry out testing, we will do so on your acceptance of our fees for arranging testing. Testing will be carried out in accordance with AS 1012 in an accredited facility.
- 8.2 You must provide us with a copy of the results of any third party testing you conduct on the Goods.

## **9. SAFETY**

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- 9.1 You are responsible for ensuring safe access to the Delivery Point for delivery of the Goods.
- 9.2 You will notify us, prior to the delivery date, of any difficulties or peculiarities in accessing the Delivery Point.
- 9.3 We may refuse delivery if you do not fulfil your obligations in clauses 9.1 and 9.2, however we are not responsible for any assessment of safety at the Delivery Point.
- 9.4 You acknowledge that where the Goods are sourced from a quarry, they may contain crystalline silica. You acknowledge that breathing and exposure to skin of the dust generated when working with the Goods (including transporting) carries significant risk of harm and You agree to take all safety precautions for You and Your personal including wearing protective clothing and safety goggles at all times when handling the Goods. You agree you have appraised Yourself of the risks involved in handling the Goods. We can provide detailed safety instructions at your request, and you agree to indemnify us for any injury or loss caused by your handling of the Goods to the extent provided in clause 7.

## **10. DELIVERY**

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- 10.1 The Fee associated with delivery on the Invoice is for delivery during normal business hours only. Any deliveries made outside of the hours between 6:00am and 6:00pm on a business day may

- incur an additional Fee and we may not make any deliver of Goods outside of these hours if the additional Fee is not paid.
- 10.2 You must ensure that the Delivery Point is attended by a person with authority to accept delivery on your behalf. If we are required to deliver the Goods to an unattended site, You agree that any claims may only be made in accordance with clause 1.8. Where our delivery driver is delayed at the Delivery Point, we may, in our absolute discretion, charge an additional fee in respect of that delay.
- 10.3 We will use all reasonable endeavours to ensure delivery is made in accordance with Your instructions provided they are given with at least 24 hours notice. You agree to indemnify us from any loss arising from early or late delivery caused by You or by any cause of which You ought to have been reasonably aware.

## **11. FORCE MAJEURE**

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- 11.1 If the performance of any of our obligations under the Agreement is prevented, hindered or delayed by or in consequence of any cause or event beyond our reasonable control, we will be entitled on giving notice to you:
- (a) to make partial or delayed delivery of the Goods; or
  - (b) to terminate the Agreement,
- without liability and without prejudice to rights which have already accrued to us in respect of any Goods already supplied.

## **12. TERMINATION**

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- 12.1 We may immediately terminate the Agreement:
- (a) if you fail to pay the Fees or any other money owing to us when due;
  - (b) if you breach the Agreement and fail to rectify the breach within the time specified in a notice from us requiring rectification;
  - (c) if you breach the Agreement and the breach is not capable of rectification;
  - (d) if you cease or threaten to cease to carry on your business or a material part of your business;
  - (e) if you are an individual and die, become bankrupt or compound for the benefit of creditors or become subject to any law relating to mental health; or
  - (f) if you are incorporated and are insolvent (as defined in the Corporations Act), a controller, receiver, administrator or similar person is appointed to you or an application is made for your winding up.
- 12.2 We may terminate the Agreement by giving 30 days written notice or otherwise cancel the delivery of the Goods before they are delivered by giving you written notice.
- 12.3 On termination you must pay all Fees payable in respect of the Goods supplied up to the date of termination. In addition, in the case of termination under clause 12.1 you must pay the reasonable costs of materials and equipment ordered by us for incorporation into the Goods provided that title to such materials and equipment pass to you on payment.

## **13. GOVERNING LAW**

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The Agreement is governed by the laws of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the State.

## **14. GENERAL**

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- 14.1 The Agreement supersedes any prior negotiations or representations and cannot be changed unless the parties agree in writing. It overrides any terms and conditions you seek to impose, whether before or after the date of the Agreement. If we supply any Goods to you, this Agreement will apply whether or not you have provided an executed Agreement to us.
- 14.2 A failure to fully exercise a right or delay in exercising a right does not result in a waiver of that right. A waiver of any right must be in writing and executed by the party granting the waiver.
- 14.3 We can assign, novate or transfer all or any part of our rights or obligations under the Agreement without your consent, but must give written notice of the same.
- 14.4 You must not assign, subcontract or deal with any rights or obligations under the Agreement without our prior written consent (to be given, withheld or conditioned at our absolute discretion).

- 14.5 If any part of the Agreement is or becomes invalid, illegal or unenforceable, that part will be excised from the Agreement and will not affect the validity of the remaining clauses.
- 14.6 If you are a corporation, you warrant that the individual ordering the Goods has the necessary authority to bind you.
- 14.7 Clauses 5, 7, 12, 13, 14, 15 and 16 will survive termination or expiry of the Agreement.
- (t) 'You', 'your' means the customer named in the Invoice; and where the context requires includes your Associates, successors and assigns; and
- (u) 'We', 'our' 'us' means Multiquip Aggregates Pty Limited (ACN 143 902 998) of 260 Tenth Avenue (PO Box 4), Austral NSW 2179

## **15. INTERPRETATION**

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- 15.1 Capitalised terms have the meaning given to them in the Agreement.
- 15.2 If there is any inconsistency between the Invoice and these terms and conditions, the Invoice will prevail.
- 15.3 A reference to a right or obligation of any 2 or more persons confers that right or imposes that obligation jointly and severally.
- 15.4 'Include' and other forms of the word are not words of limitation.
- 15.5 A reference to \$ or dollars means Australian dollars and a reference to payment means payment in Australian dollars.
- 15.6 Headings do not affect interpretation.
- 15.7 Words importing the singular include the plural.
- 15.8 A reference to a Law or legislation includes any statutory amendments or replacement and any subordinate or delegated legislation.
- 15.9 The Agreement is not to be construed against a party on the basis that they were responsible for drafting it.

## **16. DEFINITIONS**

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In the Agreement, unless the context otherwise requires:

- (a) 'Agreement' means the contract comprised of the Invoice and these terms and conditions as varied in accordance with the Agreement;
- (b) 'Associates' includes employees, officers, agents and subcontractors;
- (c) 'Australian Standard' means the Australian Standard noted on the Invoice attached to this agreement as amended from time to time
- (d) 'CCA' means Competition and Consumer Act (Cth) 2010 and any regulations made under it;
- (e) 'Delivery Date' is specified in the Invoice (if applicable);
- (f) 'Delivery Point' means the delivery point specified in the Invoice (if applicable);
- (g) 'Delivery Terms' is specified in the Invoice;
- (h) 'Fees' means the total amount payable by you to us for the supply of the Goods, including the cost of the Goods, freight charges, delivery charges, stamp duty, GST and any interest or other costs properly charged by us as indicated in our Tax Invoices issued to you and itemised in the Invoice;
- (i) 'Goods' means all goods or services supplied to you in connection with the Agreement, more specifically particularised in the Invoice;
- (j) 'GST' has the meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (k) 'Invoice' means the Invoice accompanying these terms and conditions;
- (l) 'IP Rights' means all patents, inventions, copyright, registered or registrable designs, rights in relation to trade secrets, know how and other confidential information and all other kinds of intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967, and any improvements.
- (m) 'Law' includes Acts, Ordinances, regulations, by-laws, orders, awards, licences, consents, permits, approvals, industry codes of practice and Australian Standards;
- (n) 'Loss' includes loss, liability, claim, cost, injury, death, demand, threat, damage, penalty or expense (including legal costs in connection with same on a full indemnity basis);
- (o) 'Order' means the quotation or order raised by use for the provision of the Goods supplied by us under the Agreement;
- (p) 'PPSA' means the Personal Property Securities Act (Cth) 2009 and any regulations made under that Act;
- (q) 'PPSR' means the Personal Property Securities Register constituted under the PPSA;
- (r) 'Quotation' means a quotation We provide for the supply of any Goods;
- (s) 'Tax Invoice' has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth);