

Concrete Sleepers Melbourne Terms and Conditions of Sale

1) DEFINITIONS

In the terms and conditions:

"Australian Consumer Law" means schedule 2 of the Competition & Consumer Act 2010 (Cth)"

"Buyer" means the person to whom any quotation is made by Concrete Sleepers Melbourne (CSM), any person offering to contract with Concrete Sleepers Melbourne on these terms and conditions and any person who purchases Goods from Concrete Sleepers Melbourne;

"Consequential Loss" means any loss or damage suffered by a party or any other person which is indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity;

"Defect" means a defect, flaw or imperfection in the Goods which prevents the Goods from being used for the purposes intended for such Goods or which makes the use of the Goods dangerous, but does not include anything which has been disclosed as a feature or limitation of the Goods by Concrete Sleepers Melbourne prior to the date of purchase, or any defect, flaw or imperfection that is trivial or insubstantial:

"Goods" means all products and services agreed to be supplied by Concrete Sleepers Melbourne to the Buyer under any contract, arrangement or understanding between Concrete Sleepers Melbourne and the Buyer;

"Invoice" means the invoice issued by Concrete Sleepers Melbourne to the Buyer setting out the amount to be paid by the Buyer; and

"Order" means any order for Goods placed by the Buyer with Concrete Sleepers Melbourne, in whatever form;

"Non-excludable Obligation" has the meaning given to that term in clause 4c);

"Concrete Sleepers Melbourne" or CSM means "Sleepers Melbourne" ABN 23 646 746 027 and its agents, servants and employees and any related bodies corporate as defined in the Corporations Act 2001 (Cth) (if such related body corporate is named as the party making or accepting the Buyer's order of Goods).

2) GENERAL

- a) Unless Concrete Sleepers Melbourne otherwise agrees in writing, these are the only terms and conditions which apply to the sale of Goods by Concrete Sleepers Melbourne and the Buyer agrees that these terms and conditions will in all circumstances prevail over any other document Order or other terms, including the Buyer's terms and conditions of purchase (if any).
- b) These terms and conditions supersede and exclude all prior and other discussions, dealings, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods.
- c) If there is an inconsistency between any other terms agreed by the Buyer and Concrete Sleepers Melbourne in writing and/or these terms and conditions, the terms agreed by the Buyer and Concrete Sleepers Melbourne in writing will prevail to the extent of any inconsistency.

3) ORDERS

- a) Concrete Sleepers Melbourne has sole discretion to accept or reject any Order or any variation or modification of an Order requested by the Buyer.
- b) CSM has sole discretion to accept or reject any Order cancellation request by the Buyer. If a cancellation request is accepted by CSM, the Buyer will be liable for any direct loss or expense incurred by CSM in respect of that Order (including without limitation, payment for any Goods ordered by CSM from its suppliers relating to that Order).
- c) Where some Goods ordered are not in stock, CSM may at its discretion supply part of the Order and invoice the Buyer for that part of the Order supplied.

4) WARRANTIES

- a) CSM warrants that the Goods supplied will be of merchantable quality and will conform to the specifications published by it in relation to the Goods.
- b) All warranties and conditions that are capable of exclusion and would, apart from this provision, form part of these terms and conditions, are expressly excluded.
- c) Nothing in this document operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law, where to do so would:

- i contravene the Australian Consumer Law; or
- ii cause any terms of this document to be void,

(Non-excludable Obligation).

- d) To the extent the Non-excludable Obligations apply to the sale of Goods to the Buyer, CSM's liability to the Buyer for a failure to comply with any Non-excludable Obligation in respect of that sale is limited to:
 - i the Buyer's choice of a replacement or refund of the defective Goods for a major failure; or
 - ii CSM's choice of having the defective Goods repaired or replaced if the failure does not amount to a major failure.
- e) To the extent the law permits and notwithstanding any other clause of these terms and conditions, CSM excludes all liability whatsoever to the Buyer for any Consequential Loss.

5) ADVICES

The Buyer hereby acknowledges that it has not relied on any advice, recommendation, information or assistance provided by CSM in relation to the Goods or their intended application, use or stated benefits.

6) DELIVERY AND COLLETION

- a) CSM will make all reasonable efforts to have the Goods delivered to the Buyer on the date agreed between the parties as the delivery date. However, subject to clause 11, time is not of the essence under these terms and conditions and CSM shall not be liable for any failure to deliver or delay in delivery for any reason.
- b) The Buyer shall be responsible for checking the delivery of Goods upon receipt and shall report any discrepancy in the quantity of the Goods ordered by the Buyer to CSM at the time of delivery. Failure to report any discrepancy to CSM within 12 hours of delivery shall constitute acceptance by the Buyer that the quantity of Goods delivered matches the quantity of Goods ordered by the Buyer.
- The Buyer shall be liable for all costs associated with the delivery of Goods to the Buyer.
- d) If the Buyer elects to collect the Goods from CSM' premises or any other location, the Buyer acknowledges and agrees that it will be solely responsible for taking all steps necessary to ensure that the Goods are safely and lawfully collected and transported from its premises or any other location (including but not limited to ensuring any trailer, equipment and/or vehicle used to collect the Goods satisfies the relevant specifications required to safely and lawfully transport the Goods). Without limiting this clause 6 d), the Buyer is solely responsible for ensuring that the weight of the Goods does not exceed the maximum weight or load bearing capacity of the vehicle, trailer and equipment used by the Buyer, or any third party engaged by the Buyer, to collect and transport the Goods.
- e) The Buyer must provide all necessary information requested by CSM to verify that the Goods can be safely collected and transported by the Buyer. CSM may in its absolute discretion refuse collection of the Goods if the Buyer fails to provide any information requested by CSM under clause 6 d) to its reasonable satisfaction.

7) DEFECTS

- a) The Buyer must examine the Goods for Defects upon delivery and notify CSM of any Defects in writing within 3 days of delivery. If the Buyer does not notify CSM within 3 days of delivery the Buyer shall be deemed to have accepted the Goods.
- b) The Buyer must preserve any Goods that are found to have a Defect in the state in which they were delivered and allow CSM (or its nominated agent) access to the Buyer's premises to inspect the Goods. If CSM, upon inspection agrees with the Buyer that such Goods have a Defect, then the Buyer will replace the defective Goods in accordance with clause 4(d).

8) RISK AND TITLE

- a) All risk in and to the Goods purchased shall pass to the Buyer upon delivery to the Buyer or any agent or other carrier commissioned by the Buyer to take possession of the Goods. Legal and equitable title in and to the Goods shall not pass to the Buyer until payment in full for all Goods is
- b) The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause 8, the Buyer holds the Goods as bailee of CSM and that a fiduciary relationship exists between the Buyer and CSM.
- c) Until title in and to the Goods passes to the Buyer in accordance with this clause 8, the Buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of CSM and ensure that the Goods are properly stored, protected, readily identifiable and insured. CSM shall be entitled at any time until title in and to the Goods passes to the Buyer to demand the return of the Goods and shall be entitled without

notice to the Buyer and without liability to the Buyer to enter any premises occupied by the Buyer (or any other premises where the Buyer is holding the Goods) in order to search for and remove the Goods.

d) The Buyer acknowledges that if it sells the Goods before title in and to the Goods has passed to the Buyer in accordance with this clause 8, it sells the Goods as a fiduciary agent of CSM provided that such sales shall not give rise to any obligations on the part of CSM. The Buyer shall hold the proceeds of sale on trust for CSM in a separate account and must pay to CSM such amount as CSM requests.

9) PRICE

- Unless otherwise agreed in writing or for orders which have been accepted by CSM, the price charged for the Goods shall be the price determined by CSM at the date of delivery (plus any applicable sales tax and 2% credit surcharge (or as otherwise notified)).
- b) Any price indications or price list provided by CSM to the Buyer or otherwise made available to the Buyer are subject to alteration at any time without notice.

10) FORCE MAJEURE

- a) CSM is not liable for any failure to perform any of its obligations under these terms and conditions as a result of any event beyond its reasonable control including, without limitation, where CSM is prevented or hindered from manufacturing, delivering or supplying the Goods as a result of any strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, products, equipment, facilities or services from usual suppliers on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network.
- In such circumstances, CSM may suspend performance of any obligations under these terms and conditions while the event continues. CSM shall not incur any liability to the Buyer in respect of such suspension.
- c) If any of the above events occur for more than 30 days, CSM may, without liability, terminate any affected Order and/or these terms and conditions immediately by notice in writing to the Buyer.

11) PAYMENT AND DEFAULT

Payment terms for the purchase of Goods are cash on delivery (COD), unless the Buyer has obtained an approved account with CSM.

12) RELEASE

Except where legislation cannot be excluded or would make this clause 12 illegal, or where the inclusion of this clause 12 would otherwise make CSM liable to a penalty, the Buyer irrevocable and unconditionally releases CSM from any claim that is made against CSM, and CSM will not incur any liability, for damages or otherwise in respect of any loss, damage, death or injury arising from negligence or otherwise caused directly or indirectly by or arising out of the use or condition of Goods sold to the Buyer, including but not limited to:

- a) loss caused by the Buyer or to the extent it results from the Buyer's failure to take reasonable steps to avoid or minimise that loss;
- b) loss or damage arising from the Buyer failing to take all steps necessary to ensure the Goods are safely and lawfully collected and transported from CSM's premises or any other location (including but not limited to loss or damage arising from the Buyer's use of any vehicle, trailer and equipment used to collect the Goods that fails to satisfy the relevant specifications required to safely and lawfully transport the Goods such as specifications relating to the maximum weight bearing capacity of the vehicle, trailer and equipment):
- c) improper, negligent or inappropriate use of the Goods;
- d) unauthorised modification of the Goods;
- e) the failure to comply with the installation and maintenance instructions for the Goods; or
- f) loss caused by events falling outside CSM reasonable control,

except to the extent that such loss, damage, death or injury has been caused by $\ensuremath{\mathsf{CSM}}.$

13) INDEMNITY

The Buyer indemnifies, and must keep indemnified, CSM and its directors, officers, employees and agents from and against any loss or damage (including damage and reasonable legal costs and expenses) or liability incurred or suffered by us arising from any claim, demand, suit, action or proceeding by any person against us where such loss or liability arose out of, or in connection with the Buyer's acts or omissions, breach of these terms, or use of the Goods (including any physical injury, property damage, or any other form of loss or damage arising from the Buyer's failure to take all action necessary to safely and lawfully collect the Goods from CSM premises or any other location).

14)SEVERANCE

If any provision of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall, so far as possible, be read down to such extent as may be necessary to ensure

that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these terms and conditions shall not in any way be affected or impaired.

15) VARIATION AND ASSIGNMENT

These terms and conditions may be varied by agreement between the parties in writing only. The Buyer may not assign its rights under these terms and conditions without CSM' prior written consent.

16) GOVERNING LAW AND JURISDICTION

These terms and conditions are governed by the law of the State of Victoria, Australia. Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of Victoria. Each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

17) TAXES AND DUTIES

Notwithstanding any other clause in these terms and conditions, to the extent that any supply made under or in connection with these terms and conditions attracts sales tax, the Buyer must pay to CSM, in addition to the consideration provided for under these terms and conditions for that supply an amount (additional amount) equal to the amount of that consideration multiplied by the rate at which any sales tax is imposed in respect of the supply. The Buyer must pay to CSM the additional amount at the same time as the consideration to which it is referable. The Buyer is responsible for paying any other duties, taxes or charges, including any stamp duty (if applicable) and GST, in relation to the Goods.

18) WAIVER

Waiver by CSM of a breach of these terms and conditions or of any right or power arising on a breach of these terms and conditions must be in writing and signed by CSM. A right or power created or arising on a breach of these terms and conditions is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

19) NO RIGHT TO OFFSET

No amount owing whether present or future, actual, contingent or prospective and on any account whatsoever by the Buyer to CSM

may be offset against any amount owing whether present, future, actual, contingent or prospective of the Buyer to CSM hereunder on any other account whatsoever.

20) INTELLECTUAL PROPERTY

The purchase of Goods under these terms and conditions does not confer on the Buyer any licence or assignment of any copyright, patent, design or trade mark, or any other intellectual property right (whether registered, registrable or not) that subsists in the Goods.

21) RETURNS AND REFUNDS

- a) CSM provides a warranty against defects in respect of eligible Goods manufactured by it in accordance with its product warranty which can be access on its website ("Product Warranty").
- b) CSM reserves the right to change the Product Warranty from time to time. Notice of any such changes to these policies or schemes will be provided by CSM by posting a notification on CSM website or providing an updated warranty documentation upon the sale of the Goods (if applicable), or as otherwise deemed appropriate by CSM.
- c) CSM expects that the Buyer should never need to use the warranty, however in the unlikely event that the Buyer is required to make a warranty claim under the Product Warranty, the Buyer will be required to verify and make its warranty claim in accordance with the procedure set out in clause 4 of the Product Warranty.

We do not accept returns if the Buyer has simply changed its mind, found the product cheaper elsewhere, or the Buyer has decided it does not like or need the product anymore. If at CSM discretion it chooses to accept a return for change of mind, all returns will incur a 20% restocking fee for 80mm sleepers or 40% restocking fee for thicker sleepers. Custom sleepers can not be returned. A minimum cost of \$150+GST applies.

22) SECONDS AND CLEARANCE STOCK

Any sleeper sold as a second carries no warranty. These sleepers are sold as concrete blocks and not for structural use. These sleepers might not be compliant with the engineering specification of the regular sleepers and as such it is the Buyer's responsibility on how they are used.

No warranties, returns, refunds or exchanges on seconds or clearance stock whatsoever.