

HYMIX AUSTRALIA PTY LTD TERMS AND CONDITIONS OF SALE

1. These terms and conditions of sale of Hymix Australia Pty Ltd (ABN 35 000 582 221) ("Hymix"), apply whenever concrete is supplied by Hymix.
2. Unless otherwise stated, prices are based on a nominal slump of 80mm consisting of a blend of materials of Hymix's choice. The volume of concrete delivered shall be in accordance with clause 1.8 of AS1379. Compliance with any temperature limitations is excluded unless agreed in writing by Hymix.
3. The Customer may have to pay special charges for waiting time, small loads, concrete ordered and not used, returned concrete disposal and delivery outside of normal hours. Testing of concrete and/or aggregates will not necessarily be carried out, unless ordered by the Customer. If ordered, the Customer will pay Hymix's ruling rates. If the results of any testing are to be used in any claim against Hymix, the testing shall comply with the applicable Australian Standard.
4. The Customer shall pay the price to Hymix prior to delivery or within any agreed credit period. All amounts not paid within the agreed credit period shall bear interest at the reference rate charged by Hymix's principal bankers from invoice date until payment, plus all costs incurred by Hymix in relation to the exercise of its rights under these terms and conditions. If the Customer fails to comply with its obligations, Hymix shall have the right to suspend further performance and/or to terminate the contract of sale, without affecting any right or remedy of Hymix. Property in the goods shall not pass to the Customer until payment in full of all monies owed to Hymix, and Hymix reserves the right to take possession of and dispose of the goods as it sees fit at any time until full payment is made. Immediately upon delivery, the Customer accepts responsibility for the goods.
5. The Customer shall notify Hymix in writing 48 hours in advance of estimated daily concrete delivery requirements. All delivery times made known to, or agreed with the Customer shall be an estimate only. Hymix shall:
 - (a) use its reasonable endeavours to meet the Customer's delivery time requirements;
 - (b) not be liable for loss, damage or expense (direct or indirect) sustained by the Customer arising from Hymix's failure to deliver on any day resulting from plant or delivery equipment breakdown, traffic delay, labour dispute, strike, weather or any other cause whatsoever beyond Hymix's control or from Hymix's inability to obtain the necessary raw materials or equipment from the source normally expected by Hymix.
6. If Hymix's delivery vehicle is required to leave a public road to gain access to the discharge location, the Customer shall at all times:
 - (a) ensure that Hymix's vehicle has a safe, suitable and unrestricted route between the kerbside adjacent to the delivery address and the discharge location; and
 - (b) indemnify Hymix against any loss or damage or any claims made by or through the Customer or any third party arising from gaining access unless solely caused by Hymix's negligent act or omission.
7. Hymix may in its absolute discretion refuse to deliver if it is of the opinion that the Customer has failed to perform its obligations under clause 6(a).
8. If the Customer does not accept delivery of any concrete ordered by the Customer after batching by Hymix, or if the concrete is not delivered due to refusal by Hymix to deliver pursuant to clause 7 above, a special charge will be payable by the Customer calculated in accordance with the following: (a) the price of concrete not delivered; (b) cartage costs; and (c) the cost of handling and disposal of that concrete.
9. The Customer shall be present at the discharge location at the time of delivery. If the Customer is not present at the discharge location at the time of delivery, Hymix may complete the delivery without any obligation to have its delivery dockets signed by the Customer.
10. Subject to clause 9, prior to discharge of any concrete from Hymix's delivery vehicle, the Customer shall check that the concrete description and quantity appearing on Hymix's delivery docket conforms with the Customer's order placed with Hymix. If there are discrepancies between the concrete description and quantity described in Hymix's delivery docket and the Customer's order, delivery shall not occur.
11. After discharge of any concrete, the Customer shall acknowledge receipt of the delivery by signing Hymix's delivery docket. If the Customer disagrees with any discharge record, the Customer shall record in writing on Hymix's delivery docket full details of such disagreement prior to the departure of Hymix's delivery vehicle from the delivery address.
12. Subject to clause 13, if concrete is delivered in circumstances where the Customer is not present at the discharge location at the time of delivery, or the Customer is present at the discharge location at the time of delivery and does not sign the delivery docket or record its disagreement on the delivery docket in accordance with clause 11:
 - (a) the Customer acknowledges receipt of delivery and the accuracy of the discharge records;
 - (b) Hymix shall have no liability to the Customer in respect of any discrepancy between the concrete description and quantity appearing on Hymix's delivery docket and the Customer's order placed with Hymix;
 - (c) the Customer acknowledges that any and all rights the Customer had to reject the concrete referred to in the delivery docket are waived;
 - (d) the delivery docket shall be deemed to be conclusive evidence of all matters stated or referred to therein including, without limitation:
 - (i) the accuracy of the discharge records; (ii) the addition of excess water; and (iii) application of delivery related special charges to the price under these conditions; and
 - (e) the Customer is not entitled to partly or wholly withhold payment of the price by way of retention and waives any right of set-off (legal or equitable) it may acquire against Hymix in connection with the concrete or its delivery.
13. Clause 12 shall not apply where the concrete contains any defect which was not apparent at the time of delivery or which would not have been disclosed upon reasonable inspection at the time of delivery.
14. Unless otherwise agreed in writing, Hymix shall not be taken to have approved any specification as being suitable for any particular purpose and shall not be liable for any loss or delay or any costs associated therewith resulting from any defects in or unsuitability of the specification.
15. Hymix shall not be liable for and is hereby indemnified by the Customer in respect of any direct or indirect loss or damage or any claims made by or through the Customer or any third party which arise out of these terms and conditions or any defects, shrinkages or other faults which may exist or develop in the concrete and which are due to:
 - (a) faulty handling, placing or curing of the concrete by the Customer or any other person;
 - (b) the addition of any water or other material to the concrete either before or after discharge from the delivery vehicle;
 - (c) the time taken for the placement and compaction of concrete delivered to Customer not being in accordance with AS 1379;
 - (d) the effect of any weather conditions including but not limited to heat, rain, wind or hail; or
 - (e) the construction or site practices of the Customer or any other act or omission of the Customer or a third party.
16. For deliveries to "Consumers" as defined by section 4B of the Trade Practices Act 1974, Hymix's liability for a breach of a condition or warranty implied by Division 2 of Part V of that Act (other than section 69) is limited to any of the following, at Hymix's election: (i) in the case of goods, the replacement, repair or payment of the cost of replacement or repair of the goods; and (ii) in the case of services, resupplying the services or payment of the cost of resupplying the services.
17. Subject to clause 16, Hymix's maximum liability to the Customer in tort or contract or in any way whatsoever for loss or damage of every kind in relation to defective or non-conforming or non-complying concrete is limited to supplying replacement of any defective or non-conforming or non-complying concrete, and steel reinforcement and formwork directly affected. Hymix shall not be liable for any claim by the Customer in respect of any matter arising out of the supply of concrete unless a fully particularised claim is lodged in writing with Hymix not later than three months after the occurrence of the events or circumstances on which the claim is based. Hymix shall not in any circumstances be liable for any loss of revenue, income, rents, profit, use, opportunity, productivity, delay costs, liquidated damages or for any indirect or consequential loss incurred by the Customer arising from the supply of the goods by Hymix. All conditions or warranties which would be implied into these terms and conditions by law or statute are excluded unless such exclusion is forbidden or made void by statute.
18. If the whole of any part of a provision of these terms and conditions is void, unenforceable or illegal in a jurisdiction, the provision (or part thereof, as the case may be) is severed for that jurisdiction. The remainder of these terms and conditions will have full force and effect and the validity or enforceability of that provision (or part thereof) in any other jurisdiction is not affected.
19. Hymix may record telephone conversations between the Customer and Hymix and the Customer consents to such recordings being made and disclosed by Hymix.
20. All payments under these terms and conditions have been calculated without regard to GST, unless otherwise stated. If the whole or any part of any payment is the consideration for a taxable supply for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST amount, on receipt of a tax invoice. Terms used in this clause have the meaning given to them in the GST Law, as defined in A New Tax System (Goods and Services Tax) Act 1999.
21. A copy of Hymix's privacy policy is available on request.