

To the fullest extent legally possible, all dealings between Aerolite Quarries Pty Ltd ABN 73 310 149 859 ["AQ"] & each of its subsidiaries, divisions, affiliates, associated companies & related entities & any successors & assigns & any Customer relating to any "Products" or transactions are subject to the following Terms & Conditions of Trade ("these Terms") unless otherwise agreed in writing.

1. **Payment:**
  - a. Credit Account Customers are to pay within 30 days from end of month of invoice without deduction
  - b. All other sales are to be paid C.O.D. without deduction.
2. **Property:**
  - a. Property in Products shall not pass until payment in full of all monies owed on any basis by the Customer to AQ ("full payment")
  - b. AQ reserves the right to take possession & dispose of Products at any time until full payment & the Customer grants permission to AQ to enter any property where any Product is in order to do so, with such force as necessary
  - c. Immediately upon delivery the Customer accepts liability for safe custody of Products
  - d. Until payment in full the Customer agrees
    - i. to keep all Products as fiduciary for AQ & store them in a manner which shows AQ as owner
    - ii. only to sell Products in the usual course of business
    - iii. sale on terms, at cost or for less than cost shall not be "in the usual course"
  - e. This clause shall be read down to avoid it creating a charge
  - f. A certificate purporting to be signed by an officer of AQ, identifying Products shall be conclusive evidence of AQ's title thereto.
3. **Limitation of Liability:**
  - a. The Customer agrees to limit any claim on AQ to the cost of re-supply of equivalent Products
  - b. AQ shall not be liable for any claim loss or expense arising which is made after 28 days from date of delivery (or at all once Products have been unpacked, on-sold or otherwise used or applied) after which there shall be deemed to have been unqualified acceptance
  - c. AQ will not be liable for any contingent consequential direct indirect special or punitive damage arising from any dealing with the Customer, whether due to negligence or otherwise & the Customer acknowledges this limit of liability & agrees to limit any claim accordingly
  - d. No other term, condition, agreement, warranty, representation or understanding whether express or implied other than these Terms, is made or given.
4. **Exclusions:**
  - a. No dealing between AQ & the Customer shall be or be deemed to be a sale by sample
  - b. If AQ publishes material concerning its business or prices, anything so published which is incompatible with these Terms is excluded
  - c. The Customer will rely on its own knowledge & expertise in selecting any Product for any purpose.
  - d. Any advice or assistance given for or on behalf of AQ shall be accepted at the Customer's risk in all things & shall not be or be deemed to be given as expert or adviser nor to have been relied upon by the Customer or anyone claiming through the Customer.
5. **Placement Of Orders:**
  - a. if any dispute arises over any order (including any question of identity, authority or telephone, facsimile, computer or e-mail order etc) the internal records of AQ will be conclusive evidence of what was ordered

- b. each order placed shall be & be deemed a representation made by the Customer at the time, that it is solvent & able to pay all of its debts as & when they fall due
  - c. failure to pay in accordance with these Terms shall be & be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representations & that the representations were unconscionable, misleading & deceptive
  - d. when an order is placed, the Customer shall inform AQ of any material facts which would or might reasonably influence any decision by or on behalf of AQ to accept the order &/or grant credit in relation to it
  - e. Failure to do so shall create & be deemed to create an inequality of bargaining position, to constitute & be deemed the taking of an unfair advantage of AQ & be & be deemed to be unconscionable misleading & deceptive.
6. **Purchase Price:**
- a. All sales are made by AQ at its ruling price at time of delivery
  - b. government imposts, GST etc ("imposts") will be paid by the Customer
  - c. any AQ price list, estimate or quote excludes imposts unless expressly noted thereon.
7. **Ability to Supply:**
- a. The Customer agrees that AQ will not be liable for any delay in supply or availability of any Products & AQ may allocate Products to Customers at its unfettered discretion: eg: if demand exceeds available supply.
8. **Delivery: The Customer acknowledges & agrees**
- a. AQ accepts no responsibility for delivery but may elect to arrange delivery at its discretion without any liability & at the Customer's costs & responsibility in all things
  - b. AQ may elect to charge for any delivery
  - c. it shall be deemed to have accepted delivery & liability for Products immediately AQ notifies the Customer that any Products are ready for collection or they are placed with a carrier or delivered to the Customer's business premises, whether attended or not
  - d. a certificate purporting to be signed by an officer of AQ confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket
  - e. AQ will not be liable for delay failure or inability to deliver any Products
  - f. once notified that Products are ready for collection or delivery the Customer agrees to pay all costs of AQ in holding Products
  - g. to pay all costs & expenses arising from frustrated or delays in delivery
  - h. AQ may delay, cancel or suspend any delivery for any period or cancel any part of any agreement for sale without liability to anyone.
9. **Variation or cancellation of these Terms or any order must first be agreed in writing.**
10. **Pallets:**
- a. The Customer will return all pallets provided with Products & indemnifies AQ for the full replacement cost of any pallet not returned to promptly & in good order.
11. **Severability:**
- a. Any part of these Terms may be severed without affecting any other part.
12. **Other Terms & Conditions:**
- a. No terms & conditions sought to be imposed upon AQ shall apply, unless agreed in writing
  - b. AQ Terms & Conditions of Purchase will apply to any purchases from the Customer, to the exclusion of any Customer terms.
  - c. Interest will be charged on overdue accounts at the rate prescribed under the Penalty Interest Rates Act 1983 (Vic) rate, plus an additional 3%.

13. **Recovery Costs:**
  - a. The Customer will pay all the costs & expenses (on a full indemnity basis) incurred by AQ or its legal advisers, mercantile agents &/or other parties acting on AQ's behalf in respect of anything instituted or being considered against the Customer whether for debt, loss, damages, possession of any Products or otherwise.
14. **Attornment:**
  - a. To give effect to the Customer's obligation arising under these Terms, the Customer irrevocably appoints any solicitor of AQ as its attorney in all things.
15. **Retail Prices:**
  - a. Retail price books will be available to Resellers from AQ, which will list all current products available and recommended retail prices.
16. **Default:**
  - a. a) Upon any default or breach by the Customer of these Terms or of any other dealing or arrangement with AQ ("Default") AQ may at its discretion, retain all monies paid, call-up any monies unpaid, cease further deliveries, recover from the Customer all loss of profits arising &/or take immediate possession of any Product held by the Customer, without prejudice to any other rights & without being liable to any party
  - b. The customer agrees not to commence or continue or permit to be commenced or continued through it any suit or action against AQ whilst the customer is in Default.
17. **Jurisdiction:**
  - a. All contracts & dealings with AQ shall be deemed to be made in the State/Territory nominated by AQ & the Customer agrees to submit to the jurisdiction of the appropriate Courts in or nearest the Capital of that State/Territory.
18. **Description:**
  - a. AQ will have fulfilled its obligations upon having available for delivery Products (plus or minus 5%) which comply with the generic description of what was ordered.
19. **Credit Limit:**
  - a. If AQ grants any credit facility or nominates any credit limit, this is an indication only of its intention at the time. AQ can vary or withdraw any credit facility at its unfettered discretion, without liability to the Customer or any other party.
20. **Waiver:**
  - a. If AQ elects not to exercise any rights as a result of any Default, it shall not be or be deemed to be a waiver of any rights relating to any subsequent or other breach.