

**1. DEFINITIONS & INTERPRETATION**

**1.1 Definitions**

**BGC** means BGC (Australia) Pty Ltd (ACN 005 736 005) T/A BGC Cement.

**Chain of Responsibility** means the road transport laws contained in the *Road Traffic (Administration) Act 2008* (WA) and the *Road Traffic (Vehicles) Act 2012* (WA) and associated regulations, as amended from time to time, or any equivalent laws in other States.

**Consequential Loss** means loss beyond the normal measure of direct damages and includes without limitation and whether or not such loss would be within the normal measure of direct damages, indirect loss, loss of profit, loss of revenue, loss of business, loss of actual or anticipated savings, loss of bargain, loss of business reputation, loss of use, cost of capital or costs of substitute goods, facilities or services and loss of opportunity (including opportunities to enter into arrangements with third parties).

**Collection Ex-Works** means the supply of Products by BGC under this contract for collection by the Customer at the BGC site specified in the Order.

**Customer** means any person (including a body corporate) who acquires Products from BGC and as specified in the Order.

**Delivered** means the supply of Products, including freight and unloading of Products into a suitable storage facility at the Customer's site, as set out in the relevant Order.

**Delivery Location** means the site to which the Product(s) is to be delivered and as specified in the Order.

**GST** has the same meaning as given to that term under the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** means the following circumstances:

- (a) where the Defaulting Party enters into a compromise or arrangement (or announces one) under section 411 of the *Corporations Act 2001* (Cth);
- (b) where a managing controller is appointed over the whole (or substantially the whole) of the Defaulting Party's property; or
- (c) where the Defaulting Party enters into voluntary administration.

**Metropolitan Region** means an area generally bounded by

connecting lines between, and including, Two Rocks, Bullsbrook, Mundaring, Pinjarra and Mandurah (Dawesville Cut).

**Order** means an order for the supply of Products, whether made by the Customer accepting a Quote, or by BGC accepting a purchase order or similar document provided by the Customer to BGC or any other means.

**Personnel** means employees, agents suppliers or subcontractors.

**Products** means cement products supplied by BGC in accordance with any Order.

**Quote** means a quote (or similar document) provided by BGC to the Customer.

**Specifications** means any specifications and other information provided by the Customer to BGC for the manufacture and/or supply of Products.

**Terms** means the terms and conditions set out in this document.

**1.2 Interpretation**

- (a) Any reference to a document, law or regulation is a reference to that document, law or regulation as amended from time to time.
- (b) The Customer's terms and conditions, howsoever provided, do not form part of these Terms (even if any representative of BGC signs those terms and conditions and/or they are annexed to these Terms or any Quote or purchase order).
- (c) Any variation or changes to these Terms (other than an update to these Terms by BGC), whether to apply to all subsequent Orders, or any particular Order, may only be made if it:
  - (i) is in writing;
  - (ii) is signed by authorised managers of both parties; and
  - (iii) expressly states that it is a variation to these Terms, and

the parties agree and acknowledge that their representatives and employees that are not authorised managers as referred to in clause 1.2(c)(ii) above do not have the authority to vary these Terms, or to agree that these Terms do not apply to a supply to which these Terms would otherwise apply.

**2. QUOTES**

- (a) A Quote will remain valid for 30 days from the date on the Quote, unless otherwise stated in the Quote. Any extension of this period is at the discretion of BGC.
- (b) If an Order is placed by telephone, then the Customer shall check any documents sent to it by BGC confirming that Order, and unless the Customer informs BGC immediately of an error in the Order as recorded in that document, the Order shall be taken to be as set out in that document.
- (c) The Quote sets out the specific Products being quoted. Any change to any detail of the Order may result in a price change.

**3. ORDERS**

- (a) All Orders must set out the following details:
  - (i) Product quantity;
  - (ii) whether the Order is for Collection Ex-Works, or Delivered;
  - (iii) if the Order is for Collection Ex-Works, the BGC site from which the Products are to be collected;
  - (iv) if the Order is Delivered, the Delivery Location;
  - (v) the date for Delivery or Collection Ex-Works of the Products; and
  - (vi) the price for the Products, determined in accordance with these Terms.
- (b) BGC reserves the right to accept or decline, in whole or in part, any Order placed by the Customer.
- (c) A minimum of two (2) full working days' notice is required for all Orders to be delivered within the Metropolitan Region. BGC may require a minimum of 72 hours' notice for all other orders (**Minimum Order Notice**).
- (d) The Customer must pay the agreed price, or where no price is agreed then the reasonable costs of all variations to Orders in addition to the price quoted where variations are received after the Minimum Order Notice and BGC incurs costs as a result. The reasonable costs of a variation will be calculated by BGC at reasonable rates for labour and materials and will include a reasonable administration charge, allowance for overheads and profit and other costs incurred by BGC as a result of the variation. BGC will take reasonable steps to limit these costs once informed of the variation.

**4. PERFORMANCE**

- (a) BGC will be responsible for the supply of the Products:
  - (i) in accordance with each Order and applicable Australian standards;
  - (ii) for supplies that are Collection Ex-Works, at BGC's premises; and
  - (iii) for supplies that are Delivered, to the Delivery Location.
- (b) BGC will carry out and complete its obligations to an industry standard of workmanship of a reasonably competent contractor.

**5. QUALITY**

- (a) The Customer warrants that their Specifications (if any) are accurate, correct, complete and suitable in all respects for the Customer's intended use of the Products, and acknowledges that BGC will rely on these Specifications in selecting, manufacturing, supplying or making recommendations in relation to the Products. If any Specifications provided are incorrect or incomplete, BGC will not be liable for any resulting defects in the Products or any damage or defect caused by the Products, save and except damage caused by a negligent act or omission of BGC.
- (b) If the Customer has any doubts as to the accuracy or completeness of the information provided to BGC, they must ensure that BGC is provided with full, correct information (and the opportunity to revise any prices or recommendations) prior to accepting any Quote.
- (c) BGC maintains a quality assurance system certified to AS/NZS ISO 9001:2000 Quality Management System [Certificate No. QEC2955/04].
- (d) BGC Cement warrants that the Products supplied comply with Australian Standard AS 3972-2010 General Purpose and Blended Cements.
- (e) The slag is manufactured and supplied in accordance with Australian Standard AS 3582.2 -2016 Supplementary Cementitious Materials - Slag - Ground Granulated Iron Blast-Furnace.

- (f) Un-ground granulated slag is supplied on an "as-is" basis, and no guarantees are provided as to its suitability for a sub-course material.
- (g) Safety Data Sheets for BGC Cement products are available from BGC's websites.
- (h) BGC shall not be liable for, and is hereby indemnified by the Customer in respect of, any claims made by the Customer or any third party which arise out of any contamination of the Products, or any defects which may develop in the Products due to:
  - (i) faulty handling, placing, curing or storing of the Products by the Customer or any other person other than BGC or BGC's Personnel;
  - (ii) the addition of materials to the Products either before or after discharge from the delivery vehicle without the written authority of any authorised representative of BGC; or
  - (iii) the addition of any additives to the Products at the request of the Customer, unless an authorised representative of BGC confirms in writing that the requested additives are approved.
- (i) Products contain materials of BGC's choice unless otherwise stated. The strength characteristics of the Products are those shown on the face of the delivery docket. Customers should ensure that the Products' characteristics shown are in accordance with the requirements of the Specification at the time of delivery or collection.
- (j) The Customer acknowledges that BGC does not guarantee colour consistency for any Products supplied as colour variations can be caused by various factors which are beyond BGC's control, including but not limited to, the amount of water added on site, time and techniques of finishing, the time taken between pours, the age of the Product, the curing environment and the sources of raw materials and pigments.

**6. DELIVERY, STORAGE & RISK**

For Delivered Products

- (a) The Customer acknowledges that all times quoted for delivery are estimates only, and BGC will not be liable for any failure to deliver or for delay in delivery of cement occasioned by inclement weather, road

closures, traffic conditions, strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause beyond BGC's control.

- (b) The Customer shall not be relieved of any obligation to accept or pay for cement by reason of any delay in delivery
- (c) Delivery must be accepted by the Customer and unloading or discharge completed as soon as possible after the arrival of the delivery vehicle at the Delivery Location. If unloading or discharge is not completed within 45 minutes after arrival at the Delivery Location waiting time in excess thereof will be charged at the rates published on BGC's website from time to time save and except delay caused by BGC.
- (d) It is the Customer's responsibility to check the delivery docket and confirm that it is in accordance with the Customer's requirements before any Products are unloaded. If delivery of Products made in accordance with the description on the face of the docket is accepted, the Customer shall be liable to pay for it and shall have no claim against BGC for the Products not being as ordered.
- (e) Delivery will be made to the loading dock, the curb alignment or edge of the road unless previously agreed. If the Customer requires the delivery vehicle or forklift to leave a public road to gain access to the discharge or unloading location, the Customer shall ensure that:
  - (i) the vehicle or forklift has a safe, suitable and unrestricted route between the kerbside nearest to the delivery address and the discharge or unloading location;
  - (ii) the Delivery Location and any storage facilities used to store the Products are suitable for their purpose (including unloading, receipt and storage of the Products), and meet all relevant Australian Standards, and that the Products are stored and used in accordance with Australian Standards and BGC's and any third party manufacturer's instructions (including without limitation any safety instructions and data); and
  - (iii) indemnify BGC against any loss, damage, cost or liability arising from events occurring while gaining such access unless solely caused by BGC's negligent act or omission.

For Products Collected Ex Works

- (f) The Customer must ensure that the Customer's motor vehicle used to collect the Products is maintained in a mechanically sound condition that is fit for the purpose of collecting and transporting the Products.
- (g) BGC may refuse to release the Products to the Customer where BGC has reasonable grounds to believe that the Customer's motor vehicle is not fit for the purposes of collecting and transporting the Products.
- (h) It is the Customer's responsibility to check any docket provided to them by BGC and confirm that it is in accordance with the Customer's requirements before any Products are loaded into the Customer's motor vehicle. If the Customer accepts the Products in accordance with the description on the face of the docket, the Customer shall be liable to pay for it and shall have no claim against BGC for the Products not being as ordered.
- (i) The Customer must comply with all relevant Laws, including without limitation, all safety laws applicable to the supply of Products and Chain of Responsibility obligations with respect to the collection of the Products.
- (j) The Customer must ensure that the Customer's Personnel wear at least the minimum PPE required by BGC at all times when on BGC premises. Minimum PPE required by BGC includes, but is not limited to, BGC approved safety footwear, high visibility vests and shirts and safety glasses that comply with AS/NZS 1337.1:2010.
- (k) Customer Personnel are responsible for ensuring that their motor vehicle used to collect the Products is ready for immediate loading. Due to chain of responsibility requirements no person (including any BGC Personnel) is to assist the Customer to secure and position a load unless they are the Customer's Personnel who are covered by appropriate insurance. To this end BGC Personnel are expressly prohibited from repositioning any Products or items on any tray or motor vehicle provided by the Customer.
- (l) BGC reserves the right to direct the Customer's Personnel to stay in a vehicle cab for any reason, including if there are safety concerns regarding the safe loading of a motor vehicle.

## 8. GST

- (m) During loading at BGC premises, no person, other than BGC Personnel or Customer Personnel, who are covered by the appropriate insurance, are physically allowed on the loading floor or to exit a motor vehicle cab.

## Risk

- (n) Risk in the Products passes to the Customer upon delivery to the Delivery Location for Delivered Products or collection by the Customer for Products collected Ex Works, whether or not the Products have been paid for in full.
- (o) BGC will use reasonable endeavours to handle the Products safely and with all due care. However, BGC will not be responsible for any loss or damage to the Products upon delivery to the Delivery Location for Delivered Products or collection by the Customer for Products collected Ex Works.

## 7. PAYMENT

- (a) The Customer agrees to pay the amount(s) specified in any Quote accepted by the Customer before delivery/collection or in any tax invoice issued to the Customer (for approved accounts only). Terms of payment are cash before delivery or collection unless the Customer has entered into a credit arrangement with BGC, in which case the terms of that credit arrangement will apply.
- (b) A surcharge may be payable for all deliveries before 5.00am (WST) or after 3.00pm (WST) on weekdays or for deliveries after 12pm (WST) on Saturdays and all day Sundays and Public Holidays.
- (c) BGC reserves the right to change its price list at any time upon notice to the Customer (which notice shall be the publishing of updated price lists on BGC's website). The price displayed at the time the Customer places an Order will continue to apply even if the price changes before the Customer's order is accepted by BGC.
- (d) For any Products ordered for delivery and later cancelled the Customer shall, on demand, pay to BGC all reasonable expenses incurred up to the time of cancellation. BGC's statement of expenses shall be prima facie evidence of its contents.

## 8. GST

- (a) Any expression used in this clause 8 and which is defined in the GST Act has the same meaning in this clause 8.
- (b) Unless otherwise expressly stated, all amounts stated to be payable by the Customer under these Terms are exclusive of GST. If GST is imposed on any supply made under or in accordance with these Terms, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice by the supplier to the recipient.

## 9. TERMINATION

### 9.1 Termination by the Customer for Default

If BGC breaches these Terms in a material respect, and BGC does not rectify that default within 7 days from the Customer requiring BGC to remedy it, the Customer may terminate these Terms at any time provided the event of default is continuing, by written notice to the BGC, taking immediate effect.

### 9.2 Termination by BGC for Default

BGC may terminate these Terms by written notice to the Customer taking immediate effect, if any of the following occurs:

- (a) the Customer breaches these Terms in a material respect and the Customer does not rectify the breach within 14 days after notice from BGC requiring the Customer to remedy it;
- (b) the Customer or any of the Customer's Personnel commits an act which constitutes negligence, wilful misconduct, fraud or dishonesty for any matter undertaken or required to be undertaken under these Terms;
- (c) the Customer or the Customer's Personnel act in a manner which BGC reasonably considers to be substantially prejudicial or harmful to BGC; or
- (d) an Insolvency Event occurs with respect to the Customer.

### 9.3 Termination

- (a) A party (**Non-defaulting Party**) may terminate these Terms at any time by written

notice to the other party (**Defaulting Party**) if:

- (i) a judgement, order or encumbrance is enforced, or becomes enforceable upon any of the Defaulting Party's property;
- (ii) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 days;
- (iii) the Defaulting Party suspends or delays payment of its debts;
- (iv) the Defaulting Party is unable to pay its debts as and when they fall due or goes into bankruptcy;
- (v) the Defaulting Party (being a corporation) has a liquidator appointed to it, or has a mortgagee of the corporation assume control of, or a receiver appointed to any of the assets or undertakings of the Defaulting Party (not being an Insolvency Event);
- (vi) the Defaulting Party (being a corporation) is deregistered; or
- (vii) the Defaulting Party breaches any credit agreement with BGC; or
- (viii) to the extent permitted by law, the Defaulting Party is subject to an Insolvency Event.

(b) These Terms may be terminated by BGC at any time effective immediately upon the giving of notice if a change occurs in the Purchaser's circumstances which, in BGC's reasonable opinion, may have a material adverse effect on the Purchaser's ability to comply with its obligations under these Terms. Examples include (but are not limited to):

- (i) a change in the Purchaser's financial position up and until an Insolvency Event occurring;
- (ii) the Purchaser factoring its debts; or
- (iii) the Purchaser becoming party to litigation, arbitration or any other administrative proceeding.

## 9.4 Consequential Loss

Where the Customer acquires Products from BGC for the purpose of on-supplying to another person ("**consumer**"), BGC shall not be liable for any consequential loss suffered by the Customer unless otherwise stated in a contract or agreement. However, to the extent required by the Australian Consumer Law, BGC may be liable for any consequential loss suffered by the consumer.

## 10. LIABILITY

- (a) In the event any Products supplied by BGC under these Terms are defective, the liability of BGC (if any) shall (to the extent permitted by law) be limited to replacement of such defective Products.
- (b) To the extent permitted by law, BGC's liability under any condition or warranty which cannot legally be excluded is limited to:
  - (i) the replacement of the Products;
  - (ii) the payment of the cost of replacing the Products; or
  - (iii) the payment of the cost of having the Products repaired (if applicable);
- (c) Subject to clause 10(d), if any Products to be supplied by BGC under these Terms fail to conform in a material respect with the Specifications then BGC is not liable unless the Customer notifies BGC of the failure within:
  - (i) 45 days after the date of delivery of bulk Products; or
  - (ii) for bagged products, the lesser of the following:
    - (A) 45 days after the use of bagged Products; or
    - (B) 2 months from delivery or collection.
- (d) The liability of BGC is in any case limited as set out in clause 10(b).
- (e) Nothing in these Terms operates to exclude or restrict any right the Customer has under any statute, including under the Australian Consumer Law, except to the extent permitted by that statute. BGC will comply with its obligations in respect of any such warranty, and any express warranty or guarantee given by BGC is in addition to those statutory warranties.

## 11. DISPUTE RESOLUTION

- (a) If a dispute or difference arises between BGC and the Customer in respect of any fact, act, matter or thing arising out of or in any way connected with these Terms and one party requires the dispute or difference to be resolved, then that party will promptly give the other party a written notice giving details of the dispute.
- (b) Within 14 days of a party receiving a notice BGC and the Customer and/or their delegates must meet and attempt to resolve the dispute in good faith.
- (c) If, within 14 days of the meeting, the dispute is still not resolved, then, either party may proceed to litigation.
- (d) In the event of any dispute arising between BGC and the Customer, the Customer shall pay BGC the amount claimed by BGC, to be held by BGC until determination of the dispute.

## 12. FORCE MAJEURE

- (a) A party (**Affected Party**) is not liable for any delay or failure to perform an obligation (other than to pay money) under these Terms caused by an act of God, fire, war, insurrection or other armed conflict, riot, vandalism or sabotage, strike, lockout, ban, transport or port accident or congestion, pandemic, epidemic, quarantine of persons or goods, limitation of work or other industrial disturbance or any law, rule, regulation, order, requirement or restraint imposed by any government or governmental agency whether local, state, national or international (other than an order, requirement or restraint resulting from the Affected Party's breach of any law, permit or authorisation).
- (b) The Affected Party must notify each other party as soon as practical of any anticipated delay or failure caused by an event specified in clause 12(a) (**Event**).
- (c) The performance of the Affected Party's obligation is suspended for the period of delay caused by the Event to the extent performance is prevented by the Event from the date notice is given under clause 12(b) and any such non-performance or delay in performance of this contract will not be a breach of the contract.
- (d) Any party may terminate this contract at the expiration of not less than 7 days' notice to the

other party if prevention of performance of a material obligation by an Event, or a delay caused by the Event, exceeds 90 days.

- (e) If a party terminates this contract under clause 12(d), all money previously paid under this contract for which no goods, services or other consideration has been provided must be refunded.
- (f) If a party terminates this contract under clause 12.1(d):
  - (i) all money previously paid under these Terms for which no goods, services or other consideration has been provided must be refunded; and
  - (ii) each party shall have no claim against the other arising from the termination, but shall retain all rights and claims arising prior to the termination.

subject matter of these Terms as at the date of these Terms. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by these Terms and has no further effect.

- (f) BGC may collect the Customer's personal information for the purpose of supplying the Products and keeping a record of transactions on BGC's file. Personal information can include sensitive health information as required by BGC from time to time. BGC's Privacy Policy can be found at [www.bgc.com.au/](http://www.bgc.com.au/).
- (g) The Customer agrees that BGC may use a tracking device or other surveillance device at BGC's premises, and in relation to the Customer, in the course of the Customer collecting the Products from BGC's premises.

## 13. GENERAL

- (a) These Terms are governed by and are to be construed according to the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.
- (b) If any part of these Terms is, or becomes, void or unenforceable, that part is, or will be, severed from these
- (c) Terms so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.
- (d) A failure to exercise or delay in exercising any right, power or privilege by any party will not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of that right, power or privilege, or the exercise of any right, power or privilege. A purported modification, variation or amendment of these Terms or any waiver of any rights of any party shall not have any force or effect unless and until the same is in writing, executed by the parties or, in the case of a waiver, is executed by the party whose rights are thereby waived.
- (e) These Terms constitute the entire agreement between the parties with respect to the subject matter of these Terms and contains all of the representations, warranties, covenants and agreements of the parties in relation to the