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**BATHURST  
CONCRETE  
PUMPING**



EVER-READY CONCRETE PTY. LIMITED

## TERMS OF TRADE

The following Terms of Trade (Conditions) shall apply to and form part of any contract for the provision of the Services by Ever-Ready Concrete Pty Ltd Concrete Pty. Ltd (ACN 056 748 808) ("Ever-Ready") to the Customer. The Customer agrees that prior to placing an order with Ever-Ready, the Customer has read and agreed to the terms and conditions as set out hereunder:

### 1. Definitions

- 1.1 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, or other form as provided by the Ever-Ready to the Customer;
- 1.2 "Guarantor" means the person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis;
- 1.3 "Services" shall mean all Services supplied by Ever-Ready to the Customer; and
- 1.4 "Price" shall mean the price payable for the Services as agreed between Ever-Ready and the Customer in accordance with clause 3 of these Conditions.

### 2. Quote & Acceptance

- 2.1 Where Ever-Ready has given the Customer an estimate and or quote:
  - (a) Ever-Ready need not supply the Customer until the estimate and or quote has been accepted by the Customer;
  - (b) The Customer shall accept the estimate and or quote by instructing (in writing) by way of an email and or post or official order making specific reference to Ever-Ready's estimate and or quote number and or issuing a copy of the order to Ever-Ready;
  - (c) Quotes are valid for thirty (30) days only, unless an extension has been authorised by Ever-Ready; and
  - (d) Acceptance by the Customer of the quote will constitute acceptance by the Customer of these Terms and Conditions. In acceptance of the quote, the Customer warrants that it has not relied on any representation by Ever-Ready and its employees and agents other than as supplied in writing in the quote.
- 2.2 The Customer shall give Ever-Ready not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Ever-Ready as a result of the Customer's failure to comply with this clause.
- 2.3 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.

### 3. Price and Payment

- 3.1 The Price shall be Ever-Ready's quoted Price (subject to clause 3.2) which shall be binding upon Ever-Ready. The Price shall be exclusive of GST and other taxes and duties that may be applicable.
- 3.2 Ever-Ready reserves the right to change the Price in the event of a variation to Ever-Ready's quotation, subject to Ever-Ready giving the Customer prior notice of the intended or required variation. Any such variation from the plan of the scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties beyond the reasonable control of Ever-Ready) will be detailed in writing and charged for on the basis of Ever-Ready's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 Invoices will be generated weekly. Payment must be made in full within 30 days of the date of invoice unless otherwise advised in writing by Ever-Ready. Time for payment for the Services shall be of the essence.
- 3.4 Payment will be made by cash, cheque, bank cheque, credit card, direct credit or by any other method as agreed to between the Customer and Ever-Ready. Should a payment be made by credit card, Ever-Ready Concrete reserves the right to charge an additional fee of 2.2% to cover administration and merchant card fees
- 3.5 Ever-Ready may require a deposit from the Customer in specific circumstances and if a deposit is so requested by Ever-Ready the Customer acknowledges Ever-Ready is under no obligation to undertake any works as requested by the Customer, until the deposit is received by Ever-Ready in full and when all details pertaining to contract are finalised. In the event of default as to payment owing to Ever-Ready on the part of the Customer, Ever-Ready shall be entitled to apply any deposit paid to the outstanding amount.
- 3.6 The Customer must pay to Ever-Ready any costs, expenses or losses incurred by Ever-Ready as a result of the Customer's failure to pay to Ever-Ready all sums outstanding as owed by the Customer to Ever-Ready, including without limiting, the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor-client basis.

### 4. Customer's Responsibilities

- 4.1 It is the Customer's responsibility to ensure that the work site for the performance of the Services ("work site") has been suitably prepared (in the reasonable opinion of Ever-Ready) prior to the performance of the Services by Ever-Ready, including but not limited to the following requirements:
  - (a) arranging for the work site to be free of all obstacles;
  - (b) ensuring that the work site is level and will withstand the performance of the Services;
  - (c) ensuring that there is adequate access to the work site, and more specifically that Ever-Ready's vehicles can enter and leave the work site without difficulty;

- (d) ensuring that the necessary equipment and workers (of the Customer) are available at the specified time that Ever-Ready will perform the Services;
- (e) ensuring that there is a water supply in adequate quantity within a reasonable distance of the the work site; and
- (f) ensuring that its contractors, agents and employees comply with standard industry practice in respect of using appropriate curing methods in respect of the Services (or goods arising from the Services) and taking into account prevailing weather conditions.

## 5. Damages

- 5.1 Ever-Ready shall not be liable for any loss or damage caused in accessing the work site beyond reasonable control of Ever-Ready (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas).

## 6. Retention of Title

- 6.1 Ever-Ready and the Customer agree that ownership of the Services shall not pass until:
- (a) the Customer has paid Ever-Ready all amounts owing for the Services; and
  - (b) the Customer has met all other obligations due by the Customer to Ever-Ready in respect of all contracts between Ever-Ready and the Customer.
- 6.2 Receipt by Ever-Ready of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Ever-Ready's ownership or rights in respect of the Services shall continue.

## 7. Customer's Disclaimer

- 7.1 Subject to clause 11.1, to the maximum extent permitted by law, the Customer hereby disclaims any right to rescind, or cancel the contract with Ever-Ready or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by Ever-Ready and the Customer acknowledges that the Services are bought relying solely upon the Customer's skill and judgment.

## 8. Inspection on Completion

- 8.1 Without limiting the Non-exclusionary Rights in clause 11, the Customer shall inspect the job site on completion and shall within 5 working days of completion (time being of the essence) notify Ever-Ready of any alleged defect, errors, omissions or failure to comply with the description or quote. If the Customer believes the Services are defective in any way, the Customer must afford Ever-Ready a reasonably opportunity to inspect the Services. If the Customer fails to comply with the timeframe and these conditions, the Services shall be deemed as in accordance with the description of quote and the Customer, to the maximum extent permitted by law, hereby releases Every-Ready any claim, loss or damage in respect of the Services. For defective Services which have been notified within the above timeframe and in accordance with the conditions herein, the Customer's remedies, to the maximum extent permitted by law, are limited to either (at Ever-Ready's absolute discretion) replacing the Services, repairing the Services or refunding the price of the Services.

## 9. Default & Consequences of Default

- 9.1 If payment in respect of an invoice is not received by the due date, Ever-Ready will be entitled to charge interest on the outstanding amount at the rate of 9% higher than the Reserve Bank of Australia's cash rate (determined at the due date) from the due date until the date of full payment.

- 9.2 Without prejudice to any other remedies Ever-Ready may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Ever-Ready may suspend or terminate the supply of Services to the Customer and any of its other obligations under the Conditions. Ever-Ready will not be liable to the Customer for any loss or damage the Customer suffers because Ever-Ready has exercised its rights under this clause.

- 9.3 Without prejudice to Ever-Ready's other remedies at law, Ever-Ready shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Ever-Ready shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to Ever-Ready becomes overdue, or in Ever-Ready's opinion the Customer will be unable to meet its payments as they fall due;
- (b) the Customer ceases to trade, becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## 10. Cancellation

- 10.1 Ever-Ready may cancel the Services at any time before the Services are first delivered or performed by giving written notice to the Customer. On giving such notice Ever-Ready shall repay to the Customer any sums paid in respect of the price. Ever-Ready shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 10.2 If the Customer cancels the Services, since Ever-Ready may otherwise incur substantial irrecoverable sunk costs in respect of the Services, the Customer shall reimburse Ever-Ready for any costs, expenses or losses already incurred by Ever-Ready up to the date of cancellation.

## 11. Liability and Indemnity

- 11.1 The parties acknowledge that, under applicable State and Commonwealth laws (including the Competition and Consumer Act 2010 (Cth)), certain conditions and warranties may be implied in these Conditions and there are rights and remedies conferred on the Customer in relation to the provision of the goods or of services which cannot be excluded, restricted or modified by the Agreement ("Non-exclusionary Rights").
- 11.2 Ever-Ready disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-Exclusionary Rights. To the extent permitted by law, the liability of Ever-Ready for a breach of a Non-Exclusionary Right is limited, at Ever-Ready's option, to the supplying of the goods and/or any services again or payment of the cost of having the goods and/or services supplied again.
- 11.3 Despite any other provision of these Conditions, neither party shall be liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the other party for:
- (a) any increased costs or expenses;
  - (b) any loss of profit, revenue, business, contracts or anticipated savings;
  - (c) any loss or expense resulting from a claim by a third party; or
  - (d) any special, indirect or consequential loss or damage of any nature whatsoever (including those caused by Ever-Ready's failure to complete or delay in completing the Services).

- 11.4 Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond their reasonable control.
- 11.5 To the maximum extent permitted by law, Ever-Ready shall not be liable for any claim, liability, loss or damage whatsoever caused or contributed to by the Customer or its contractors, agents or employees using inappropriate curing methods in respect of the Services (or goods arising from the Services) or failing to take into account prevailing weather conditions.
- 12. Privacy Act 1988**
- 12.1 The Customer and/or the Guarantor/s agree for Ever-Ready to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by Ever-Ready.
- 12.2 The Customer and/or the Guarantor/s agree that Ever-Ready may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the credit worthiness of the Customer and/or Guarantor/s.
- 12.3 The Customer consents to Ever-Ready being given a consumer credit report to collect an overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 12.4 The Customer agrees that personal credit information provided may be used and retained by Ever-Ready for the following purposes and for other purposes as shall be agreed between the Customer and Ever-Ready or required by law from time to time:
- (a) The provision of Services; and/or
  - (b) The marketing of Services by Ever-Ready, its agents or distributors in relation to the Services; and/or
- (c) The analysing, verifying and/or checking of the Customer's credit, payment and/or status in relation to provision of Services; and/or
  - (d) The processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (e) The enabling of the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.
- 12.5 Ever-Ready may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
  - (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 13. General**
- 13.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.2 These Conditions and any contract between the parties are governed by the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales in respect of any proceedings in connection with these Conditions.
- 13.3 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by Ever-Ready.
- 13.4 Ever-Ready may license or sub-contract all or any part of its rights and obligations under the Conditions without the Customer's consent.
- 13.5 The Customer may not assign or transfer its rights or obligations under these Conditions without Ever-Ready's consent (which shall not be unreasonably withheld).
- 13.6 The failure by Ever-Ready to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Ever-Ready's right to subsequently enforce that provision.

