


STANDARD PURCHASE TERMS

Holcim (Australia) Pty Limited
(ACN 099 732 297)

Valid from 01 November 2016



These are the Standard Purchase Terms referred to in the Purchase Order between Holcim (Australia) Pty Limited or any of its wholly owned subsidiaries (**Holcim**) and the Supplier named on the Purchase Order (**Supplier**) (**the Purchase Order**).

1. Agreement

Unless otherwise agreed in writing, the agreement between the parties (**Agreement**) consists of the Purchase Order, these Standard Purchase Terms and any agreement in writing between the parties (which has priority over these Standard Purchase Terms to the extent of any inconsistency), but excluding any terms and conditions expressed in any document of the Supplier, unless Holcim has expressly accepted those terms and conditions in writing.

2. Acceptance

- a) The Supplier is deemed to have accepted the Agreement upon acknowledgement of a Purchase Order or upon any supply pursuant to a Purchase Order, whichever occurs first.
- b) In the case of any inconsistencies between these Standard Purchase Terms and a Purchase Order, the Purchase Order will prevail.

3. Price and Payment

3.1 Price

- a) Each Purchase Order is placed on a firm price basis in accordance with the price(s) of the goods (**Goods**) and/or services specified in the Purchase Order (**Goods or Services**) and is not subject to any increase in price without the prior written agreement of Holcim.
- b) The price(s) must include all costs payable by Holcim for the Goods or Services, including (where applicable):
 - i. delivery charges to the destination stated on the Purchase Order (**Destination**), if delivery is specified on the Purchase Order;

- ii. the unloading of the Goods by the Supplier at the Destination, if delivery is specified on the Purchase Order;
- iii. any applicable taxes, duties, and fees payable;
- iv. insurance;
- v. packaging; and
- vi. the use or supply of pallets and containers.

3.2 Payment

- a) The Supplier must provide monthly statements of account to Holcim and invoice Holcim promptly in respect of each delivery. Holcim will pay each invoice within 60 days after the end of the month in which the tax invoice is dated unless it notifies the Supplier of an error or a dispute in relation to the invoice or the Goods or Services supplied. Such notice will be given to the Supplier within a reasonable time after the error or dispute has been identified by Holcim and will detail the nature of the error or dispute. The Supplier will pay undisputed portion of the invoice. Within 21 days after receipt by the Supplier of the notification of the dispute the parties will meet to discuss and resolve the dispute.
- b) The tax invoice must comply with Australian Tax Office requirements and identify:
 - i. the Supplier's Australian Business Number; and
 - ii. the GST for each component of the Goods or Services supplied pursuant to the Purchase Order.

3.3 Deductions

Without prejudice to other rights under the Agreement, Holcim may deduct from any amount which may be or become payable to the Supplier under the Agreement any amount due from the Supplier to Holcim.

4. Shipment and delivery

- a) The Goods must be appropriately packed for shipment and shipped to the address specified on the Purchase Order in accordance with any shipping instructions issued by Holcim in conjunction with the Purchase Order.
- b) All of the Goods specified in the Purchase Order must be delivered:
 - i. in accordance with the Purchase Order;
 - ii. on or before the delivery date specified on the Purchase Order;
 - iii. to the delivery destination specified on the Purchase Order;
 - iv. accompanied by a delivery note stating the date of issue, Supplier's details, the Goods delivered and the Purchase Order details;
 - v. in good condition and without damage; and

- vi. with copies of all relevant engineering details, designs, evidence of compliance with applicable standards and other documentation reasonably requested by Holcim.
- c) If the quantity of Goods received exceeds the amount ordered, unless Holcim wishes to retain the Goods on terms agreed with the Supplier, Holcim will return the excess at the Supplier's expense.
- d) Delivery of Goods will not have occurred for the purposes of the Agreement, unless Holcim has acknowledged receipt of any Goods which are delivered.

5. Inspection and rejection

- a) Holcim or its nominee may from time to time inspect all work in progress associated with the supply of Goods or Services.
- b) The purchase of the Goods is subject to inspection and approval (acting reasonably) by Holcim or its authorised representative within a reasonable time after delivery. Where any Goods are not in accordance with the Agreement, Holcim reserves the right to either require correction or replacement of such Goods or, where reasonable in the circumstances (including, without limitation, in the case of material or repeated non-conformances) Holcim may reject and return such Goods.
- c) Goods rejected will be held by Holcim at the Supplier's risk and cost, for no more than 60 days pending the Supplier's instructions (after which Holcim may return the defective Goods at the Supplier's cost).
- d) The Supplier must pay the cost to Holcim of rejecting and removing or returning any defective Goods to the Supplier.

6. Title and risk

- a) Title to and, subject to clause 5(c), all risk associated with the Goods will pass to Holcim on delivery of the Goods in accordance with the Agreement.
- b) The Goods are at the Supplier's risk until risk passes to Holcim in accordance with the Agreement.

7. Insurance

- a) The Supplier must take out and maintain at its own expense:
 - i. a workers' compensation insurance policy;
 - ii. a public liability insurance policy for not less than \$20 million in aggregate;
 - iii. a product liability insurance policy for not less than \$10 million in aggregate (if Goods are supplied by the Supplier); and
 - iv. if Services are supplied by the Supplier, a professional indemnity insurance policy for not less than \$5 million in aggregate.
- b) All insurance must be current during the period in which Goods or Services are supplied.

8. Warranties

- a) The Supplier warrants that:
- i. the Goods or Services are of merchantable quality and free from any defect of material or workmanship;
 - ii. the Goods will comply with all specifications provided by Holcim;
 - iii. any services are provided with due care and skill;
 - iv. the Goods or Services are fit for the purpose for which goods or services of the same kind are commonly supplied and for any other purpose made known to the Supplier;
 - v. where sold by sample, the Goods in bulk correspond with the sample in quality;
 - vi. where sold by description, the Goods correspond with the description;
 - vii. the Goods carry any applicable manufacturer's warranty, which passes to Holcim or the customer of Holcim, and the Supplier will either assign to Holcim, or hold on trust for Holcim and Holcim's customer, the benefit of any applicable warranty or guarantee that the Supplier has received from any supplier of the Supplier;
 - viii. the Goods are free from lien, charge, or any other encumbrance or security interest;
 - ix. the Goods or Services do not infringe any patent, trademark, trade name, copyright or other property right of any third party; and
 - x. it has obtained and will maintain all necessary licences, permits and consents that may be required in connection with the supply of the Goods or Services.
- b) These warranties apply in addition to any warranties implied by law, and are not a waiver of any such implied warranties.
- c) These warranties (express or implied) survive delivery, inspection, acceptance and payment by Holcim.

9. Intellectual Property

- a) All specifications, drawings, and other intellectual property furnished by Holcim to the Supplier or developed by the Supplier for the purpose of a Purchase Order are confidential, must not be disclosed or furnished to any third party without Holcim's prior written consent, and remain the property of Holcim.
- b) Any equipment paid for by Holcim for use in the fulfilment of a Purchase Order remains the property of Holcim, must be clearly marked as the property of Holcim, must be surrendered to Holcim on demand, and must not be used for any purpose other than the fulfilment of a Purchase Order without the prior written consent of Holcim.
- c) The Supplier assigns to Holcim all intellectual property rights the Supplier may have in Goods manufactured using property or intellectual property of Holcim.

- d) The Supplier must not, without the prior written consent of Holcim, advertise or publish the fact that the Supplier has entered into, or is supplying Goods or Services under, this Agreement.
- e) The Supplier agrees to take all reasonable steps to ensure that its officers, employees, contractors and agents comply with the obligations set out in this clause.

10. Confidentiality

- a) The Supplier acknowledges that it may obtain knowledge of or access to proprietary and confidential information of Holcim, and agrees to keep such information strictly confidential and not to use that information for any purpose other than fulfilling a Purchase Order.
- b) Clause 10 survives delivery, inspection, acceptance and payment by Holcim.

11. Cancellation

- a) Holcim reserves the right to cancel a Purchase Order or any part thereof if the Supplier fails to deliver the full amount of all Goods or Services ordered in accordance with the Agreement or otherwise fails to fulfil the Purchase Order in any other particular and the failure is not remedied within a reasonable period of Holcim notifying the Supplier of the failure.
- b) The Supplier releases Holcim from any and all claims against it in relation to cancellation of a Purchase Order under this clause except to the extent caused or contributed to by Holcim's negligence or unlawful act or omission.
- c) The Supplier must pay the cost to Holcim of removing or returning any Goods to the Supplier as a result of a cancellation under this clause.

12. Termination

- a) Without limitation to any other rights and remedies set out in the Agreement, if the Supplier or Holcim (**Breaching Party**) breaches or defaults in any of its material obligations under the Agreement, engages in any repeated breaches which when taken together constitute a material breach, or becomes insolvent or if a receiver, administrator, or other controller is appointed to the Breaching Party, then the other party may cancel the Purchase Order and the Agreement in whole or in part and shall have no continuing obligation to the Breaching Party. Where the Supplier claims that Holcim has failed to pay amounts due and payable under the Agreement, it will provide Holcim with written notice of the non-payment and provide Holcim with a reasonable opportunity to pay undisputed amounts. Termination of a Purchase Order or the Agreement will not affect the accrued rights and remedies of either party. Any terms that expressly or by implication continue after termination of the Purchase Order or Agreement will continue after termination.
- b) On termination of the Agreement, Holcim may remove, and the Supplier will give Holcim reasonable access and assistance to remove, any property of Holcim from the Supplier's facility.

13. Indemnities

- a) The Supplier agrees to indemnify and hold harmless Holcim in respect of all claims, losses and expenses in connection with the use of the Goods or Services by Holcim or any of its customers, or any other acts or omissions of the Supplier in connection with its obligations under the Agreement. The Supplier's liability to indemnify Holcim is reduced proportionally to the extent that Holcim has contributed to the claims, losses or expenses.
- b) Clause 13 survives delivery, inspection, acceptance and payment by Holcim.

14. Compliance

14.1 Practices and Procedures

The Supplier must comply, and warrants that it is aware of and complies, with Holcim's Policies and Procedures and ensure that each of its employees, agents and sub-suppliers (**Personnel**) also comply. Holcim reserves the right to monitor and/or audit the Supplier's compliance with Holcim's Policies and Procedures. "**Holcim's Policies and Procedures**" are:

- a) Holcim's latest procurement policies and procedures, including the Supplier Code of Conduct, copies of which are available at:

<http://www.holcim.com.au/about-us/procurement.html>

- b) The Holcim Safety, Health and Environmental (SHE) Contractor Management Handbook and Holcim's Health and Safety policies, copies of which are available at:

<http://www.holcim.com.au/sustainability/health-and-safety.html>

14.2 Compliance with Anti-Bribery and Corruption Legislation

It is expressly understood and acknowledged by the Supplier that Holcim has a policy of "zero tolerance" when it comes to corruption and bribery. Each party represents and warrants that it is knowledgeable about, and will comply with, all anti-corruption, anti-bribery, anti-trust and anti-money laundering laws and other criminal laws, rules and regulations applicable to the performance of this Agreement.

The Supplier warrants to Holcim that it has not made or offered to make, nor will it make or offer to make, any payment or transfer of money or anything of value to any Personnel of Holcim, to any state officials or representatives, state employees, officials or employees of any national or local authority or to any employees or representatives of any undertaking, company or enterprise, irrespective of whether operated or owned or financed by private or public entities or funds, to secure an improper advantage or benefit in relation to the matters contemplated by this Agreement.

The Supplier must establish and maintain appropriate anti-bribery and corruption policies, procedures and precautions.

The Supplier acknowledges and agrees that any breach of this clause 14.2 by the Supplier is deemed a material breach entitling Holcim to terminate the Agreement at any time with immediate effect.

14.3 Use of Damstra

Holcim has engaged Damstra Pty Ltd (**Damstra**) to manage its contractor compliance. Any Supplier with Personnel working at Holcim sites must register their organisation and their Personnel working on Holcim sites with Damstra and pay any fees associated with such registration. Any Supplier or Personnel who do not register will not be allowed to enter Holcim sites.

15. Notices

A communication under the Agreement is only effective if it is in writing, signed by or on behalf of the party giving it and it is received in full and legible form at the addressee's address or fax number.

16. General provisions

- a) The Supplier may not assign, delegate or subcontract the Agreement or any part of it without the prior written consent of Holcim.
- b) No waiver of a right or remedy under the Agreement is effective unless in writing and signed by Holcim, and shall not constitute a waiver of any other right or remedy under, or condition of, the Agreement.
- c) The Agreement is governed by the laws of New South Wales and the parties irrevocably and unconditionally submit to the jurisdiction of the courts of New South Wales.
- d) The Agreement may not be modified except with the written agreement of Holcim. No local, general, or other trade customs will be applied to alter the terms of the Agreement.
- e) The consent of Holcim to anything under the Agreement may be withheld in Holcim's absolute discretion.
- f) The Supplier must notify Holcim within 7 days of any change of more than 50% in the beneficial ownership or control of the Supplier.
- g) Any term of the Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of the Agreement is not affected.