



**CONDITIONS OF SALE**  
**Effective 1<sup>st</sup> February 2019**

NUCRUSH HEAD OFFICE  
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These 'Conditions of Sale' of Nucrush Pty Ltd (ABN 23 010 119 981) will be effective from **1<sup>st</sup> February 2019**.

**Definition and inconsistency**

1. In these Conditions of Sale:

"Conditions" means these Conditions of Sale (including the Special Conditions applicable to the type of goods being supplied);

"Company" means Nucrush Pty Ltd (ABN 23 010 119 981), and its related bodies corporate, (as defined in the Corporations Act 2001), whose business names and brands include (but are not limited to): Nucrush Quarries, Nucrush Group.

"Customer" means the customer placing an order and any agent or representative of that customer.

2. Placing of an order with the Company by the Customer for goods and/ or services indicates acceptance by the Customer of these Conditions for the provision of those goods and/or services. In the event of any inconsistency between these Conditions and any terms and conditions on the Customer's order, the Customer agrees that these Conditions shall prevail.

**Quotations and Prices**

3. Quotations are open for acceptance by the Customer for 30 days from the date of the quotation.
4. All prices quoted are strictly net of all discounts
5. Prices are subject to change without notice
6. All credit accounts NETT 30 days.

**Delivery and Surcharges**

7. All prices are for supply and/or delivery as applicable, during the Company's business hours, Monday to Friday, unless otherwise quoted in writing. Work by the Company outside of these hours will incur a surcharge.
8. Unless the quoted price is inclusive of delivery to a nominated delivery site, the Customer will be charged for delivery; please contact the Nucrush Weighbridge Sales Office for transport rates.
9. A minimum load surcharge will apply for delivery of loads smaller than the minimum load size for delivery of each particular type of goods.
10. A waiting time or hourly hire surcharge may apply when a delivery vehicle is unable to unload promptly and without delay upon arrival at the delivery site.
11. Goods will be delivered to the roadside adjacent to the delivery site. If at the Customer's request, the delivery vehicle leaves the road and enters the delivery site to unload, the Customer is responsible for providing suitable and safe access for the Company delivery vehicle and Company agents and contractors. In addition, the Customer agrees to indemnify the Company and its agents and contractors for all damage and injury to any person and to any public or private property which may result including any costs associated with enabling the delivery vehicle to leave the site, and the cost of any returned product as a result of the Customer failing to provide suitable and safe access to the delivery site.
12. No responsibility is taken by the Company for damage done to property above or below ground level after leaving public carriageway. All care is taken



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13. The Customer must be present at the delivery site and must sign the Company delivery docket to acknowledge that the products and quantities described on the delivery docket have been delivered and comply with the Customer's order and that the Customer also accepts any applicable delivery surcharges.
14. It is the Customer's responsibility to sign for delivered material. If at the time of delivery no one is in attendance, materials will be deposited and the Customer will remain responsible for the goods.
15. Where the Customer does not sign or is not available to sign the delivery docket, the signature of the driver on the delivery docket shall be prima facie evidence of delivery to the Customer of the products and quantities described on the delivery docket including any applicable surcharges.
16. If the goods are delivered on pallets, the pallets remain the property of the Company. The Customer may be charged for such pallets but, in that case, the Company will give a credit when the pallets are returned in good condition.

**Payment**

17. Unless prior arrangements for credit have been made, payment for goods and/or services is due in full before delivery. Where there is more than one load to be delivered, full payment must be made prior to delivery of all loads. Payment for surcharges must be made at the time they are incurred.
18. Payment terms for all credit accounts are as advised to the Customer at the time the credit account is opened, being "Net 30 days" (meaning the Company must receive payment in full on or before the last working day of the month following the date of supply. Any variation to these payment terms must be agreed in writing by the Company.
19. Acceptance by the Company of any late payment by the Customer exceeding the credit limit set by the Company shall not amount to a waiver by the Company of its right to payment "Net 30 days" nor is it an agreement to provide credit other than in accordance with these Conditions.
20. The Customer must pay the Company the cost of any bank fees arising from dishonoured cheques paid by the Customer to the Company, and must also pay an administrative charge and for any legal or other debt collection costs incurred by the Company in respect of overdue accounts.
21. The Customer must notify the Company in writing within 7 days of any change in the beneficial ownership of the Customer.
22. The Company may require the Customer to provide security for payment in a form acceptable to the Company prior to the supply of goods and/or services.
23. The Customer is not entitled to withhold any payment by way of retention unless the terms and conditions of the retention are agreed to in writing by the Company prior to supply.
24. The Company can vary or withdraw any credit arrangements at any time and without any liability whatsoever to the Customer or any party claiming through the Customer.
25. Terms of trading accounts are strictly nett cash 30 days after end of month delivery. Should this invoice remain unpaid after the above period, discount will be revoked and interest at the rate of 1.4% monthly will be charged.
26. The Company may charge the Customer interest on overdue amounts at the Reserve Bank of Australia's large business variable indicator rate (Reserve Bank Rate). The effective Reserve Bank Rate will be changed twice yearly as follows:
  - a. Reserve Bank Rate effective 1 April to 30 September = Reserve Bank Rate published for previous February;
  - b. Reserve Bank Rate effective 1 October to 31 March = Reserve Bank Rate published for previous August.
27. Where interest is charged, it will be calculated monthly on amounts outstanding from the date on which they were due and payable, until the Company receives full payment of the outstanding amounts.

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**Risk**

28. The Customer will become responsible for loss of or damage to the goods, except where the Company is at fault, immediately upon delivery of the goods to the nominated delivery site or the roadside adjacent to the delivery site or to a carrier nominated by the Customer.

**Title**

29. Goods supplied to the Customer remain the property of the Company until payment in full is received by the Company. The Customer acknowledges that until full payment is made, the Customer holds the goods as bailee of the Company and that a fiduciary relationship exists between the Customer and the Company.
30. Until payment is made, the Customer shall hold the goods in such a manner that they are clearly identifiable as the property of the Company. The Customer acknowledges that if it sells any of the Company's goods, it sells the goods as a fiduciary agent of the Company provided that such sales shall not give rise to any obligations on the part of the Company.

**Dispute**

31. If the Customer believes that the goods and/or services supplied do not conform with the order placed or that the price charged does not conform with the quotation given by the Company, the Customer shall notify the Company in writing as soon as practicable, detailing the way in which the goods or price do not conform.
32. Failure to give such notification within seven days of the date of supply or date of invoice (as applicable) shall raise the inference against the Customer that the goods are in accordance with the order and quotation.
33. The Customer shall be deemed to have accepted the goods as supplied if it fails to keep the goods in the condition they were in when supplied or declines a reasonable request from the Company to inspect the goods.

**Installation**

34. For goods supplied to a Customer who is undertaking the installation of those goods, the Customer agrees to indemnify the Company against any liability the Company may incur as a result of the failure of the Customer to follow generally accepted good practice, or due to a lack of ability, expertise, or skill with the particular type of goods being installed.

**Warranties**

35. The Company warrants that the goods delivered are those specified in the delivery docket and the goods delivered are owned by the Company, are free from third party claims, undisclosed securities and are of acceptable quality as defined in the Australian Consumer Law.
36. All other conditions, warranties and guarantees which would be imported into these Conditions by statute are negated except to the extent that such negation is specifically forbidden by statute.

**Limitation of Liability for Breach of a Condition or Warranty**

37. Pursuant to sections 64A and 276A of the Australian Consumer Law the following clause applies in respect of any of the goods and/or services supplied under this contract which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this clause will not apply if the Customer establishes that reliance on it would not be fair and reasonable.
38. The Company's liability in respect of breaches of expressed or implied conditions, and warranties and guarantees, other than the warranty as to title, undisturbed possession and undisclosed securities, is limited to
- where the Customer is a consumer (as defined in the Australian Consumer Law – "consumer") any one of the following as determined by the Company: the replacement of the goods or the supply of equivalent goods; or the repair of the goods; or the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired or
  - where the Customer has supplied the goods to a consumer: an amount equal to the lowest of the costs of the actions in paragraph a).
39. The Company will not be liable for any damage arising out of or in connection with, special, consequential, direct or indirect loss, damage, cost, expense, harm or injury suffered or incurred as a result of such a breach unless such liability is mandatorily imposed on the Company by statute, notably the Australian Consumer Law.



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40. In addition to Australian Consumer Law, the limitations of the Company's liability in respect of breaches of express or implied conditions and warranties as expressed in the previous clause shall be varied to the extent required to also limit the Company's liability to the extent permitted by relevant State and Territory legislation covering sale of goods and consumer protection.

**Termination and Suspension**

41. If the Company is not satisfied as to the Customer's ability to pay for the goods and/or services, it may suspend or terminate supply and shall not be liable in any way for any claim, damage, loss, expense or cost arising therefrom and all monies then outstanding by the Customer shall immediately become due and payable.

**Agreement**

42. These Conditions, the quotation (if any) and any other documents specified in the quotation, form the agreement between the Company and the Customer and any variations, alterations or additions must be acknowledged in writing by the Company.
43. The Company may make partial deliveries of the goods ordered and invoice the deliveries separately. The supply of goods and/ or services in more than one delivery shall be subject to separate agreements for the sale of each delivery.

**Severance**

44. In the event that it is held that one or more of these Conditions are not enforceable, the remaining Conditions shall apply.

**Force Majeure**

45. Unless otherwise stated in the quotation, penalties or charges for time delays by the Company will not apply; in the event that there is failure to deliver or any time delay in delivery.
46. Commencement of site works or completion of site works due to weather, fire, labour dispute, strike or other cause whatsoever beyond the Company's control or due to the inability of the Company to obtain raw materials from the source expected by the Company:
- The Company will not be liable for any loss or damage sustained by the Customer or by any other person by reason of any such delay or failure, and
  - The Company will be entitled to suspend deliveries for such period as it may think fit or terminate the agreement immediately after suspending deliveries and shall not be liable for any loss or damage sustained by the Customer or by any other person by reason of such suspension or termination.

**Privacy Policy**

47. Personal information provided by the Customer to the Company may be disclosed elsewhere within the Company. The Company will use this information to manage its business dealings with the Customer, for example:
- to provide the Customer with the products or services the Customer has requested;
  - to assess the Customer's credit worthiness, where relevant;
  - to manage the Customer's payments or accounts;
  - to inform the Customer of the Company's products and services including by electronic means;
  - to comply with the Company's legal obligations,
  - and may supply the Customer's information to contractors and advisers that help the Company to do this.
  - Individuals may access personal information held by the Company about them, subject to the Federal Privacy Act. For more information, please refer to the Privacy Policy of the Company at: [www.nucrush.com.au](http://www.nucrush.com.au)

## CONDITIONS OF SALE

### **Special Conditions applying to the sale and delivery of Quarry Products**

48. When quarry products are sold by volume rather than weight, the volume will be determined by the loose uncompacted volume as measured on the delivery vehicle at the time of loading at the quarry.
49. Upon request the Company will make the relevant quarry product available for inspection and sampling by the Customer prior to supply.
50. If quarry products are returned at the Customer's request, the Company reserves the right to charge for return cartage, handling and disposal costs.
51. Unless otherwise agreed by the parties, quarry products covered by Australian Standard AS2758, will comply with this standard.