



Terms and Conditions of Sale

Sunset Sleepers Terms and Conditions of Sale

1) DEFINITIONS

In the terms and conditions:

"Buyer" means the person to whom any quotation is made by Sunset Sleepers, any person offering to contract with Sunset Sleepers on these terms and conditions and any person who purchases Goods from Sunset Sleepers;

"Consequential Loss" means any loss or damage suffered by a party or any other person which is indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity;

"Defect" means a defect, flaw or imperfection in the Goods which prevents the Goods from being used for the purposes intended for such Goods or which makes the use of the Goods dangerous, but does not include anything which has been disclosed as a feature or limitation of the Goods by Sunset Sleepers prior to the date of purchase, or any defect, flaw or imperfection that is trivial or insubstantial;

"Goods" means all products and services agreed to be supplied by Sunset Sleepers to the Buyer under any contract, arrangement or understanding between Sunset Sleepers and the Buyer;

"Invoice" means the invoice issued by Sunset Sleepers to the Buyer setting out the amount to be paid by the Buyer; and

"Order" means any order for Goods placed by the Buyer with Sunset Sleepers, in whatever form;

"Sunset Sleepers" means Sunset Concrete Pty Ltd ACN 646 746 027 and its agents, servants and employees and any related bodies corporate as defined in the Corporations Act 2001 (Cth) (if such related body corporate is named as the party making or accepting the Buyer's order of Goods).

2) GENERAL

- a) Unless Sunset Sleepers otherwise agrees in writing, these are the only terms and conditions which apply to the sale of Goods by Sunset Sleepers and the Buyer agrees that these terms and conditions will in all circumstances prevail over any other document Order or other terms, including the Buyer's terms and conditions of purchase (if any).
- b) These terms and conditions supersede and exclude all prior and other discussions, dealings, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods.
- c) If there is an inconsistency between any other terms agreed by the Buyer and Sunset Sleepers in writing and/or these terms and conditions, the terms agreed by the Buyer and Sunset Sleepers in writing will prevail to the extent of any inconsistency.

3) ORDERS

- a) Sunset Sleepers has sole discretion to accept or reject any Order or any variation or modification of an Order requested by the Buyer.
- b) Sunset Sleepers has sole discretion to accept or reject any Order cancellation request by the Buyer. If a cancellation request is accepted by Sunset Sleepers, the Buyer will be liable for any direct loss or expense incurred by Sunset Sleepers in respect of that Order (including without limitation, payment for any Goods ordered by Sunset Sleepers from its suppliers relating to that Order).
- c) Where some Goods ordered are not in stock, Sunset Sleepers may at its discretion supply part of the Order and invoice the Buyer for that part of the Order supplied.

4) WARRANTIES

- a) Sunset Sleepers warrants that the Goods supplied will be of merchantable quality and will conform to the specifications published by it in relation to the Goods.
- b) All warranties and conditions that are capable of exclusion and would, apart from this provision, form part of these terms and conditions, are expressly excluded.
- c) Except where by legislation may not be limited, or where a limitation of a liability would otherwise render Sunset Sleepers liable to a penalty, Sunset Sleepers' liability in connection with the sale of the Goods and these terms of sale is limited to any one of the following, as determined by Sunset Sleepers, (i) the replacement of the Goods, or the supply of equivalent Goods; or (ii) the refund of the price paid by the Buyer for the Goods.
- d) To the extent the law permits and notwithstanding any other clause of these terms and conditions, Sunset Sleepers excludes all liability whatsoever to the Buyer for any Consequential Loss.

5) ADVICES

The Buyer hereby acknowledges that it has not relied on any advice, recommendation, information or assistance provided by Sunset Sleepers in relation to the Goods or their intended application, use or stated benefits.

6) DELIVERY

- a) Sunset Sleepers will make all reasonable efforts to have the Goods delivered to the Buyer on the date agreed between the parties as the delivery date. However, subject to clause 11, time is not of the essence under these terms and conditions and Sunset Sleepers shall not be liable for any failure to deliver or delay in delivery for any reason.
- b) The Buyer shall be responsible for checking the delivery of Goods upon receipt and shall report any discrepancy in the quantity of the Goods ordered by the Buyer to Sunset Sleepers at the time of delivery. Failure to report any discrepancy to Sunset Sleepers within 12 hours of delivery shall constitute acceptance by the Buyer that the quantity of Goods delivered matches the quantity of Goods ordered by the Buyer.
- c) The Buyer shall be liable for all costs associated with the delivery of Goods to the Buyer.

7) DEFECTS

- a) The Buyer must examine the Goods for Defects upon delivery and notify Sunset Sleepers of any Defects in writing within 3 days of delivery. If the Buyer does not notify Sunset Sleepers within 3 days of delivery the Buyer shall be deemed to have accepted the Goods.
- b) The Buyer must preserve any Goods that are found to have a Defect in the state in which they were delivered and allow Sunset Sleepers (or its nominated agent) access to the Buyer's premises to inspect the Goods. If Sunset Sleepers, upon inspection agrees with the Buyer that such Goods have a Defect, the remedies set out in clause 4(c)(i)-(ii) will apply.

8) RISK AND TITLE

- a) All risk in and to the Goods purchased shall pass to the Buyer upon delivery to the Buyer or any agent or other carrier commissioned by the Buyer to take possession of the Goods. Legal and equitable title in and to the Goods shall not pass to the Buyer until payment in full for all Goods is made.
- b) The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause 8, the Buyer holds the Goods as bailee of Sunset Sleepers and that a fiduciary relationship exists between the Buyer and Sunset Sleepers.
- c) Until title in and to the Goods passes to the Buyer in accordance with this clause 8, the Buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of Sunset Sleepers and ensure that the Goods are properly stored, protected, readily identifiable and insured. Sunset Sleepers shall be entitled at any time until title in and to the Goods passes to the Buyer to demand the return of the Goods and shall be entitled without notice to the Buyer and without liability to the Buyer to enter any premises occupied by the Buyer (or any other premises where the Buyer is holding the Goods) in order to search for and remove the Goods.
- d) The Buyer acknowledges that if it sells the Goods before title in and to the Goods has passed to the Buyer in accordance with this clause 8, it sells the Goods as a fiduciary agent of Sunset Sleepers provided that such sales shall not give rise to any obligations on the part of Sunset Sleepers. The Buyer shall hold the proceeds of sale on trust for Sunset Sleepers in a separate account and must pay to Sunset Sleepers such amount as Sunset Sleepers requests.

9) PRICE

- a) Unless otherwise agreed in writing or for orders which have been accepted by Sunset Sleepers, the price charged for the Goods shall be the price determined by Sunset Sleepers at the date of delivery (plus any applicable sales tax and 2% credit surcharge (or as otherwise notified)).
- b) Any price indications or price list provided by Sunset Sleepers to the Buyer or otherwise made available to the Buyer are subject to alteration at any time without notice.

10) FORCE MAJEURE

- a) Sunset Sleepers is not liable for any failure to perform any of its obligations under these terms and conditions as a result of any event beyond its reasonable control including, without limitation, where Sunset Sleepers is prevented or hindered from manufacturing, delivering or supplying the Goods as a result of any strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, products, equipment, facilities or services from usual suppliers on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network.



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In such circumstances, Sunset Sleepers may suspend performance of any obligations under these terms and conditions while the event continues.

Sunset Sleepers shall not incur any liability to the Buyer in respect of such suspension.

- b) If any of the above events occur for more than 30 days, Sunset Sleepers may, without liability, terminate any affected Order and/or these terms and conditions immediately by notice in writing to the Buyer.

11) PAYMENT AND DEFAULT

Payment terms for the purchase of Goods are cash on delivery (COD), unless the Buyer has obtained an approved account with Sunset Sleepers.

12) RELEASE

Except where legislation cannot be excluded or would make this clause 12 illegal, or where the inclusion of this clause 12 would otherwise make Sunset Sleepers liable to a penalty, the Buyer releases Sunset Sleepers from any claim that is made against Sunset Sleepers for damages or otherwise in respect of any loss, damage, death or injury arising from negligence or otherwise caused directly or indirectly by or arising out of the use or condition of Goods sold to the Buyer, except to the extent that such loss, damage, death or injury has been caused by Sunset Sleepers.

13) SEVERANCE

If any provision of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall, so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these terms and conditions shall not in any way be affected or impaired.

14) VARIATION AND ASSIGNMENT

These terms and conditions may be varied by agreement between the parties in writing only. The Buyer may not assign its rights under these terms and conditions without Sunset Sleepers' prior written consent.

15) GOVERNING LAW AND JURISDICTION

These terms and conditions are governed by the law of the State of Victoria, Australia. Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of Victoria. Each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

16) TAXES AND DUTIES

Notwithstanding any other clause in these terms and conditions, to the extent that any supply made under or in connection with these terms and conditions attracts sales tax, the Buyer must pay to Sunset Sleepers, in addition to the consideration provided for under these terms and conditions for that supply an amount (additional amount) equal to the amount of that consideration multiplied by the rate at which any sales tax is imposed in respect of the supply. The Buyer must pay to Sunset Sleepers the additional amount at the same time as the consideration to which it is referable. The Buyer is responsible for paying any other duties, taxes or charges, including any stamp duty (if applicable) and GST, in relation to the Goods.

17) WAIVER

Waiver by Sunset Sleepers of a breach of these terms and conditions or of any right or power arising on a breach of these terms and conditions must be in writing and signed by Sunset Sleepers. A right or power created or arising on a breach of these terms and conditions is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

18) NO RIGHT TO OFFSET

No amount owing whether present or future, actual, contingent or prospective and on any account whatsoever by the Buyer to Sunset Sleepers may be offset against any amount owing whether present, future, actual, contingent or prospective of the Buyer to Sunset Sleepers hereunder on any other account whatsoever.

19) INTELLECTUAL PROPERTY

The purchase of Goods under these terms and conditions does not confer on the Buyer any licence or assignment of any copyright, patent, design or trade mark, or any other intellectual property right (whether registered, registrable or not) that subsists in the Goods.