

Terms and conditions of sale

1. Prices: Prices are subject to change without notice. Deliveries will be made at current prices at time of despatch.

2. Returns: Claims for faulty product will not be considered :
(a) unless made in writing within seven (7) days of date of despatch.
(b) if claim is for less than 5% of product sold.
(c) once product has been moved from original point of delivery.
(d) once product has been laid.
No returns are accepted arising from over-ordering.

3. Payment: Payment must be made in full prior to delivery, unless credit arrangements have been made. Where BEST agrees to give credit to the purchaser of goods or services, payment must be made in accordance with the credit arrangements as agreed by BEST. If payment is made by cheque, payment will not be deemed to have been made until the cheque has been cleared by the bank on which it is drawn. The customer shall not be entitled to make short payments or deduct retentions from payments unless by prior agreement with BEST. If BEST's credit terms are breached in any way, BEST reserves the right to withhold supply, terminate agreements in relation to undelivered goods or services, terminate all credit facilities and institute legal action for recovery of outstanding amounts and costs incurred. The purchaser agrees to pay to BEST on demand all costs and expenses, including legal costs on a solicitor/client basis, incurred by BEST in the collection of any overdue amount or in the recovery of goods.

4. Title and Risk: Title in the products shall not pass to the customer until payment in full for the products together with any interest or associated costs have been received by BEST. If payment is overdue in whole or in part, BEST may recover or recall the products and may enter upon premises where they are reasonably thought to be stored and may repossess the products. Risk will pass to the purchaser on delivery. Until such time as all amounts due to BEST by the purchaser are paid in full, the relationship between the parties will be fiduciary and the purchaser will hold all goods delivered as bailee for BEST and will deliver them up to BEST when required. The purchaser must not deal with the goods contrary to these terms and conditions of sale. The purchaser will at all times store any goods supplied by BEST which have not been paid for in such a manner that they are clearly identifiable as being the property of BEST. In any event, the purchaser must keep records of any of BEST's goods in the possession of the purchaser, including but not limited to serial numbers (if any). The purchaser must keep sufficient records or employ appropriate practices so as to enable BEST to identify its property. If for any reason BEST's goods cannot be clearly identified the parties agree that the purchaser will be deemed to have disposed of goods not the property of BEST first.

5. Termination of Credit: If any of the following events occur, all agreements as to the grant of credit by BEST (if any) to the customer will automatically terminate, all amounts outstanding will be immediately due and payable by the customer, the customer's right to possession of all goods supplied by BEST will cease and BEST will be entitled to recover possession of all goods supplied:

- 5.1 the customer commits any act of bankruptcy, or compounds or makes any arrangements with its creditors, or executes a bill of sale over its goods or any of them, or if any execution or distress is levied on the goods of the customer;
- 5.2 the customer, being a company, is wound up either compulsorily or voluntarily or a receiver of its assets is appointed; or
- 5.3 the customer fails to pay all amounts due to BEST in accordance with these terms and conditions of sale and the terms of the credit agreement.

The customer will indemnify and keep indemnified BEST against all losses, claims, costs, demands and expenses howsoever arising which BEST may sustain or incur during the course of or in any attempt to exercise its rights or should it be prevented for any reason from exercising its rights. If before or after goods are supplied to the purchaser by BEST they or any of them become a constituent or component of another product, BEST will have all legal and beneficial title and interest in such products as if these were goods supplied to the customer by BEST.

6. Credit Limit: If credit arrangements are in place, a credit limit will have been advised. Once the credit limit has been reached no further deliveries will be supplied until payment is made reducing the account balance. BEST accepts no responsibility for delivery delays due to payment arrangements being breached.

7. Samples/Displays: Any sample product or display is provided to indicate only the general nature of the product. BEST provides no warranty or guarantee that the products supplied shall correspond in colour, texture or blend with any previously supplied sample or viewed display.

8. Efflorescence: BEST makes every effort to minimize the occurrence of efflorescence in all its products. Nevertheless, efflorescence may from time to time occur. Efflorescence must be taken for what it is – a natural occurrence in a product made from natural raw materials. BEST will not accept any liability or claims should efflorescence appear in its products.

9. Product Blending: The complete BEST product range is manufactured using the finest natural raw materials available. These natural raw materials will from time to time exhibit shade variations. As a result all products should be blended by mixing from various pallets. BEST will not accept liability for "patchy" areas of product. It remains the responsibility of the customer to ensure the product is blended adequately.

10. Honing/Polishing: Any product that is honed or polished may be subject to a thickness reduction of up to 10mm.

11. Product Size Variation: The stated sizes are nominal sizes only. Size variation may from time to time occur as a result of the manufacturing process.

12. Wastage: The Concrete Masonry Industry allows up to 5% wastage factor.

13. Warranty of Quality

13.1 BEST will not be bound by or subject to any condition warranty obligation or liability whatsoever in respect to the condition, merchantability or fitness for purpose of goods supplied by BEST save and except for any non-excludable condition warranty obligation or liability which is implied as a matter of law.

13.2 Any complaints regarding the quality of goods supplied must be made in writing to BEST within seven (7) days of delivery of the goods. Goods subject to any claims must be preserved intact and available for inspection by BEST. Whether or not goods are inspected by BEST, return of goods to BEST will be at purchaser's expense, unless BEST has otherwise agreed in writing. Goods being returned to BEST must be in the same order and condition as that in which they were delivered. If BEST is satisfied that the goods are of legally inadequate quality, it may replace the goods or reimburse the purchaser to the extent of the amount originally charged.

13.3 BEST will not in any circumstances be liable for any loss or damage, whether direct or consequential, resulting from the use or application of goods or from further processing of goods whether due to defects in goods or otherwise, even if such loss or damage is the result of the negligence of BEST.

13.4 Where the Trade Practices Act 1974 (Cth) implies conditions or warranties the agreement arising from or incorporating these conditions, the liability of BEST in the event of a breach of such a condition or warranty (other than a condition or warranty implied by the Act) will be limited, subject to that Act, to: in the case of goods, the repair or replacement of the goods, at the option of BEST; and in the case of services, the re-supply of the services.

13.5 All other implied conditions and warranties are hereby excluded to the full extent permitted by law.

14. Ability to Supply: Every effort will be made to carry out any contract or order placed with BEST, but no responsibility will be accepted for delays caused by a limited supply of stock. BEST also reserves the right to deliver by instalments and failure to deliver any instalments shall not place any liability upon BEST.

15. Order Cancellation or Deferral: No requests to cancel or defer orders will be accepted by BEST unless they are authorised in writing by the General Manager of BEST or his/her nominee.

16. Order Deposit Refund: Should a customer request a refund for a "made to order" deposit they will need to make that request in writing to the General Manager of BEST or his/her nominee. The customer's eligibility to a refund will be at the discretion of BEST.

17. Postponed Orders: Orders placed with an expected delivery or pick-up date, that are postponed for periods greater than 1 week, will be returned to stock with a restock fee of 25%. Any cancelled order having to be made up additional times incur a \$100 fee.

18. Made to Order Products: These products are non-standard products and will be manufactured to order. Due to concrete batch sizes there may be small over runs above the original ordered quantity. These extra quantities will be delivered, invoiced and must be paid by the customer.

19. Deliveries: Variations of quantities from those shown on delivery notes, must be reported in writing within 24 hours of delivery otherwise no responsibility will be accepted by BEST for such claims. Product delivered to unattended sites shall be the customer's responsibility and BEST will not accept claims for shortages. Delivery dates are estimates only and BEST is under no liability for any loss or damage arising if delivery is not made on an agreed date. The delivery records of BEST are prima facie proof of delivery of the product in good order and in the quantity and of the description ordered. Standard time designated for unloading is up to 30 minutes. Should unloading time exceed 30 minutes BEST or its delivery sub-contractors reserve the right to apply additional delivery charges to customer.

20. Site Damage: BEST will take as much care as possible when delivering product to site. However, BEST will not be responsible for any damage or injuring to persons, creature or property. Please ensure that our drivers have easy access.

21. Delivery Instructions: Any special delivery instruction will be assessed on site by our sub-contractor delivery driver. We reserve the right to refuse any delivery instruction that is deemed to be dangerous and or unreasonable. In these cases product will be left on nature strip or any other convenient area at the customers responsibility.

22. Roadway/Footpath Soiling: Our delivery sub-contractors may refuse any delivery instruction that may cause soiling to roadways and/or footpaths. In these cases product will be left on any convenient area at customers responsibility.

23. 'Specials' or 'Seconds': Where a product is supplied by BEST as a 'second' or 'special' no warranty is given by BEST. BEST shall not be liable in any way for the performance or use of, or any defect in, such a product.

24. Pallets: Pallets remain the property of BEST Masonry Bricks & Pavers Pty Ltd at all times and will be collected at our convenience. A pallet deposit charge will apply. Deposits refunded by cheque only. Permission to enter private property to collect BEST empty pallets is provided by customer.

25. Liability Limitation: The total of any claims for defective workmanship, defects as a result of product supplied by BEST or any other losses or damages incurred as a result of any act of omission of BEST is limited to the lesser of the price charged for the product and the amount of loss or damage incurred.

26. Estimate: Any plan take-off or quantity estimate that BEST provides will be undertaken on the basis that it is an estimate only. BEST shall accept no responsibility or costs which may be incurred by the customer resulting from BEST's estimate being inaccurate.

27. Variation: BEST may vary these terms and conditions of sale from time to time by giving notice of such variation to the customer.

28. Law: South Australian law applies to these terms and conditions of sale.

29. Entire Agreement: These terms and conditions of sale and any written quotation given by BEST to the customer comprise the entire agreement between BEST and the customer and, subject to any applicable law, any warranties, representations, guarantees or other terms or conditions or whatsoever nature not contained in and recorded these terms and conditions of sale and any written quotation is of no force or effect.

30. Severance: If any provision of these terms and conditions of sale is invalid and not enforceable in accordance with its terms, all provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with their terms.

31. Warranties and Liability: BEST will use its best endeavours to comply with its obligations under these terms and conditions of sale. However, BEST will not be liable to the customer for any reason, including for breach of these terms and conditions of sale, unless such breach is serious and deliberate, and in that case, the liability of BEST is limited to the price quoted.

32. Caveatable Interest: The Customer hereby charges in favor of the Company all its estate and interest in any land and in any other assets, whether tangible or intangible, freehold or leasehold, in which it now has any legal or beneficial interest or in which it later acquires any such interest with payment of all monies owed by the Customer and consents to the lodging by the Company of a caveat or caveats which note its interest in or over any such land or other caveatable property;

33. Goods and Services Tax (GST): Any price payable for a supply made by BEST under these terms and conditions of sale will be increased or decreased (as is applicable) by an amount equal to the net effect of any New Tax System changes on the cost of the provision of that supply by BEST. In this clause:

New Tax System changes has the meaning given in section 75AT of the Trade Practices Act 1974 (Cth); and

Supply has the meaning given in section 9-10 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).