

North Queensland Lime Pty Ltd t/as Miriwinni Lime & Gypsum

PO BOX 2 Miriwinni 4871

ABN 59 650 539 834

Tel: +61 7 4043 2200

Email: accounts@mwlime.com



Terms & Conditions of Sale

1. INTERPRETATION

1.1 In these conditions:

- (a) **"Seller"** means North Queensland Lime Pty. Ltd. (ABN 59 650 539 834) of Bucklands Road Miriwinni QLD 4871.
- (b) **"Buyer"** means the person or entity who buys the products from the seller.
- (c) **"Products"** means the products supplied by the Seller to the Buyer;
- (d) **"Force Majeure"** means an act of God; war or any other unlawful act against public order or authority; an industrial dispute; government restraint; a shortage of raw materials, reserves, production capacity or transportation; a cyber attack or any other event which is not within the reasonable control of the Seller
- (e) Nothing in these conditions shall be read or applied so as to exclude, restrict, or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Trade Practices Act 1974* (Cth)) and which by law cannot be excluded, restricted or modified.

2. GENERAL

- 2.1 The products sold by the Seller are sold on these terms and conditions.
- 2.2 These terms and conditions (which may only be waived in writing by the Seller) will prevail over all terms and conditions of the Buyer's order to the extent of any inconsistency.

3. PRICE

- 3.1 Unless otherwise agreed in writing, the price of products will be the Seller's current price at the date of delivery of the Products according to the Seller's current price list and standard charges
- 3.2 Unless prices are stated to include any GST, sales, value added or similar tax, these taxes are payable by the Buyer in addition to the quoted prices.

4. PAYMENT

- 4.1 The Seller will issue a valid Tax Invoice (as defined in the A New Tax System (Goods and Services) Act 1999) for each delivery of Products.
- 4.2 The Buyer must make payment in cash or electronic transfer into the account nominated by the Seller in the currency nominated on the invoice.
- 4.3 The Buyer must pay all invoices by the due date for payment. If no date is stated by the Seller then the payment must be made within 30 days from the invoice date.

5. DELIVERY

- 5.1 The Seller will use all commercially reasonable efforts to deliver the Products for which it has accepted an order or agreed to in contract to the agreed delivery location by the due date specified in the order or contract.
- 5.2 The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Products in transit caused by any event of any kind by any person.
- 5.3 The Seller must provide the Buyer with such assistance as may be necessary to press claims on carriers so long as the Buyer:
 - (a) has notified the Seller and the carriers in writing immediately after loss or damage is discovered on receipt of the Products; and
 - (b) lodges a claim for compensation with the carrier within 7 days of the date of receipt of the Products.
- 5.4 While on each other's premises, each party must comply, and require its agents and subcontractors to comply, with the other party's policies, procedures, and other lawful site related instructions.
- 5.5 Where Products are supplied ex-works, the buyer must ensure that all vehicles and equipment used are fit for purpose and insured for third party damage.
- 5.6 In the event goods are delivered and/or spread by the Seller on the Buyer's property, the Buyer is confirming that they have the legal right for this to occur, and the Buyer will be responsible for ensuring that the Seller adheres to the Buyer's procedures pertaining to biosecurity management.

6. LIABILITY AND BUYER'S WARRANTY

- 6.1 The Seller warrants solely to the Buyer for a period of 30 Days (the Warranty Period) after the products were delivered that the products will materially conform with any specifications provided or, if none have been provided, the Sellers relevant Technical Specification Sheet (Limited Warranty).
- 6.2 The Buyer must as soon as possible after delivery, check the Products, and in the event of a suspected defect notify the seller in writing within the warranty period and provide relevant documentation and samples demonstrating that the product does not comply.
- 6.3 The Buyer shall be deemed to have fully and finally accepted all the Products if a Notice of Defect is not delivered to the Seller within the Warranty Period.
- 6.4 In the event notification of a valid breach of the Limited Warranty is received by the Seller within the Warranty Period, the Seller shall at its discretion, deliver, free of charge, replacement products: and/or refund the amount actually paid for the defective portion of the products not replaced by the Seller.

North Queensland Lime Pty Ltd t/as Miriwinni Lime & Gypsum

PO BOX 2 Miriwinni 4871

ABN 59 650 539 834

Tel: +61 7 4043 2200

Email: accounts@mwlime.com



- 6.5 The obligations of the Seller under this clause shall be the Buyer's sole and exclusive remedy and constitute the Seller's entire obligation and aggregate liability to the Buyer for any breach of the Limited Warranty
- 6.6 The Seller's maximum liability to the Buyer in respect of any claim for loss or damage arising out of or in connection with the supply of Product shall be limited to the price of the Products.
- 6.7 The Seller will not be liable for any consequential, special, or indirect loss or damage, or for any loss of profit, goodwill, revenue. Business opportunity or production or any similar type of loss, however arising.
- 6.8 Except only for the Limited Warranty and those rights and remedies that the Buyer has in respect of the Products under the Competition and Consumer Act 2010 (Cth) and similar state and territory laws and which cannot be lawfully excluded, restricted, or modified all conditions and warranties, whether statutory or otherwise, are excluded in relation to the products, including without limitation the exclusion of any implied warranties of merchantability of fitness for a particular purpose.
- 6.9 If the products are resold by the Buyer, the Buyer agrees, represents, and warrants to the Seller that it will instruct its customers in the proper handling and use of the products (so far as it is reasonably necessary and possible).
- 6.10 The Buyer will indemnify and save the Seller from any claim or liability arising out of or in any way connected with a failure by the Buyer to comply with its obligations under clause 6.7.

7. PRODUCT TITLE & RISK

- 7.1 Title to the Products passes to the Buyer on payment in full of the Price for the Products.
- 7.2 The Seller reserves the following rights in relation to the Products until all accounts owed by the Buyer to the Seller are fully paid:
 - (a) ownership of the Products;
 - (b) to enter the Buyer's premises (or the premises of any associated company or agent where the Products are located) without liability for trespass or any resulting damage and retake possession of the Products; and
 - (c) to keep or resell any Products repossessed pursuant to clause 7.2(b).

8. DISPUTE RESOLUTION

- 8.1 In the event of any failure to agree, dispute of claim, the parties shall try to settle the dispute amicably by negotiation within 30 days of giving notice in writing to the other party.
- 8.2 If the parties cannot resolve the dispute within the 30-day period, then the dispute must be resolved exclusively by arbitration of a single arbitrator in the state of Queensland according to the applicable rules of the International Chamber of Commerce (ICC)

9. FORCE MAJEURE

- 9.1 Where Force Majeure interrupts, impacts, or delays the Seller from providing Products to the Seller or the Seller receiving products the relevant obligations under these terms and conditions are suspended as long as the Force Majeure continues.