



Application for Commercial Credit

Batesford Quarry ABN 90 577 930 861
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GPO Box 120 Geelong Vic 3220
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Applicant's Details

Date of application	DD / MM / YY	ABN / ACN					
Legal entity name							
Registered trading name							
Type of business				Date business commenced	DD / MM / YY		
Legal Structure (tick box)	Sole trader <input type="checkbox"/>	Partnership <input type="checkbox"/>	Pty Ltd Company <input type="checkbox"/>	Public Company <input type="checkbox"/>	Trust <input type="checkbox"/>		
Business address							
Postal address							
Business telephone	()	Mobile					
After hours telephone	()	Facsimile	()				
Email							
Monthly Credit Limit	\$	Purchase Orders	Yes <input type="checkbox"/>	No <input type="checkbox"/>			

Credit limit should be based on 2.5 times your expected monthly purchases

Financial Details

Bank								
BSB No				Account No.				

Does the applicant own business premises?	(tick box)	Owned <input type="checkbox"/>	Leased <input type="checkbox"/>
If owned, are the premises subject to any mortgage or charge?	(tick box)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is there any other charge or mortgage on the business assets?	(tick box)	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Does any financial institution, company or person hold any security (including a personal guarantee) in relation to the applicant?	(tick box)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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Has the applicant or anyone acting as a guarantor for the applicant:

- been bankrupt or used Part IX or Part X of the Bankruptcy Act?	(tick box)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
- owned, controlled or operated a business that has been wound up, had receivers appointed, had a voluntary administrator appointed, or entered into a scheme for the benefit of creditors?	(tick box)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
- ever had or been known by any other name?	(tick box)	Yes <input type="checkbox"/>	No <input type="checkbox"/>

If yes to any of the above, provide details

Trade References

	Supplier	Account No.	Telephone No.
Reference 1			()
Reference 2			()

IMPORTANT INFORMATION

By signing this application below, the Customer named above agrees and warrants that:

- (a) the Customer will be bound by the Terms and Conditions of Sale ('Terms') set out in this document (as amended in accordance with those Terms);
- (b) any credit provided to the Customer by the Supplier is to be applied wholly or predominately for commercial and/or investment purposes;
- (c) all the information set out in this document is true and correct and the Customer has disclosed to the Supplier all information relevant to the Customer's Application for Commercial Credit; and
- (d) the Customer will promptly provide written notice to the Supplier if there is any change to the Customer's details set out in the Customer's Application for Commercial Credit.

Each person who signs this application:

- (a) warrants that they have the authority to execute this application for and on behalf of the Customer; and
- (b) agrees to be personally bound by the terms of the privacy agreement set out below as if they personally were the 'Customer' referred to in those terms.

PRIVACY

1. The Supplier may, before, during or after the provision of credit to the Customer, disclose Personal Information (as defined under the Privacy Act 1988 (Cth) (Privacy Act)) about the Customer to a credit reporting body, including any of the following: (a) identity particulars; (b) the Customer's application for credit; (c) the fact that the Supplier is a current credit provider to the Customer; (d) repayment history information; (e) information about previous consumer or commercial credit applications; (f) court proceedings information; (g) personal and business insolvency information; or (h) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement.
2. The Customer authorises the Supplier to collect:
 - (a) information (including credit reporting information) about the Customer from a business which provides information about the commercial creditworthiness of persons; and
 - (b) credit reporting information about the Customer from a credit reporting body,for the purpose of assessing the Customer's application for credit or a grant of any ongoing credit or for any related purpose.
3. The Supplier may, but is not obliged to, disclose credit eligibility information about the Customer to any person:
 - (a) who is currently a guarantor; or
 - (b) whom the Customer has indicated is considering becoming a guarantor,for the purpose of a person deciding whether to act as guarantor or keeping a guarantor informed about any guarantee or for any related purpose.
4. The Customer authorises the Supplier to collect and disclose credit eligibility information about the Customer with those credit providers and suppliers (including trade references):
 - (a) named in this application; or
 - (b) named in any credit information disclosed by a credit reporting body; and
 - (c) of which the Supplier is, or becomes, aware,for the purpose of assessing an application for credit, notifying other credit providers (including trade references) of a default, exchanging information with other credit providers (including trade references) as to the status of credit where the Customer is in default with other credit providers (including trade references), or assessing the Customer's creditworthiness or for any related purpose.
5. The Supplier complies with the privacy policy of its parent company Adbri Pty Ltd which is made available at adbri.com.au/privacy. The privacy policy contains information about credit reporting, including about the following matters:
 - (a) that if the Customer does not provide all of the Personal Information the Supplier requests, the Supplier may be unable to provide the Customer with credit;
 - (b) the credit reporting body to which the Supplier is likely to disclose the Customer's credit information;
 - (c) that the Customer may seek access to Personal Information (including credit eligibility information) about the Customer that is held by the Supplier;
 - (d) that the Customer may seek the correction of Personal Information (including credit information or credit eligibility information) about the Customer that is held by the Supplier;
 - (e) that the Customer may complain about a failure of the provider to comply with its credit reporting obligations under the Privacy Act or the Privacy (Credit Reporting) Code 2014 (Cth) (CR Code) (as amended or replaced from time to time), and that the Supplier will investigate and respond to such a complaint within a reasonable time;
 - (f) that credit reporting bodies may include the information in reports provided to credit providers to assist them to assess the Customer's credit worthiness;
 - (g) that the Customer may request credit reporting bodies not to use their credit reporting information for the purposes of pre-screening of direct marketing by a credit provider; and
 - (h) that the Customer may request the credit reporting body not to use or disclose credit reporting information about the Customer, if the Customer believes on reasonable grounds that the Customer has been, or is likely to be, a victim of fraud.
6. The Supplier is not likely to disclose Personal Information to overseas recipients that do not have an 'Australian link' (as that term is defined in the Privacy Act).
7. The Customer can request to have the Supplier's privacy policy (including the statement of matters that must be notified to the Customer under the Privacy Act and the CR Code) available on the Supplier's website provided in an alternative form, such as a hard copy.

Executed as an Agreement

Details and signatures of all:

Directors

Partners

Proprietors

Executed for and on behalf of the Customer by:

Full name

Full name

Home address

Home address

Residence

Owned Rented

Residence

Owned Rented

Date of Birth

DD / MM / YYYY

DD / MM / YYYY

Director ID No.

Driver's Licence No.

Signature

Signature

Date

DD / MM / YY

Date

DD / MM / YY

TERMS AND CONDITIONS OF SALE

- 1. Order for Goods /Services**
 - 1.1 These terms and conditions of sale (Terms) apply to any Order for, and any supply of, Goods and/or Services by the Supplier to the Customer. In no circumstances will any terms or conditions of the Customer apply in connection with any order for, or any supply of, Goods and/or Services (despite anything contrary in any such terms).
 - 1.2 Any quotation by the Supplier does not constitute an offer to supply. Any quotation will remain valid for 30 days unless the Supplier withdraws it any time before the Supplier accepts a corresponding Order.
 - 1.3 By submitting an Order and/or accepting any Goods and/or Services the Customer agrees to these Terms. No Order by the Customer will be binding on the Supplier unless the Supplier accepts it.
 - 1.4 If the Supplier accepts an Order, the parties will have created a binding Contract under which the Supplier will supply the Goods and/or Services and the Customer will pay the Price in accordance with the terms of the Contract (which include these Terms), but the Contract will be subject to:
 - (a) the availability of the materials necessary to supply the Goods; and
 - (b) if the Customer is seeking credit terms, the Supplier agreeing to make the Customer an Account Customer.
 - 1.5 The Customer must not cancel any Order or Contract other than in accordance with these Terms. Where the Customer elects to cancel an Order or terminate a Contract, in addition to any accrued rights the Supplier might have, the Customer must pay the Supplier all costs, loss and damage foregone or incurred by reasons of the cancellation or termination including:
 - (a) the value of all unpaid Goods supplied in accordance with these Terms prior to the date of termination or cancellation; and
 - (b) the cost of Goods manufactured, and materials reasonably ordered by the Supplier prior to the date of termination for the purpose of supplying the Goods.
 - 1.6 The Supplier may cancel any Order or Contract at any time prior to delivery with no liability other than to repay any Price paid before cancellation.
 - 1.7 The Customer must provide the Supplier with all relevant information (including drawings, specifications and properties of Goods and/or Services) at the time the Customer requests any quotation and prior to submitting an Order and must ensure the specifications and properties of Goods and/or Services will be fit for the intended use of the Goods and/or Services.
 - 1.8 The Customer must on request provide such further information or assistance as the Supplier from time to time considers reasonably necessary to enable the Supplier to supply the Goods and/or Services in accordance with the Contract.
 - 1.9 The Supplier can rely on the accuracy of the information provided by the Customer. If any information provided by the Customer contains errors, the Supplier will, without limiting the Supplier's rights, be entitled to vary the Price by written notice to the Customer, which variation must reasonably reflect the variation in work or cost required to be undertaken by the Supplier as a result of the errors. The Customer warrants the Supplier's use of anything provided by the Customer will not infringe the Intellectual Property Rights of any third party.
- 2. Price and payment**
 - 2.1 The Price for an Order will be the price set out in a valid quotation (written or verbal) from the Supplier.
 - 2.2 The Supplier may, in its sole discretion, grant the Customer credit subject to any conditions or other requirements the Supplier may determine (including requirements to provide security) and the Supplier may vary or withdraw such credit in accordance with these Terms.
 - 2.3 The Price and any applicable Additional Charges are payable in full before the Supplier supplies Goods and/or Services to the Customer unless the Customer is an Account Customer and the amount payable is within the Customer's credit limit, in which case the Customer must make full payment of the Price and any applicable Additional Charges within 30 days after the end of the month in which the Goods and/or Services (as applicable) are supplied to the Customer.
 - 2.4 The Customer must not withhold (including as retention money), make deductions from, or set-off, payment of any money owed to the Supplier for any reason.
 - 2.5 The Customer must reimburse any other fees or expenses incurred by the Supplier in connection with any payment or attempted/failed payment by the Customer, including any credit card surcharge incurred by the Supplier from time to time if the Customer makes any payment to the Supplier using a credit card.
 - 2.6 The Supplier may charge monthly compound interest on any overdue amounts owed by the Customer at a rate of 5% per annum above the Reserve Bank of Australia's cash rate target.
- 3. Delivery of Goods**
 - 3.1 If the Supplier agrees to deliver Goods, the Supplier:
 - (a) must endeavour to deliver the Goods to the Delivery Address on the Delivery Date during the Supplier's business hours; and
 - (b) may charge additional delivery charges if the Customer is unable to receive delivery of the Goods at the Delivery Address or on the Delivery Date or in accordance with any other agreed delivery arrangements.
 - 3.2 The Supplier will not be liable for any delay in the delivery of Goods to the Delivery Address. The Supplier may advise the Customer of a delay in delivery of the Goods at any time prior to the date for delivery. If the Customer is a Consumer or Small Business, unless otherwise agreed by the Customer, the Customer may terminate that part of the Order the subject of the delay by written notice to the Supplier within 48 hours of receiving the delay notice. If the Customer fails to issue a notice within time, or takes delivery of the Goods, the Customer is deemed to have accepted the revised time for delivery.
 - 3.3 The Customer must ensure the Customer's Personnel will be available to take delivery of the Goods and, if requested by the Supplier, sign a delivery docket on the Customer's behalf. However, the Supplier may deliver Goods notwithstanding no Customer Personnel are available to accept delivery.
 - 3.4 The Supplier's responsibility for delivery of Goods ceases at the kerbside or public roadway frontage of the Delivery Address.
 - 3.5 The Customer must provide safe access for delivery and testing of Goods (including providing safety measures such as traffic control) and the Supplier may refuse to deliver or test Goods, and in the case of Goods, return them at the Customer's cost, if the Supplier or a member of the Supplier's Personnel reasonably considers it would be unsafe to deliver or test the
- Goods.
 - 3.6 The Customer must inspect any Goods immediately on collection or delivery of the Goods.
- 4. Risk and title**
 - 4.1 The Customer will be deemed to have accepted the Goods, and the risk in the Goods will pass to the Customer, upon delivery to the Delivery Address or, where the Supplier has not agreed to deliver the Goods, immediately on the Goods being placed on any vehicle or means of conveyance for collection by or on behalf of the Customer.
 - 4.2 The Customer will not receive title to Goods until the Customer makes full payment of the Price and all other amounts payable to the Supplier.
 - 4.3 Until title in the Goods passes to the Customer, the Customer holds the Goods as bailee and must hold the proceeds from any sale or disposal of the Goods on trust for the Supplier.
 - 4.4 The Supplier may repossess (including by entering the Customer's premises to do so), retain, deal with and/ or sell the Goods as the Supplier determines in the Supplier's absolute discretion if the Customer does not pay the Price and all Additional Charges to the Supplier by the due date for payment or the Customer is the subject of Administration.
- 5. Force Majeure**

No party will be liable to the other party for any failure or delay in performing the obligations under these Terms or a Contract if the failure or delay arises in connection with any cause beyond that party's reasonable control. If any such failure or delay continues for a period of 14 days the parties may terminate any affected Contract by mutual agreement. If any such failure or delay continues for a period of 90 days, either party may terminate any affected Contract. This clause does not apply to any obligation to pay money.
- 6. Supplier's Confidential Information and Intellectual Property**
 - 6.1 The Customer must not use, or disclose, any Confidential Information.
 - 6.2 All Intellectual Property Rights in all designs, drawings, technical information and documents created by the Supplier in relation to the Goods and/or Services will remain with the Supplier and will not be assigned to the Customer and no supply of Goods and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods and/or Services or such designs, drawings, technical information or documents. The Customer must not use or permit the use of any trade marks or other Intellectual Property Rights of the Supplier without the Supplier's express written authorisation and where such authorisation is given, the Customer must comply with any conditions, directions and guidelines notified by the Supplier from time to time in respect of such use.
 - 6.3 If the Supplier supplies any designs, drawings, technical information or documents to the Customer as part of the Goods and/or Services, the Supplier grants the Customer a non-exclusive, non-transferable, right to use the designs, drawings, technical information and documents strictly and only for the purposes of the Customer's use of the Goods and/or Services for the purpose for which they were supplied.
- 7. Approvals**

The Customer must, at the Customer's expense, obtain all Approvals.
- 8. Chain of responsibility**
 - 8.1 The Customer acknowledges the HVNL takes precedence over these Terms and any Contract and the Supplier and its personnel will not be bound to do anything that would result in a non-compliance with the HVNL.
 - 8.2 The Customer, and each member of the Customer's Personnel, must comply with the HVNL at all times and not knowingly impose on the Supplier or its Personnel, any requirement that would result in a non-compliance with the HVNL.
 - 8.3 The Customer will provide to the Supplier any information reasonably requested by the Supplier to evidence compliance with the HVNL.
- 9. Warranties**
 - 9.1 To the extent permitted by law, the Supplier does not warrant the Goods and/or Services are fit for any purpose whether or not made known to the Supplier or any member of the Supplier's Personnel.
 - 9.2 If you are a Consumer, the Supplier acknowledges and agrees that nothing in these Terms shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the provision of Goods and/or Services pursuant to these Terms or any of the provisions pursuant to the Australian Consumer Law or any relevant State or Federal Legislation which by law cannot be excluded.
 - 9.3 The Supplier excludes all express and implied conditions and warranties in relation to the Goods and/or Services except those conditions or warranties that cannot be excluded by law, and the Supplier's liability under any such conditions or warranties is limited to, at the Supplier's option, arranging to replace or repair the Goods and/or the outcome of the Services or resupplying the Goods and/or Services.
 - 9.4 Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or any Fair Trading Act except to the extent permitted by such Acts.
- 10. Liability**
 - 10.1 To the extent permitted by law, the Supplier's Liability in relation to these Terms, any Contract, and any supply of Goods and/or Services (whether under statute, contract, tort, or otherwise) will be limited to the amount of the Price paid by the Customer to the Supplier as at the date of the Claim under the Contract that is most proximate to the circumstances giving rise to the Claim.
 - 10.2 To the extent permitted by law, if the Customer is a Consumer or Small Business each party will not be liable to the other party for any Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any Indirect Damages.
 - 10.3 If the Customer is not a Consumer or Small Business, to the extent permitted by law, the Supplier is not liable to the Customer for any Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any Indirect Damages.
- 11. Termination**
 - 11.1 The Customer may terminate these Terms by written notice to the Supplier where:
 - (a) the Supplier materially breaches these Terms and the breach is not capable of remedy or the Supplier does not remedy that breach within 30 days of written notice by the Customer; or
 - (b) an Administration occurs in relation to the Supplier and the termination is not

prohibited by law.

11.2 The Supplier may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to the Supplier if:

- (a) the Customer breaches these Terms or any Contract and does not remedy the breach within 7 days of receiving a notice from the Supplier requiring the Customer to do so;
- (b) the Customer materially breaches these Terms or any Contract and such breach is not capable of remedy;
- (c) there is any change in control of the Customer; or
- (d) an Administration occurs in relation to the Customer and the termination is not prohibited by law.

12. Security interest

12.1 In consideration of the Supplier supplying Goods and/or Services to the Customer at the request of the Customer, the Customer hereby grants to the Supplier a Security Interest, in the nature of a charge, in all of its present and after-acquired real and personal property and in all of its present and future rights in relation to any real and personal property from time to time as security for payment of any amount owed by the Customer to the Supplier in connection with these Terms or a Contract and for the performance by the Customer of the obligations set out in these Terms.

12.2 The Customer agrees that any Goods or proceeds of sale of the Goods coming into existence after the date of these Terms will come into existence subject to the Security Interests granted in these Terms without the need for any further action or agreement by any party.

12.3 The Customer: (a) agrees with the Supplier that neither the Customer nor the Supplier will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA); (b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143; (c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following provisions of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137; (d) agrees to promptly, on request by the Supplier, execute all documents and do anything else reasonably required by the Supplier to ensure any Security Interest arising in connection with these Terms or a Contract is perfected; and (e) waives, if permitted under the PPSA, the Customer's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement.

13. Attorney

The Customer irrevocably appoints each Officer as the Customer's agent and attorney to do all things necessary to create and register each Security Interest arising in connection with these Terms or a Contract. Upon demand by the Supplier, the Customer agrees to immediately execute a deed, mortgage or other instrument in terms satisfactory to the Supplier to enable the Supplier to register each such Security Interest or to further secure payment of the money payable by the Customer.

14. Default

14.1 If an Event of Default occurs, the Supplier may (without limiting the Supplier's other rights) demand immediate payment of any money owed by the Customer, retain any money paid by the Customer, cease any further supply of Goods and/or Services to the Customer and take possession of any Goods and/or Services for which the Customer has not paid.

14.2 Each Security Interest arising in connection with these Terms or a Contract will immediately become enforceable (whether or not the amounts owed by the Customer to the Supplier have become payable) if an Event of Default occurs, without the need for any demand or notice under a Document.

14.3 If a Security Interest has become enforceable, the Supplier may appoint a Receiver to any secured property and fix the remuneration of the Receiver or exercise any power exercisable by a Receiver even if a Receiver has not been appointed.

15. Privacy

15.1 The Supplier may collect and disclose personal information about the Customer where the Supplier reasonably considers it necessary or desirable to do so in connection with providing Goods and/or Services to the Customer or otherwise complying with its obligations or enforcing its rights under these Terms or a Contract, or for any related purpose.

15.2 The Supplier complies with the privacy policy of its parent company Adbri Limited which is made available at adbri.com.au/privacy.

16. Supply of Concrete

16.1 If the Supplier agrees to supply concrete to the Customer, this clause 16 applies and prevails over any conflicting or inconsistent provision of these Terms.

16.2 The Supplier:

- (a) may use any raw materials to manufacture and supply the concrete;
- (b) will supply concrete in accordance with Australian Standard AS1379-2007 (R2017).

16.3 The Supplier will not be liable for, and the Customer will indemnify the Supplier in relation to any Claim as a result of:

- (a) the Supplier varying the quantity or source of any additives or other materials comprising concrete at the Customer's request;
- (b) the Customer or any other person handling, placing, curing or otherwise dealing with the concrete (including the effects of weather on such matters);
- (c) the Customer or any other person, including but not limited to any member of the Supplier's Personnel, adding water or any other substance to concrete whether before, during or after the delivery of the concrete; or
- (d) the time between the arrival of the Supplier's delivery vehicle at the Delivery Address and the completion of the discharge of the Goods exceeding the Supplier's standard or stated discharge time.

17. Supply of exposed, polished or coloured concrete

17.1 If the Supplier agrees to supply exposed, polished or coloured concrete to the Customer, this clause 17 applies and prevails over any conflicting or inconsistent provision of these Terms

(including clause 16).

17.2 The Customer acknowledges:

- (a) the raw materials used to manufacture exposed, polished and coloured concrete are natural products and subject to variations;
- (b) exposed, polished and coloured concrete may also contain iron stone which could cause rust stains in finished products;
- (c) the colour, texture, appearance and quality of exposed, polished and coloured concrete in any brochure, display or other promotional material are indicative only;
- (d) the colour, texture or appearance of exposed, polished and coloured concrete might not match the selections in any order; and
- (e) the Supplier does not represent, warrant or guarantee that the colour, texture, appearance or quality of exposed, polished or coloured concrete will match the selections in any Order or Contract.
- (f) the Supplier's exposed concrete has been designed with a high volume of aggregate;
- (g) the Supplier does not recommend placing exposed concrete using a concrete pump;
- (h) the Customer should obtain advice from the Customer's contractor as to how best to place and finish concrete;
- (i) the Customer's contractor's advice and actions may affect the quality of exposed concrete and the depth or consistency of exposure; and
- (j) the Customer will be responsible for the onsite preparations or placement techniques (including the adding of water or sugar or other additives) or finishing techniques (including the hosing or polishing of concrete) used by contractors.

17.3 The Customer agrees that if a contractor uses water to wash off the top surface of concrete, the Customer must ensure the contractor captures the water, as that water could be high in cementitious material and the Supplier has no responsibility for such water entering drainage systems or waterways.

17.4 The Supplier will not be liable for, and the Customer will indemnify the Supplier in relation to any liability or claim arising in connection with the matters contemplated in this clause 17.

18. Supply of Quarry Products

18.1 If the Supplier agrees to supply quarry products to the Customer, this clause 18 applies and prevails over any conflicting or inconsistent provision of these Terms.

18.2 The Customer acknowledges:

- (a) the Supplier will supply quarry products by weight and in accordance with Australian Standard AS2758; and
- (b) the Customer may test the quarry products which are the subject of an Order at the Supplier's plant provided that the Customer provides at least 7 days' written notice to the Supplier and provides copies of all test results to the Supplier.

19. Release and Indemnity

19.1 Neither the Supplier nor any person appointed by the Supplier under any Document will be liable for any loss that the Customer suffers as a direct or indirect result of the exercise or attempted exercise of, or failure to exercise, any rights under any Document or any release or dealing with any security or Security Interest.

19.2 If the Customer is not a Consumer or Small Business, the Customer indemnifies the Supplier, each member of the Supplier's Personnel and each Receiver or any other person appointed by the Supplier, in relation to any Claims, losses, liabilities, expenses (including but not limited to legal expenses on a full indemnity basis) or taxes incurred in connection with:

- (a) the exercise or attempted exercise of any powers, rights, discretions or remedies vested in the person under any Document or the Corporations Act;
- (b) any Event of Default by the Customer or any member of the Customer's Personnel;
- (c) the Customer's breach of a material Term or any material term of a Contract;
- (d) the negligence or wilful misconduct of the Customer or any member of the Customer's Personnel;
- (e) the Supplier or any member of the Supplier's Personnel acting in accordance with the Customer's instructions;
- (f) the Supplier or any member of the Supplier's Personnel entering the Delivery Address;
- (g) the Goods and/or Services not being fit for any particular purpose; or
- (h) the Supplier having to resupply the Goods and/or Services, or undertake any rework, as a result of the actions or omissions of the Customer, the Customer's Personnel or any third party.

19.3 The Customer indemnifies the Supplier, each member of the Supplier's Personnel and each Receiver or any other person appointed by the Supplier, in relation to any Claims, losses, liabilities, expenses (including but not limited to legal expenses on a full indemnity basis) or taxes incurred in connection with personal injury or loss suffered by the Supplier or any member of the Supplier's Personnel to the extent the loss was caused or contributed to by the Customer or the Customer's Personnel.

19.4 The Customer's liability to indemnify the Supplier under these Terms is reduced to the extent that such Claims, losses, liabilities or expenses are caused or contributed to by the Supplier.

20. Miscellaneous

20.1 The Customer acknowledges that the Customer has had an opportunity to obtain independent legal and financial advice in relation to these Terms.

20.2 These Terms binds the Customer both personally and as trustee of any trust of which the Customer is trustee.

20.3 The Supplier may set off any amounts due and payable by the Supplier to the Customer against any amounts due and payable by the Customer to the Supplier whether under these Terms or otherwise.

20.4 These Terms may only be amended by written agreement between the parties or by the Supplier providing no less than 30 days' written notice of the amendments to the Customer (provided that, in the case of amendment by written notice from the Supplier, the amendments are reasonable and will not take effect until the Customer places a new Order after the notice period has expired and the Customer may terminate the agreement within the notice period if the changes cause adverse consequences to the Customer and are not required by law). Otherwise, a Contract may only be amended by written agreement between the parties.

20.5 Any waiver of a right by the Supplier must be express and in writing and will not operate as a waiver in relation to any subsequent matter.

20.6 If any provision of these Terms is unenforceable, the provision will be severed and the remaining provisions will continue to apply.

20.7 The Customer may only assign any rights or benefits under these Terms or a Contract with the Supplier's prior written consent.

20.8 These Terms will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, the state in which the Goods and/or Services are delivered.

20.9 These Terms do not create, and no Contract will create, any partnership, joint venture, agency or relationship of employment between the parties.

20.10 No Contract will be a sale by sample.

20.11 The Customer must promptly provide written notice to the Supplier if there is any direct or indirect change in ownership or control of the Customer.

20.12 If the Customer is a franchisee or licensee of a third party franchisor or licensor, the Customer:

- (a) consents to the Supplier disclosing any Document or any confidential or personal information of or about the Customer obtained by the Supplier in connection with these Terms or a Contract to that franchisor or licensor (as applicable); and
- (b) acknowledges and agrees that the Supplier may pay a rebate or other benefit to that franchisor or licensor (as applicable) in connection with these Terms or any Contract, including a benefit calculated by reference to the volume of Goods and/or Services supplied to the Customer under these Terms and/or the aggregate Price paid by the Customer under these Terms.

21. GST

21.1 Unless expressly stated otherwise, all Prices and other amounts payable are quoted on a GST exclusive basis.

21.2 In addition to the Price and other amounts payable under these Terms or a Contract, the recipient of a taxable supply must pay all GST on the supply, subject only to the receipt of a valid tax invoice.

22. Definitions

In these Terms:

“Account Customer” means a Customer in respect of whom the Supplier has granted commercial credit under these Terms (which credit has not been revoked or withdrawn); “Additional Charges” means the charges that are published on the Supplier’s website immediately before the Customer submits an Order or such other charges as are contemplated in these Terms or a Contract; “Administration” means any of the following, or any analogous, events:

- (a) any step is taken to appoint an administrator, controller Receiver, trustee, provisional liquidator or liquidator to the Customer or to the whole or any part of the Customer’s assets, operations or business;
- (b) any person, or agent of a person, who holds any security takes possession of any of the Customer’s property;
- (c) a court or other authority enforces any judgment or order against the Customer for the payment of money or the recovery of any property;
- (d) the Customer disposes of the whole or any part of the Customer’s assets, operations or business other than in the ordinary course of business;
- (e) the Customer ceases, or threatens to cease, carrying on business;
- (f) the Customer is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act;
- (g) the Customer is unable to pay the Customer’s debts as the debts fall due; or
- (h) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer’s creditors or any class of the Customer’s creditors;

“Approvals” means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by any Authority to permit the full and proper performance of the Supplier’s obligations under these Terms;

“Australian Consumer Law” means the Australian Consumer Law being scheduled 2 in the *Competition and Consumer Act 2010* (Cth);

“Authority” means any government or governmental, semi-governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, statutory corporation, instrumentality or entity;

“Claim” means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

“Confidential Information” means information in any form, relating to the Supplier (or its business) or any related entity of the Supplier (or the related entity’s business);

“Consumer” has the meaning given under the Australian Consumer Law and includes the supply of goods or services to an individual or business costing up to \$100,000 (or any other amount set by the Australian Consumer Law in future) or goods or services costing more than \$100,000, which are normally used for personal domestic or household purposes but does not include an individual or business who buys:

- (a) A good in trade or commerce:
 - I. for the purpose of re-supply;
 - II. to use them or transform them through processing, production or manufacture;
 - III. to repair or treat other goods or fixtures on land;
- (b) A service in trade or commerce for commercial use.

If the definition of ‘Consumer’ under the Australian Consumer Law is amended this definition is amended accordingly.

“Contract” means a contract formed as a result of the acceptance of an Order by the Supplier; “Corporations Act” means the Corporations Act 2001 (Cth); “Customer” means the customer set out in any quotation, offer or other document provided by the Supplier (or, in the absence of such information, the customer who placed the Order);

“Delivery Address” means the address for the delivery of the Goods and/or Services in a Contract; “Delivery Date” means the date for the delivery of the Goods and/or Services in a Contract; “Document” means these Terms and any document contemplated by these Terms;

“Event of Default” means any of the following, or any analogous, events:

- (a) the Customer fails to pay any amount due and payable under any Document when the amount is due and payable;
- (b) the Customer fails to comply with any material obligation under any Document and if the breach is remediable the Customer has failed to remedy that breach after 14 days’ notice;
- (c) any material representation, warranty or statement by the Customer in connection with any Document is untrue or misleading (whether by omission or otherwise); or
- (d) the Customer becomes subject to Administration;

“Goods” means any goods supplied by the Supplier to the Customer under a Contract in accordance with these Terms;

“HVNL” (being the Schedule to the Heavy Vehicle National Law Act 2012 (Qld)) in force in those States and Territories that have adopted or duplicated the HVNL with or without modifications;

“Indirect Damage” suffered by a party, means: (a) any loss which does not arise naturally or in the ordinary course of things from a breach by a party to these Terms (b) any loss or anticipated loss which constitutes or arises from or in connection with (even if such loss arises naturally or in the usual course of things); (i) loss of use, production, revenue, income, business savings, profit or opportunity; (ii) a loss of goodwill; (iii) a loss of business reputation, or (iv) business interruption or increased financing costs or (c) any Liability of the party to any third person, or any Claim, brought against the party by any third person, and any Liability in connection with the Claim;

“Intellectual Property Rights” means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any intellectual property;

“Liability” means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

“Officer” means any director, secretary, credit manager or authorised representative of the Supplier; “Order” means any written or verbal order by the Customer to the Supplier for Goods and/or Services; “Personnel” means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;

“PPSA” means Personal Property Securities Act 2009 (Cth);

“Price” means the price payable by the Customer to the Supplier in accordance with these Terms in respect of Goods and/or Services;

“Privacy Act” means the Privacy Act 1988 (Cth);

“Receiver” means a receiver or receiver and manager (or an additional receiver or receiver and manager);

“Security Interest” means any grant of a security interest, charge or other security, by the Customer to the Supplier, whether pursuant to these Terms or otherwise;

“Services” means any services supplied by the Supplier to the Customer in accordance with these Terms;

“Small Business” has meaning given under the Australian Consumer Law and includes a small business Customer that employs 100 or fewer persons or has an annual turnover of less than \$10 million. If the definition of ‘Small Business’ under the Australian Consumer Law is amended, this definition is amended accordingly; and

“Supplier” means Batesford Quarry ABN 90 577 930 861.

23. Interpretation

In these Terms, unless the context indicates otherwise:

- (a) the headings will not affect interpretation; the singular includes the plural and vice versa;
- (b) any other grammatical form of a word or expression defined in these Terms has a corresponding meaning;
- (c) a reference to a document includes the document as novated, altered, supplemented or replaced; a reference to a party includes the party’s executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (d) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- (e) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
- (f) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
- (g) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;
- (h) if a party comprises two or more people any agreement, representation, warranty or indemnity binds them jointly and each of them severally;
- (i) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing; a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Terms;
- (j) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day; and
- (k) terms defined in the PPSA have the meaning given to them in the PPSA.

DEED OF GUARANTEE, INDEMNITY AND CHARGE

In consideration of the Supplier agreeing to provide credit to the Customer, each Guarantor enters into this Guarantee in favour of the Supplier on the following terms:

1. Request

Each Guarantor confirms they have received and read a copy of the Terms and the Application for Commercial Credit and requests the Supplier to supply goods to the Customer in accordance with the Terms.

2. Guaranteed Money

Each Guarantor guarantees to the Supplier the due and punctual payment by the Customer of the Guaranteed Money and the Guaranteed Money will be payable by the Guarantor to the Supplier immediately on demand by the Supplier.

3. Performance

Each Guarantor unconditionally and irrevocably guarantees the Customer's due and punctual performance of all of the Customer's Obligations.

4. Release and Indemnity

4.1 Neither the Supplier nor any person appointed by the Supplier under any Document will be liable for any loss that any Guarantor suffers as a direct or indirect result of:

- (a) the exercise or attempted exercise of, or failure to exercise, any rights under any Document; or
- (b) any release or dealing with any Security.

4.2 Each Guarantor indemnifies the Supplier, the Supplier's Personnel and each Receiver or any other person appointed by the Supplier in relation to any losses, liabilities, expenses (including but not limited to legal expenses on a full indemnity basis) or taxes incurred in connection with:

- (a) the exercise or attempted exercise of any powers, rights, discretions or remedies vested in the person under any Document or the Corporations Act; or
- (b) any proceedings, claims or demands in relation to any secured property.

4.3 Each Guarantor indemnifies the Supplier in relation to any direct and indirect losses, damages or expenses which the Supplier suffers as a result of:

- (a) the Customer's failure to perform, or delay in performing, any of the Customer's Obligations; and
- (b) the Guarantor's failure to perform, or delay in performing, any of the Guarantor's obligations under this Guarantee.

5. Continuing guarantee

5.1 This Guarantee is a continuing guarantee in respect of all money due to the Supplier at any time and will not be wholly or partially satisfied or discharged by the payment of any money to the Supplier or any other event.

5.2 This Guarantee will not be affected by:

- (a) any agreed variation to the terms of the Guarantee;
- (b) any event of insolvency affecting a person or the death of a person;
- (c) any change in the constitution, membership, or partnership of a person;
- (d) the partial performance of the Customer's Obligations;
- (e) any of the Customer's Obligations being invalid or unenforceable at any time;
- (f) the Supplier refusing any credit to the Customer;
- (g) the Supplier granting any time or other indulgence or concession to the Customer;
- (h) the release of any Guarantor (if there is more than one Guarantor).

5.3 No Guarantor will be released from this Guarantee unless the Guarantor provides a written request for a release to the Supplier and the Supplier provides a written agreement to the release which the Supplier may provide or withhold in the Supplier's absolute discretion.

5.4 The liability of each Guarantor under this Guarantee extends to and is not affected by any circumstance, act or omission which, but for this clause, might otherwise affect the Guarantor at law or in equity including:

- (a) any failure or omission by the Supplier to complete, register, perfect or take advantage of or enforce the Supplier's Security Interest or any other security granted or given by the Customer or any guarantor of the Guaranteed Money or the Customer's Obligations, at the date of the execution of this Guarantee or at any time;
- (b) the obligations of the Customer in respect of the Guaranteed Money or the Customer's Obligations or the obligations of any other guarantor of the Customer's Obligations under this Guarantee or any other agreement relating to the Guaranteed Money or the Customer's Obligations or this Guarantee (including any other guarantee or security) being or becoming illegal, void, voidable, unenforceable or disclaimed by a liquidator or trustee for creditors or in bankruptcy; or
- (c) any laches, acquiescence, delay, act, omission or mistake on the part of, or suffered by, the Supplier or any other person, in relation to this Guarantee or any other guarantee, security or agreement.

6. Principal obligation

6.1 This Guarantee is a principal obligation and is not ancillary or collateral to any other right or obligation.

7. Independent

7.1 This Guarantee is independent of any other guarantee or security in relation to the Customer's Obligations.

8. Security Interest

8.1 In consideration of the Supplier supplying Goods and/or Services to the Customer at the request of each Guarantor, the Guarantor hereby grants to the Supplier a Security Interest, in the nature of a charge, in all of the Guarantor's present and after-acquired real and personal property and in all of the Guarantor's present and future rights in relation to any real and personal property from time to time as security for the performance of the Customer's Obligations.

8.2 Each Guarantor: (a) agrees with the Supplier that neither the Guarantor nor the Supplier will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA); (b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138(4), 142 and 143; (c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following provisions of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137; (d) agrees to

promptly, on request by the Supplier, execute all documents and do anything else reasonably required by the Supplier to ensure any Security Interest arising in connection with this Guarantee is perfected; and (e) waives, if permitted under the PPSA, the Guarantor's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement.

9. Attorney

Each Guarantor irrevocably appoints each Officer as the Guarantor's attorney to do all things necessary to create and register each Security Interest. Upon demand by the Supplier, each Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Supplier to further secure payment of the money payable by the Guarantor.

10. Enforcement

10.1 The Supplier may enforce this Guarantee without first having to enforce any of the Supplier's rights against the Customer or having resort to any other guarantee or Security in relation to the Customer's Obligations.

10.2 Each Security Interest will immediately become enforceable (whether or not the Guaranteed Money has become payable) if an Event of Default occurs, without the need for any demand or notice under a Document.

10.3 If a Security Interest has become enforceable, the Supplier may appoint a Receiver to the secured property and fix the remuneration of the Receiver or exercise any power exercisable by a Receiver even if a Receiver has not been appointed.

11. Administration

Until this Guarantee is released by the Supplier, no Guarantor will prove in any liquidation, bankruptcy or similar procedure in relation to the Customer in competition with the Supplier.

12. Voluntary

Each Guarantor acknowledges that the Guarantor has read and understands this Guarantee, enters into this Guarantee voluntarily and not as a result of any representation of the Supplier or duress of any person.

13. Legal advice

Each Guarantor acknowledges that the Guarantor has had an opportunity to obtain independent legal and financial advice in relation to this Guarantee.

14. Information

Each Guarantor warrants that all the information set out in this Guarantee is true and correct and the Guarantor has disclosed to the Supplier all information relevant to this Guarantee.

15. Notice

Each Guarantor must promptly provide written notice to the Supplier if there is any change in the ownership or control of the Guarantor or to the Guarantor's details set out in this Guarantee.

16. Administration

If any payment by the Guarantor to the Supplier is avoided as a result of, or the Supplier settles any claim in relation to, any statutory provision arising as a result of any Administration, the payment will be taken not to have been made and the Supplier will be entitled to recover the amount of the payment from the Guarantor.

17. Privacy

Each Guarantor acknowledges and agrees that the privacy agreement set out in the Application for Commercial Credit is incorporated into this Guarantee by reference and applies to the Guarantor with the necessary changes made (including that references to the "Customer" will be deemed to be references to the Guarantor).

18. Miscellaneous and interpretation

The parties acknowledge that clauses 20 (Miscellaneous) and 23 (Interpretation) of the Terms are incorporated into this Guarantee by reference and apply with the necessary changes made (including that references to the "Customer" will be deemed to be references to the Guarantor).

19. Definitions

In this Guarantee, capitalised terms have the meaning given to them in the Terms, and:

"Application for Commercial Credit" means an application for commercial credit completed by the Customer in the form approved by the Supplier;

"Corporations Act" means the Corporations Act 2001 (Cth);

"Customer" means the Customer named in the Application for Commercial Credit to which this Guarantee relates;

"Customer's Obligations" means the Customer's obligations to the Supplier under the Guarantee, or otherwise (including but not limited to the obligation to pay the Guaranteed Money);

"Document" means the Application for Commercial Credit, the Terms, this Guarantee and any document contemplated by such documents;

"Event of Default" means any of the following, or any analogous, events:

- (a) the Guarantor or the Customer fails to pay any amount due and payable under any Document when the amount is due and payable;
- (b) the Guarantor or the Customer fails to comply with any obligations under any Document;
- (c) any representation, warranty or statement by the Guarantor or the Customer in connection with any Document is untrue or misleading (whether by omission or otherwise); or
- (d) the Guarantor or Customer becomes subject to Administration;

"Guarantee" means this deed of guarantee, indemnity and charge;

"Guaranteed Money" means all money which is, or may be in future, owed by the Customer to the Supplier for any reason;

"Guarantor" means each person who executes this Guarantee;

"Security Interest" means the security under this deed and/or any grant of security by the Customer to the Supplier, whether pursuant to the Terms or otherwise;

"Supplier" means Batesford Quarry ABN 90 577 930 861; and

"Terms" means the Supplier's Terms and Conditions of Sale by which the Customer is bound from time to time.

Executed as a Deed

SIGNED, SEALED AND DELIVERED BY EACH GUARANTOR:

Guarantor full name

Director ID No.

Address

Date of Birth

DD / MM / YYYY

DD / MM / YYYY

DD / MM / YYYY

Driver's Licence No.

Guarantor Signature

WITNESSED BY:

Witness full name

Witness Signature

Date

DD / MM / YYYY

DD / MM / YYYY

DD / MM / YYYY