



**APPLICATION FOR COMMERCIAL CREDIT**

The applicant described in **Part 1: Customer Information** ("Customer," "you," "your") applies to Detroit Concrete Pty Limited ACN 669 886 720 ("VicMix" "we," "us," "our") to supply Goods and Services on credit on the terms of this Application for Commercial Credit ("Credit Application"), which incorporates the attached **Part 2: Privacy Statement, Part 3: Credit Terms, Part 4: National Credit Code Declaration, Part 5: Terms of Sale, and Part 6: Deed Poll of Guarantee and Indemnity.**

Please ensure that all parts of this Credit Application have been completed and signed prior to submitting your application to us. A failure to complete or sign any part of this Credit Application may result in delays in processing your application or the rejection of your application.

Upon our acceptance of your application in writing, we may agree to supply Goods and Services to you on credit on the terms contained in this Credit Application.

**PART 1: CUSTOMER INFORMATION**

**CUSTOMER DETAILS**

<b>Name of Customer:</b>			
<b>Business Type (Please Tick):</b>	<input type="checkbox"/> Pty. Ltd. Company	<input type="checkbox"/> Individual / Sole Trader	<input type="checkbox"/> Corporation as Trustee
	<input type="checkbox"/> Public Company	<input type="checkbox"/> Partnership	<input type="checkbox"/> Other (Please Specify):
<b>Trading Name (if Any):</b>			
<b>Name of Trust (if Applicable):</b>			
<b>ACN (if Applicable):</b>		<b>ABN:</b>	
<b>Business Address:</b>			
<b>Postal Address:</b>			
<b>Business Telephone:</b>		<b>Email Address:</b>	
<b>Date Business Commenced:</b>		<b>Nature of Business:</b>	
<b>Estimated Monthly Purchases:</b>	\$	<b>Credit Limit Requested:</b>	\$

**CONTACT DETAILS**

<b>Purchasing Contact:</b>	
<b>Telephone:</b>	<b>Email Address:</b>
<b>Accounts Payable Contact:</b>	
<b>Telephone:</b>	<b>Email Address:</b>

**BANK DETAILS**

<b>Name of Bank:</b>	<b>Branch:</b>
<b>Account No.:</b>	<b>BSB:</b>

**DETAILS OF DIRECTORS / PARTNERS / SOLE TRADER**

<b>Full Name:</b>	<b>Date of Birth:</b>
<b>Residential Address:</b>	<b>Drivers Licence No.:</b>
<b>Title / Position:</b>	<b>Mobile:</b>

<b>Full Name:</b>	<b>Date of Birth:</b>
<b>Residential Address:</b>	<b>Drivers Licence No.:</b>
<b>Title / Position:</b>	<b>Mobile:</b>

<b>Full Name:</b>	<b>Date of Birth:</b>
<b>Residential Address:</b>	<b>Drivers Licence No.:</b>
<b>Title / Position:</b>	<b>Mobile:</b>

**TRADE OR BUSINESS REFERENCES**

<b>Business Name:</b>	<b>Telephone:</b>
<b>Email Address:</b>	

<b>Business Name:</b>	<b>Telephone:</b>
<b>Email Address:</b>	

<b>Business Name:</b>	<b>Telephone:</b>
<b>Email Address:</b>	

## PART 2: PRIVACY STATEMENT

1. This privacy statement encompasses consents, notifications, and disclosures under or in relation to the *Privacy Act 1988* (Cth) ("**Act**").
2. The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation, or notification, whether contained in our Credit Application or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement will prevail.
3. For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
4. We may collect personal information about you and the Guarantor(s) (if any) for our primary purposes, which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes, and direct marketing.
5. You and the Guarantor(s) (if any) consent to us collecting, using, and disclosing personal information (including sensitive information) for both our primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
6. We may collect, and we may already have collected, Information from you and the Guarantor(s), other credit providers, credit reporting bodies, and other third parties for the purposes of our functions and activities including, but not limited to, credit, sales, marketing, and administration. If the Information was not collected by us, it may restrict or impede upon us trading with, extending credit to, continuing to extend credit to, or extending further credit to you.
7. You and the Guarantor(s) (if any) consent to us obtaining and making disclosure of Information about you and the Guarantor(s) from and to a credit reporting body, and/or another credit provider for a commercial credit related purpose, and/or a credit guarantee purpose, and/or a consumer credit purpose, and/or another related purpose. We hereby notify you and the Guarantor(s) that we may use and disclose credit eligibility information under section 21G of the Act.
8. We may provide your and the Guarantor(s)' (if any) personal information to any or all of the credit reporting bodies nominated below. We intend to disclose default information to any or all of the credit reporting bodies listed below. You and the Guarantor(s) consent to such disclosure. Our credit reporting policy contains a statement of notifiable matters in accordance with s21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what we may disclose, and your and the Guarantor(s)' right to request limitations to the use of their information.

**Equifax Australia**

Level 15, 100 Arthur Street  
NORTH SYDNEY NSW 2060  
Tel: 1300 921 621

**Creditor Watch**

Level 13, 109 Pitt Street  
SYDNEY NSW 2000  
Tel: 1300 501 312

**NCI**

Level 2, 165 Grenfell St  
ADELAIDE SA 5000  
Tel: 1800 882 820

**Illion**

Level 2, 143 Coronation Drive  
MILTON QLD 4064  
Tel: (07) 3360 0600

**Experian**

Level 6, 549 St Kilda Road  
MELBOURNE VIC 3004  
Tel: (03) 9699 0100

9. We may disclose Information to, and about you, and you and the Guarantor(s) (if any) hereby acknowledge that you and the Guarantors consent to the disclosure of such information to our subsidiaries, employees, agents and related bodies corporate, past, present, or prospective credit providers of yours and the Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit.
10. A full copy of our privacy policy and credit reporting policy can be obtained from our website (details above) or by making a request in writing directed to our privacy officer. Our privacy policy and credit reporting policy contain information about how to access and seek correction of Information, or how to complain about a breach of the Act, APP, code(s) and how we will deal with any such complaint.
11. You and the Guarantor(s) (if any) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to us within fourteen (14) days of receipt of this privacy statement that its terms are not accepted, continuing to trade with us after receipt of this privacy statement or, if the Guarantor(s) are directors of yours, by not taking steps to prevent you from continuing to trade with us after receipt of this privacy statement.

## PART 3: CREDIT TERMS

### Term

1. This Credit Agreement commences on the date we accept your completed Credit Application in writing and notify you of your credit limit and continues until such time as it is terminated in accordance with these Credit Terms.
2. The decision to grant you a credit facility is solely at our discretion.

### No obligation to supply on credit

3. We reserve the right to refuse to supply you with Goods or Services on credit (even if you have not exceeded your credit limit), without having to provide reasons to you for doing so.
4. You are liable to pay all amounts due to us, regardless of whether you have exceeded your credit limit.

### Payment terms

5. Until we notify you that you have been granted a credit facility with us, all Goods and Services supplied by us must be paid for on a cash on delivery or performance basis.
6. Where we have granted you a credit facility, the terms of payment are strictly thirty (30) days from the end of month of invoice (or such other period as nominated by us in writing).
7. If you default in the payment of any money due to us pursuant to these Credit Terms, then in addition to any other rights which may be conferred upon us by law or equity, we will be entitled to charge you interest on such money at the rate of 10% per annum, which interest will accrue and will be recoverable for each day (or part thereof), that the money remains outstanding until payment is received by us in full.
8. Any sums owed to us by you under this Credit Agreement will be made free of any set-off, or counterclaim, and without deduction or withholding (including by way of cash retention).
9. We may deduct any amount we owe you from any amount you are liable to pay to us.

### Suspension and withdrawal of credit facility

10. We may, without prejudice to any other rights which may be conferred upon us by law or equity, suspend your credit facility by notifying you in writing if you fail to make payment of any monies due to us by the due date for payment or for any other reason in our sole discretion.
11. We reserve the right to close your account without notice to you if you do not use your credit facility for a period of twelve (12) months.

### Liability for purchases

12. You are liable for all purchases made using your credit facility. We are not responsible for confirming the authority of persons using your account. You are solely responsible for ensuring there is no unauthorised use of your account.

### Retention of title

13. Until such time as you have made payment in full for any Goods supplied by us, and until such time as you have made payment in full of all other money owed to us by you (whether in respect of money payable under a specific contract or on any other account whatsoever):
  - (a) title in the Goods does not pass to you;
  - (b) you agree that property and title in the Goods will not pass to you and we retain the legal and equitable title in those Goods supplied and not yet sold;
  - (c) you will hold the Goods in a fiduciary capacity for us and agree to store the Goods in such a manner that they can be identified as our property, and will not mix the Goods with other similar goods; and
  - (d) you will be entitled to sell the Goods in the ordinary course of your business but will sell as agent and bailee for us and the proceeds of sale of the Goods will be held by you on trust for us absolutely.
14. Your liability to us will not be discharged by the operation of clause 13(d) (but your levels of indebtedness will be reduced by the extent of the funds so remitted to us).
15. You agree that whilst property and title in the Goods remains with us, we have the right, with prior notice to you, to enter upon any premises occupied by you (or any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours) to inspect our Goods and, when payment is overdue, to immediately enter the premises (as your invitee) to repossess the Goods which may be in your possession, custody, or control when payment is overdue.
16. You will be responsible for our costs and expenses (including legal costs, on a full indemnity basis) in exercising our rights under clause 15 where you are otherwise in default of this Credit Agreement. Where we exercise any power to enter the premises, that entry will not give rise to any action of trespass or similar action on your part against us, or our employees, servants, or agents.
17. You agree that where the Goods have been retaken into our possession, we have the absolute right to sell or deal with the Goods, and if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to us to do all things necessary to sell such Goods.
18. For the avoidance of doubt, our interest constitutes a 'purchase money security interest' pursuant to the PPSA.

### Personal Property Securities Act

19. You acknowledge that by assenting to this Credit Agreement, which constitutes a security agreement for the purposes of the PPSA, you grant us a security interest in all Goods (and their proceeds) now or in the future supplied by us to you (or to your account).
20. You undertake to do anything that is required by us:
  - (a) so that we can acquire and maintain one or more perfected security interests under the PPSA in respect of the Goods (and their proceeds);
  - (b) to register a financing statement or financing change statement; and
  - (c) to ensure that our security position, and rights and obligations, are not adversely affected by the PPSA.
21. Unless you have obtained our prior written consent, you undertake not to:
  - (a) register a financing change statement in respect of a security interest contemplated or constituted by this Credit Agreement; and
  - (b) create or purport to create any security interest in the Goods, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party.
22. You:
  - (a) waive your right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under this Credit Agreement;
  - (b) agree that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and

- (c) agree that the following provisions of the PPSA will not apply and you will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

23. You agree that you will, if requested by us, sign any documents, provide any information, or do anything else we request, to ensure that any security interest created in our favour by this Credit Agreement is, to the fullest extent possible under the PPSA, perfected in accordance with Part 2.2 of the PPSA.
24. Notwithstanding section 275 of the PPSA, the Parties agree to keep confidential all information of the kind referred to in section 275 of the PPSA, unless compelled by law to disclose such information.
25. You irrevocably grant to us the right to enter upon your property or premises, with notice, and without being in any way liable to you or to any third party, if we have cause to exercise any of our rights under sections 123 or 128 of the PPSA, and you will be liable for and indemnify us from and against any claims made by any third party as a result of such exercise.
26. You will be responsible for our costs and expenses (including legal costs, on a full indemnity basis) in exercising our rights under clause 25 where you are otherwise in default of this Credit Agreement. Where we exercise any power to enter the premises, that entry will not give rise to any action of trespass or similar action on your part against us, or our employees, servants, or agents.
27. You agree to accept service of any document required to be served, including any notice under these Credit Agreement or the PPSA or any originating process, by prepaid post at any address nominated in this Credit Agreement or any other address later notified to us by you or your authorised representative.
28. You further agree that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

### Charge over property

29. You charge in our favour all your estate and interest in any real property, whether held in your own right or as capacity as trustee, you own at present and in the future with payment of all monies which are now or in the future become owing to us whether pursuant to this Credit Agreement or otherwise until all such monies are paid in full by you.
30. You charge in our favour all your estate and interest in any personal property, whether held in your own right or as capacity as trustee, you own at present and in the future with payment of all monies which are now or in the future become owing to us whether pursuant to this Credit Agreement or otherwise until all such monies are paid in full by you.
31. As security for the payment of the amount of your indebtedness to us from time to time, you irrevocably appoint as your duly constituted attorney our company secretary from time to time to execute in your name and as your act and deed any real property mortgage, bill of sale or consent to any caveat we may choose to lodge against real property that you may own in any Land Titles Office in any state or territory of Australia (even though you may not have defaulted in carrying out your obligations hereunder) upon written notice and demand to you (in the event that there is no default by you in carrying out its obligations hereunder).
32. Where you have previously entered into an agreement with us by which you have granted a charge, mortgage, or other security interest (including a security interest as defined in the PPSA) over or in respect of real or personal property, those charges, mortgages, or other security interests and the terms which directly or indirectly create rights, powers, or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this Credit Agreement and will secure all of your indebtedness and obligations hereunder. We may, at our election and upon the provision of written notice, vary the terms of such previous charges, mortgages, or other securities to reflect the terms herein.

### Provision of further information

33. You undertake to comply with any reasonable written requests made by us from time to time to provide us with further information for the purpose of assessing your creditworthiness.
34. If you are a corporation (except for a public listed company), you must advise us of any alteration to your corporate structure (for example, by changing directors, shareholders, or your constitution). In the case of a change of directors or shareholders, we may ask for your directors to sign a guarantee and indemnity.

### Corporations

35. If you are a corporation, you warrant and represent to us that all your directors have signed this Credit Agreement.

### Partnerships

36. If you enter into this Credit Agreement in your capacity as a partnership, you warrant and represent to us that all partners have signed this Credit Agreement.
37. If you are a partnership, you must not alter your partnership (for example, adding or removing partners or altering its partnership agreement) without notifying us in writing.

### Trustees

38. If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:
  - (a) you enter into this Credit Agreement in both your capacity as trustee and in your personal capacity;
  - (b) you have the right to be reasonably indemnified out of trust assets;
  - (c) you have the power under the trust deed to sign this Credit Agreement; and
  - (d) you will not retire as trustee of the trust or appoint any new or additional trustee sign an agreement on substantially the same terms as this Credit Agreement.
12. You must give us a copy of the trust deed upon request.

### Insolvency

13. If you become insolvent, to the extent permitted by law, you remain liable under this Credit Agreement for payment of all liabilities incurred hereunder. You remain liable under this Credit Agreement even if we receive a dividend or payment as a result of you being insolvent.

### Indemnity

14. You are liable for and indemnify us from and against any liability, claims, damages, losses, costs, and expenses whatsoever (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that we may suffer or incur at any time, directly or indirectly, arising out of, or in connection with, any default by you in the performance or observance of your obligations under this Credit Agreement.
15. Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives termination of this Credit Agreement.
16. It is not necessary for us to incur any expense or make any payment before enforcing our rights of indemnity conferred upon us by this Credit Agreement.

### Costs

17. You are responsible for your own legal, accounting, and business costs in connection with the execution of this Credit Agreement. You must also pay for all stamp duty and other taxes payable on this Credit Agreement (if any).

18. You will pay our costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

#### Application of payments

19. Subject to clauses 47 and 48, payments by, or on behalf of, you will be applied as follows.
- Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 16, 26, 41, and 45.
  - Secondly, in payment of any interest incurred in accordance with clause 7.
  - Thirdly, in payment of any outstanding Tax Invoices (or part thereof) in an order determined by us in our sole discretion.
20. To the extent that payments have been allocated to Tax Invoices by us in our business records, we may allocate or retrospectively reallocate payments in any manner whatsoever at our absolute discretion, including in a manner inconsistent with clause 46 herein.
21. Payments allocated (or reallocated) under clause 46 or 47 will be treated as though they were allocated (or reallocated) in the manner determined by us on the date of receipt of payment.

#### Notices

22. A notice or other communication connected with this Credit Agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, a notice or other communication may be sent by pre-paid post to the address of the addressee as set out in this Credit Agreement, or sent by email or fax to the email or fax number of the addressee.

#### Termination

23. If:
- a Party commits a material breach of this Credit Agreement and fails to remedy that breach within fourteen (14) days of receiving notice from the other Party requiring it to do so; or
  - an Insolvency Event occurs in relation to a Party,
- then the other Party may terminate this Credit Agreement by written notice to that Party, in which case this Credit Agreement will terminate immediately.
24. Each Party expressly waives any rights it may have to terminate this Credit Agreement other than as contemplated by clause 50.
25. Each Party acknowledges that the other Party may terminate this Credit Agreement under clause 50 without considering the impact of the termination on the other Party.
26. On termination of this Credit Agreement, accrued rights or remedies of a Party are not affected.

#### Assignment

27. Neither Party may assign, transfer, or novate its rights or obligations under this Credit Agreement without the prior written and fully informed consent of the other (which consent must not be unreasonably withheld).

#### Waiver

28. A waiver of any provision or breach of these Credit Terms will only be effective if made by the affected Party in writing. If a Party elects not to enforce its rights arising as a result of a breach of these Credit Terms, that will not constitute a waiver of any rights in relation to any subsequent or other breach.

#### Severance

29. If any part of these Credit Terms is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from these Credit Terms. Other provisions which are self-sustaining are, and will continue to be, enforceable in accordance with their terms.

#### Variation of Credit Terms

30. Any proposed variation to these Credit Terms by you must be requested in writing and we may refuse any such request without providing reasons to you for doing so.
31. For clarity, no proposed variation of these Credit Terms will be binding upon us, unless varied in writing and agreed by an authorised officer of ours. Clerical errors (such as spelling mistakes, grammatical errors, or numerical errors) may be subject to correction by us without notification.
32. You agree that these Credit Terms may be amended by an authorised officer of ours at any time by written notice to you. Subject to clause 60, after fourteen (14) days of receipt of the written notice of the amendments, the amendments will be deemed agreed by you.
33. If you do not agree with the amendments proposed by us, you must notify us in writing, within fourteen (14) days from receipt of the written notice, that the amendments are not agreed to. We will then be at liberty to suspend your credit facility until such time as an agreement can be reached.

#### Governing law

34. You acknowledge and agree that this Agreement will be governed by the laws of the State or Territory in which Goods are delivered or Services supplied.
35. The Parties to this Credit Agreement submit to the non-exclusive jurisdiction of the courts of the relevant location under clause 34 and the federal courts and courts competent to hear appeals from those courts.

#### Entire agreement

36. This Credit Agreement constitutes the entire agreement and understanding between the Parties in relation to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of this Credit Agreement are merged in this Credit Agreement and are of no further effect. No oral explanation or information provided by a Party to another affects the meaning or interpretation of this Credit Agreement or constitutes any collateral agreement, warranty, or understanding.
37. Notwithstanding clause 36, in circumstances where there is a pre-existing written credit agreement ("**Original Agreement**") between the Parties, this Credit Agreement will constitute a variation of the Original Agreement whereby the terms and conditions of the Original Agreement are deleted and replaced with this Credit Agreement, unless the terms of the Original Agreement are otherwise expressly or implicitly

preserved by this Credit Agreement, in which case they will co-exist with this Credit Agreement, and, to the extent of any inconsistency, this Credit Agreement will prevail.

#### Definitions

38. In these Credit Terms:
- "**Credit Agreement**" means the Application for Commercial Credit, the Privacy Statement, these Credit Terms, the National Credit Declaration, and the Terms of Sale.
- "**Credit Terms**" means these credit terms.
- "**Customer**," "**you**," "**your**" means the person acquiring Goods or Services from us, as described Part 1 of this Credit Agreement.
- "**Goods**" means all goods supplied by us to you (and where the context so permits includes any supply of Services) and as are described on the Tax Invoices, quotation, or any other forms as provided by us to you.
- "**GST**" has the meaning given to it by the GST Act.
- "**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- "**VicMix**," "**we**," "**us**," "**our**" means Detroit Concrete Pty Limited ACN 669 886 720.
- "**Insolvency Event**" means any of the following events concerning a Party, unless the events take place as part of a solvent reconstruction, amalgamation, merger, or consolidation on terms approved by the other Party before it takes place and the implementation of the reconstruction, amalgamation, merger or consolidation complies with the terms of the approval:
- if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to, or over, any of the property or undertaking of the Party;
  - if the Party becomes bankrupt;
  - if a controlling trustee is appointed to, or over, any of the property or undertaking of the Party;
  - if the Party's property or undertaking becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX *Bankruptcy Act 1966* (Cth);
  - the Party is unable to pay its debts when they become due and payable;
  - if the Party ceases to carry on business; or
  - if any event happens in Australia or any other country or territory in respect of a Party that is similar to any of the events or circumstances referred to in this definition.
- "**Parties**" means VicMix and the Customer, and "**Party**" means either one of them.
- "**PPSA**" means the *Personal Property Securities Act 2009* (Cth).
- "**Services**" means all services supplied by us to you (and where the context so permits includes any supply of Goods).
- "**Tax Invoice**" the meaning given to it by the GST Act.
- "**Terms of Sale**" means our Terms of Sale.

#### Interpretation

39. If there is any conflict, ambiguity, or inconsistency between any of the documents which comprise this Credit Agreement, it is expressly agreed the order of precedence will be (highest to lowest):
- these Credit Terms; and
  - our Terms of Sale.
40. Unless the contrary intention appears, a reference to:
- this Credit Agreement, or another document includes any variation or replacement of it, notwithstanding any change in the identity of the Parties;
  - the singular includes the plural and vice versa;
  - a right includes a benefit, remedy, authority, discretion, or power;
  - a person includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority or agency, or other entity;
  - a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a party by novation) and assigns; and
  - any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them.
41. Headings are for convenience only and will not affect the interpretation of these Credit Terms.
42. The meaning of general words is not limited by specific examples introduced by including, for example, or similar expressions.
43. The expressions in writing or written means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
44. Where two or more persons are defined as a Party in these Credit Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.
45. An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.
46. Unless specified otherwise, all reference to sums of money is in terms of Australian currency (AUD), and all documents and correspondence between the Parties must be in the English language.

## PART 4: NATIONAL CREDIT CODE DECLARATION

The Customer declare that the credit to be provided to it by VicMix is to be applied wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

### IMPORTANT

You should **only** sign this declaration if this credit is wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

By signing this declaration you may **lose** your protection under the National Credit Code

Signed on behalf of the Customer by:

<b>Signature:</b>		<b>Title / Position:</b>	
<b>Name (Please Print):</b>		<b>Date:</b>	

## ACKNOWLEDGEMENT AND CUSTOMER SIGNATURE

You hereby apply for the opening of an account and provide the information set out in **Part 1 of this Credit Application** in support of your application.

By signing this Credit Application, you warrant and represent to us that:

- all information provided by you in support of your application is true and correct;
- you agree to the terms of the **Privacy Statement** contained in **Part 2 of this Credit Application**;
- you have read and understood the **Credit Terms** contained in **Part 3 of this Credit Application**;
- you have executed the **National Credit Code Declaration** contained in **Part 4 of this Credit Application**;
- you have read and understood the **Terms of Sale** contained in **Part 5 of this Credit Application**;
- (if the Customer is a corporation) you understand the granting of a credit facility may, at our sole discretion, be conditional upon your directors executing the **Deed Poll of Guarantee and Indemnity** contained in **Part 6 of this Credit Application**;
- you understand that if your application is accepted, all parts of this Credit Application will apply to any provision of Goods and Services to you; and
- you have obtained, or had the opportunity to obtain, independent legal and financial advice prior to signing this Credit Application.

By signing this Credit Application, you accept, and agree to be bound by, all parts of this Credit Application.

I/We, the below named persons, am/are authorised to sign this Credit Application on behalf of the Customer.

<b>Signature:</b>		<b>Title / Position:</b>	
<b>Name (Please Print):</b>		<b>Date:</b>	
<b>Witness Signature:</b>		<b>Witness Name (Please Print):</b>	

<b>Signature:</b>		<b>Title / Position:</b>	
<b>Name (Please Print):</b>		<b>Date:</b>	
<b>Witness Signature:</b>		<b>Witness Name (Please Print):</b>	

## OFFICE USE ONLY – FOR COMPLETION BY VICMIX

The Customer's application is accepted. Signed on behalf of VicMix.

<b>Signature:</b>		<b>Title / Position:</b>	
<b>Name (Please Print):</b>		<b>Date:</b>	
<b>Account No. / Reference:</b>		<b>Credit Limit Approved:</b>	\$
<b>PPS Registration Completed?:</b>	<b>Yes</b>	<b>No</b>	<b>PPS Registration No.:</b>

## PART 5: TERMS OF SALE

### Application of Terms

1. These Terms set out the contractual basis upon which we agree to supply you with Goods and Services and apply whenever Goods and Service are quoted for, sold, supplied, or delivered by us to you.
2. These Terms apply to each and every Contract between us and you for the supply of Goods and Services. Any terms or conditions included in, attached to, or referenced in your Order including any purchase order terms subsequently given to us by you, or any other document provided by you deviating from, or inconsistent with, these Terms (even if any representative of VicMix signs the document), are expressly rejected by us and will not vary or supplement these Terms.
3. Each supply which we make following our acceptance of an Order will be regarded as a separate Contract, which is subject to these Terms.
4. Where we have granted you a credit facility, our Credit Terms apply. In the event of any conflict, ambiguity, or inconsistency between these Terms and our Credit Terms, our Credit Terms prevail to the extent of the conflict, ambiguity, or inconsistency.

### Quotations

5. Quotations made by us are estimates only and will not be construed as an offer or obligation to supply any Goods or perform any Services.
6. Unless specified otherwise, quotations made by us:
  - (a) are exclusive of GST;
  - (b) are exclusive of the costs of delivery; and
  - (c) will remain valid for a period of thirty (30) days from the date of quotation.
7. You acknowledge and agree that quotations made by us may include additional terms or conditions, which will supplement (and are intended to be read in conjunction with) these Terms.
8. Unless specified otherwise, insofar as quotations made by us relate to the performance of Services, the Price will be based upon Services being performed during Normal Working Hours on Business Days. If requested by you, we may from time to time agree to perform Services outside of Normal Working Hours or Business Days, in which case such Services will be deemed a variation and additional charges will apply.
9. We reserve the right to withdraw, vary, or extend the time for acceptance in respect of any quotation made by us at any time prior to the formation of a Contract in accordance with clause 12.

### Formation of Contract

10. You may accept these Terms (and you will be deemed to accept these Terms) if you, following receipt of a copy of these Terms:
  - (a) confirm your acceptance of these Terms; or
  - (b) place an Order with us.
11. We reserve the right to not accept your Order, without having to provide reasons to you for doing so. For clarity, nothing in these Terms obliges us to supply you with any Goods or perform any Services at any time.
12. Any Order placed by you will be construed as an offer. A binding Contract will only come into existence if:
  - (a) we communicate our acceptance of your Order, whether in writing or by electronic means; or
  - (b) we supply you with any Goods or perform any Services following receipt of your Order.
13. For clarity, a Contract is formed at the location where your Order is placed.

### Price and Payment terms

14. Subject to clause 15, the Price payable for the Goods or Services will be in accordance with our then prevailing price list (as notified by us to you from time to time), as applicable as at the date of your Order.
15. Where we have issued you a quotation, the Price will be our quoted price (subject to clauses 6 and 25 to 28) which will be binding on us provided you accept our quotation in writing within the period it is valid for acceptance.
16. Unless otherwise agreed in writing, the terms of payment are strictly cash on delivery. We may, in our sole discretion, withhold the despatch of any Goods if you fail to make any payment due in accordance with the terms of any Contract of which these Terms form part.
17. Payment may be made by cash, EFTPOS, VISA, and MasterCard credit cards, or by using your credit facility with us (where applicable). We reserve the right to change the payment methods that we accept at any time.
18. You acknowledge that we will be at liberty to charge a payment surcharge for applicable transactions equal to our reasonable cost of acceptance.
19. We reserve the right to require payment of a deposit. The amount of the deposit will be specified in our quotation or will be advised by us and will immediately become due and payable upon the formation of a Contract in accordance with clause 12, unless otherwise agreed in writing. For clarity, where we require payment of a deposit, we are under no obligation to procure or supply Goods or Services until the deposit has been received by us in cleared funds.
20. If GST is imposed on a Taxable Supply made by us to you under any Contract of which these Terms form part, the price of the Taxable Supply will be equal to the GST-exclusive consideration that you must pay to us for the Taxable Supply under the Contract increased by an amount (the "GST Amount") equal to the amount of GST payable on that Taxable Supply. The GST Amount is, subject to us issuing a Tax Invoice to you, payable at the same time and in the same manner as the consideration to which it relates. If we become liable to pay any tax, duty, excise, or levy in connection with any Contract of which these Terms form part, you must pay us these additional amounts upon written demand.
21. You must check all Tax Invoices and advise us of any errors or omissions within seven (7) days of receipt. Failing advice from you that a Tax Invoice contains any errors or omissions, the Tax Invoice may be deemed accepted by us.
22. Any sums owed to us by you will be made free of any set-off, or counterclaim, and without deduction or withholding (including by way of cash retention).
23. We may deduct any amount we owe you from any amount you are liable to pay to us.

### Default

24. If you default in the payment of any money due to us pursuant to any Contract of which these Terms form part by the date specified in our Tax Invoice, we are entitled to, without prejudice to any other rights which may be conferred upon us by law or equity, do any or all of the following:
  - (a) charge you interest on the outstanding amount at the rate of 10% per annum, which interest will accrue and will be recoverable for each day (or part thereof), that the money remains outstanding until payment is received by us in full
  - (b) require you to pay, in advance, for any Goods or Services (or any part of the Goods or Services) which have not yet been supplied; and
  - (c) suspend or cease the supply of any further Goods or Services to you.

### Variations

25. If you request or direct that any Goods or Services be supplied that are not strictly in accordance with our quotation or your Order, then such Goods or Services will constitute a variation.
26. A notice of variation must be submitted in writing and is only effective if accepted by us in writing.
27. You understand and agree that:
  - (a) all variations must be agreed between the Parties in writing prior to the Goods or Services being supplied; and
  - (b) all variations will be, in our discretion, invoiced at the rates specified in our quotation, as specifically quoted, or in accordance with our then current price list.
28. Notwithstanding clauses 25 to 27, and subject to any rights you might have under the *Competition and Consumer Act 2010* (Cth) or any other legislation, we reserve the right to vary the quoted Price, if:
  - (a) the Goods or Services specified in your Order are varied from the Goods or Services specified in our quotation (or are otherwise varied following the formation of a Contract); or
  - (b) otherwise as provided for in these Terms.

### Order cancellations

29. You may not cancel an Order (or any part of an Order) once a Contract has been formed, delivery of the Goods cannot be deferred, and Goods ordered cannot be returned, except with our prior written consent, and then only upon terms that you reimburse and indemnify us against all losses we have incurred or may incur as a result of the cancellation, deferral, or return, including but not limited to third-party supplier restocking fees, cartage, bank charges, other incidental expenses incurred on any part of your Order, and loss of profits.
30. You acknowledge and agree that cancelled Orders whether in whole or in part (if accepted by us) may be subject to a restocking charge of 30% of the Price, cartage fees and that you may, in our sole discretion, also be required to pay any amount incurred by us for all or part of the Goods manufactured prior to the date of cancellation.

### Delivery

31. Unless our quotation states otherwise, you will be liable for all costs associated with packaging and delivery, including cartage/freight, handling, and other charges. Where you have engaged a carrier to deliver the Goods, you will also be responsible for the cost of insuring the Goods.
32. You must make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
33. You acknowledge and accept that any period or date for delivery stated by us is intended as an estimate only and is not a contractual commitment. We will not in any circumstances be liable for any loss or damage suffered by you or any third party for failure to meet any estimated delivery date.
34. Delivery will be made within Normal Working Hours on Business Days, unless otherwise agreed in writing.
35. Delivery is deemed to occur at the time:
  - (a) you, or any third party on your behalf, collects the Goods from us;
  - (b) the Goods are delivered to the delivery location specified in your Order (or to such other location as otherwise agreed in writing);
  - (c) your nominated carrier takes possession of the Goods, in which event the carrier will be deemed to be your agent; or
  - (d) upon commencement of unloading of the Goods by you or your representative whether by attachment of plant, materials, items or any apparatus to the Goods for the purpose of unloading.
36. For clarity, the Goods will be delivered to the roadside adjacent to the delivery location, unless otherwise agreed in writing.
37. If requested by us, you or your duly authorised representative must sign our delivery docket as confirmation that the Goods ordered by you have been received by you in apparent good order and condition.
38. If, at your request (or the request of your Personnel), our delivery vehicle leaves the road and enters the delivery location to unload, you warrant and represent to us that the delivery location is suitable and safe for our delivery vehicle and our Personnel. You are liable for and indemnify us and our Personnel from and against any liability, claims, damages, losses, costs, and expenses whatsoever (including legal costs on a full indemnity basis) arising from or in connection with the entry of our delivery vehicle onto the delivery location, including injury to any person, damage 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 Goods as a result of you failing to provide suitable and safe access to the delivery site.
39. You acknowledge and agree that we may:
  - (a) charge for waiting time or an hourly hire where a delivery vehicle is unable to unload promptly and without delay upon arrival at the delivery location; and
  - (b) charge a minimum load service fee for delivery of goods smaller than the minimum load size for each particular type of goods.
40. If the Goods are delivered on Pallets, the Pallets remain our property. You may be charged for the use of such Pallets. On the return of the Pallets to us:
  - (a) if the Pallets are returned to us in good condition (in our sole determination), we agree to give you a credit in an amount equal to the fee charged by us in respect of the Pallets; or
  - (b) if the Pallets are returned to us in a damaged condition (in our sole determination), you shall be liable to pay to us the cost to repair or replace the Pallets.
41. If delivery of the Goods is deferred:
  - (a) at your request; or
  - (b) due to you being unable to accept delivery of the Goods (for whatever reason), when:
    - (c) (where no date for delivery has been specified by you) we are ready to deliver the Goods;
    - (d) (where a delivery date has been specified by you) the Goods are due to be delivered,then we will be entitled to charge you, and you must pay to us:
    - (e) reasonable storage charges (which will accrue on a daily basis until such time as the Goods are delivered); and
    - (f) a charge to re-deliver the Goods (where delivery has previously been attempted).
42. You acknowledge and accept that we may deliver Goods by instalments and reserve the right to require payment for each separate instalment in accordance with these Terms.
43. You acknowledge and accept that you are not relieved from any obligation arising under these Terms, or any Contract of which they form part, by reason of any delay in delivery, and delay in delivery will not entitle you to rescind the Contract.

### Risk

44. Risk of loss or damage to the Goods passes to you upon delivery to you or to your agent or to a carrier commissioned by you in accordance with clause 35.

45. You must insure the Goods on or before delivery against all losses which may be sustained as a result of the loss, damage, or destruction of the Goods (or any part thereof) by accident, theft, fire, explosion, flood, negligence, and such other insurable causes as may be available and must include us as co-insured.
46. If you request that Goods are to be delivered either to an unattended location, left outside your premises, or left outside our premises for collection, you acknowledge that we may deliver the Goods as requested at your sole risk.

#### Retention of title

47. Until such time as you have made payment in full for the Goods and until such time as you have made payment in full of all other money owing by you to us (whether in respect of money payable under a specific Contract or on any other account whatsoever) title in the Goods does not pass to you, and you agree that property and title in the Goods will not pass to you, and we retain the legal and equitable title in those Goods supplied and not yet sold.

#### Returns

48. You must, within seven (7) days of the date of delivery, give us written notice, with particulars, of any claim that the Goods delivered are not in accordance with your Order. If you fail to provide us with such notice, then to the extent permitted by law, the Goods must be treated as having been accepted by you.
49. Unless otherwise agreed in writing, you must pay all costs associated with the return of any Goods (either to us or from us to you or any third party) including freight, insurance, handling, and other charges.
50. Goods cannot be returned to us without our prior written consent. To the maximum extent permitted by law, Goods that have been specifically produced or procured at your request cannot be returned in any circumstances.
51. Any return (except for Goods deemed by us to be incorrectly supplied or deemed by us to be defective or Goods which are precast and structural concrete products in which case the relevant special terms apply) will incur a handling and administration charge of 25% of the purchase Price of the returned Goods, unless otherwise agreed in writing.
52. Goods to be returned to us must be unsoiled, undamaged, packed and wrapped appropriately, and must include all original packaging and documentation.
53. We accept no liability for any damage that occurs to any Goods in return transit.

#### Test Results

54. If you conduct any tests whatsoever on the Goods after the Goods have been delivered and we make a written request for those tests, you must give us copies of the test results accompanied by explanations of the testing methodologies applied, within seven (7) days of our request.

#### Special terms applying to the sale and delivery of pre-mixed concrete

55. Unless our quotation states otherwise, Prices are based on "Normal Class Concrete" as specified in the current issue of Australian Standard AS1379 (Specification & Supply of Concrete) and having a nominal slump not exceeding 100mm and using a nominal 20mm maximum size aggregate. If you require a slump in excess of 100mm or aggregate with a maximum size other than 20mm, a service fee may apply.
56. We reserve the right to charge for return cartage, handling and disposal costs for:
- any pre-mixed concrete ordered of which you do not accept delivery (except where non-acceptance is due to the pre-mixed concrete not complying with the specification);
  - pre-mixed concrete which is returned from the delivery location due to you being unable to use the full quantity ordered; and
  - pre-mixed concrete rejected because the time between batching and discharge is greater than the time permitted by AS1379 or the specification that covers the project being supplied, provided that the delay was not caused by us.
57. Unless otherwise agreed in writing, pre-mixed concrete will comply with AS1379. If compliance with AS1379 requires the addition of a cooling agent, a service fee to the quoted price may apply.
58. Pre-mixed concrete is sold in the plastic state and the subsequent in-situ performance when set is greatly affected by your work practices in handling, placing, and curing of the concrete. To the maximum extent permitted by law, we accept no responsibility for:
- the performance of pre-mixed concrete other than with respect to the criteria specified in AS1379 (when tested in strict accordance with the relevant Australian Standard by a NATA-accredited construction materials testing facility);
  - if water or any other material is added to the plastic concrete before or after discharge from the delivery vehicle, unless there is prior approval by us or our authorised representative;
  - if you have specified or prescribed a pre-mixed concrete mix design other than a mix design devised by us;
  - the surface texture and colour of hardened pre-mixed concrete, including where the aggregate in the concrete has been exposed by you, and for any future colour change or oxidation of aggregates that have been exposed to the atmosphere.
59. 'Production Assessment' (as described in AS1379) will be carried out by us in accordance with AS1379. Where 'Project Assessment' (as described in AS1379) is requested by you, we will provide that service at the ruling price at the date of supply. If you wish to perform independent tests at your own expense, you will only consider the results of samples and tests performed in accordance with the current issue of AS1012 (Methods of Testing Concrete) and tested in a National Association of Testing Authorities (NATA) approved laboratory.

#### Special Terms applying to the sale and delivery of Quarry Products

60. 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.
61. Upon request, we will make the relevant quarry product available for inspection and sampling by you prior to supply.
62. If quarry products are returned at your request, we reserve the right to charge for return cartage, handling, and disposal costs.
63. Unless otherwise agreed in writing, quarry products covered by Australian Standard AS2758, will comply with this standard.

#### Special Terms applying to sale and delivery of Precast & Structural Concrete Products

64. When the concrete products quoted are described as "seconds", "rejects" or "not first class" (NFC), you acknowledge that any defects in these concrete products have been specifically drawn to your attention prior to purchase.
65. Unless our quotation states otherwise, concrete products will be manufactured to the relevant definition of "finishes" as set out in the current edition of Precast Concrete Recommended Practice of the Concrete Institute of Australia and to the relevant permissible tolerances specified in the current issue of Australian Standard AS3600 (Concrete Structures). If you require testing of the concrete product prior to delivery, our obligation will be limited to preparation and testing of standard concrete test cylinders to indicate concrete strength for the purposes of determining twenty-eight (28) day compressive strength, transfer of pre-stress, or lifting of reinforced concrete components. The cost of additional or different tests including testing by a NATA approved laboratory will be charged to you.

66. Unless our quotation states otherwise, we will not be responsible for removing or patching cast-in fittings or holes provided for lifting or hoisting the concrete products supplied.
67. When you have arranged the unloading of the concrete products from the delivery vehicle, we accept no responsibility for any damage to the concrete products that occurs during unloading. Our responsibility for the Goods ceases upon attachment of any lifting device to the concrete products.
68. We will accept return, within thirty (30) days of supply, of concrete products (other than products manufactured to your design) subject to the concrete products being clean, free from defects, of saleable quality, and you arranging and paying for return delivery to us. A restocking fee of 30% of the original invoice Price may be charged plus a one off \$75.00 administration fee which may be increased by us from time to time.
69. The specification of Goods manufactured by us to your design must be supplied in writing by you and we will be entitled to rely upon those specifications as being correct for the production of the shop drawings required for manufacture.
70. We, at our sole discretion, may submit shop drawings and details to you for approval. When you have given written approval that the drawings meet your requirements, we will not be liable for any errors or divergences from your specification, provided that the concrete products supplied are in accordance with the approved shop drawings.
71. You acknowledge and agree that any steel reinforced concrete pipe (SRCP) will be manufactured to AS4058 unless agreed otherwise.
72. We will not be liable for any delays caused by you not providing any specifications required to prepare shop drawings, or delays caused by you in failing to approve shop drawings.

#### Description of Goods

73. It is a condition of sale that any description or specification contained in our printed literature is for general indicative purposes only and does not render us responsible in any way, except to the extent that the Goods shall comply with the standards set out in such description or specification and that such description or specification shall not be taken as implying or giving any undertaking as to fitness for any particular purpose.
74. Where you have ordered Goods to comply with particular specifications, you warrant that you have verified those specifications and have satisfied yourself that the Goods are fit for purpose.

#### Intellectual property

75. All right, title and interest in the Intellectual Property Rights in and to all Works, and all Goods sold or supplied by us are, and will at all times, remain our property.
76. All improvements, derivatives and modifications to the Intellectual Property Rights contemplated by clause 75 (the "Improvements") vest in us immediately on creation. To the extent necessary to give effect to this clause 76, you assign to us all right, title and interest in the Improvements.
77. You acknowledge and agree that you have no rights to use our Intellectual Property Rights under these Terms, except as expressly set out herein, unless otherwise agreed in writing.

#### Indemnity

78. You are liable for and indemnify us in respect of all liability, claims, damage, loss, costs, and expenses (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that we may suffer or incur at any time, directly or indirectly, as a result of any default by you in the performance or observance of your obligations under any Contract of which these Terms form part.
79. Your liability to indemnify us will be reduced proportionally only to the extent that:
- Contract of which these Terms form part has contributed to the liability, claim, damage, loss, cost, or expense which is the subject of the indemnity; or
  - these Terms make us specifically liable for any cost or expense or rectifying or repairing any defect in, malfunction of, or damage to the Goods.
80. Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the performance or termination of any Contract of which these Terms form part.
81. It is not necessary for us to incur any expense or make any payment before enforcing our rights of indemnity conferred by these Terms.

#### Nature of relationship

82. We will perform our obligations under the Contract as an independent contractor. Nothing in these Terms, or any Contract of which they form part, is to be construed as creating a relationship of employment, agency, joint venture, or partnership.

#### Suitability of Goods

83. You are responsible for examining and testing the Goods, at your own expense, to ensure they are fit or suitable for your purposes. To the maximum extent permitted by law, we accept no liability for the fitness or suitability of the Goods for any particular purpose of yours.

#### Limitation of liability

84. We will not be liable for any loss or damage, however caused (including by our negligence), suffered or incurred by you in connection with any incorrect information contained in an Order or otherwise provided by or on behalf of you to us from time to time.
85. Subject to clauses 84, 86, 87, and 89, our liability for any loss or damage, however caused (including by our negligence), suffered or incurred by you in connection with any Contract of which these Terms form part is limited to the sum paid to us by you in respect of that Contract prior to the date you first suffered loss or damage in connection with that Contract.
86. The limitation contemplated in clause 85 is an aggregate limit for all claims, whenever made.
87. Subject to clause 89, we are not liable for any Excluded Loss, however caused (including by our negligence), suffered or incurred by you in connection with any Contract of which these Terms form part.
88. For clarity, and without limiting clauses 84 to 87, the Parties agree that clauses 84 to 87 are to apply in connection with a breach of a Contract, anticipated breach of a Contract, and other conduct regardless of the seriousness or nature of that breach, anticipated breach, or other conduct.
89. If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in respect of any Goods or Services supplied in connection with any Contract of which these Terms form part and our liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 84 to 87 do not apply to that liability and instead our liability for such failure is limited to, in the case of a supply of Goods, us replacing the Goods or supplying equivalent Goods, or in the case of a supply of Services, us supplying the Services again or paying the cost of having the Services supplied again.

#### Termination of Contract

90. We may, with immediate effect, terminate any Contract of which these Terms form part by written notice to you, if:
- you fail to make payment of a deposit required by us or any amount owed to us as and when due;
  - you commit a material or persistent breach of these Terms and do not remedy the breach within fourteen (14) days of receipt of a notice identifying the breach and requiring its remedy; or

(c) we are no longer able to, for whatever reason, supply the Goods or Services (or any part of the Goods or Services).

91. For clarity, termination of any Contract of which these Terms form part will not affect the rights and remedies which have already accrued to a Party at the time of termination, whether under that Contract or otherwise.

#### Costs

92. You will pay our costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

#### Force majeure

93. We are not liable to you for any delay or failure to perform any obligation under any Contract of which these Terms form part if such delay or failure to perform is due to a Force Majeure Event.

94. If either Party is unable to carry out, wholly or in part, any of its obligations under any Contract due to a Force Majeure Event for more than fifteen (15) Business Days, we may, by written notice to you, terminate the Contract in whole or in part without penalty and you acknowledge and agree that we will not be liable for any losses or claims arising from such termination.

#### Variation of Terms

95. No variation of these Terms, or any Contract of which these Terms form part, requested by you will be effective, unless varied in writing and agreed between the Parties. Clerical errors (such as spelling mistakes, grammatical errors, or numerical errors) may be subject to correction by us without notification.

96. We may amend these Terms by notifying you in writing. The amended Terms will apply to any future Order placed by you following us notifying you of the amendments.

#### Subcontracting

97. You acknowledge that we reserve the right to subcontract:

- the manufacturing and supply of any part of the Goods to be supplied; and
- the Services to be performed (or any part of those Services),

however, any subcontracting of the Goods or Services to be supplied will not relieve us of any of our obligations to you.

#### Assignment

98. You may not assign, transfer, or novate your rights or obligations under any Contract of which these Terms form part without our prior written and fully informed consent (which consent must not be unreasonably withheld).

#### Waiver

99. A waiver of any provision or breach of these Terms, or any Contract of which these Terms form part, will only be effective if made by the affected Party in writing. If a Party elects not to enforce its rights arising as a result of a breach of a Contract, that will not constitute a waiver of any rights in relation to any subsequent or other breach.

#### Severance

100. If any part of these Terms, or any Contract of which these Terms form part, is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the Contract. Other provisions which are self-sustaining are, and will continue to be, enforceable in accordance with their terms.

#### Entire agreement

101. Subject to clause 4, the Contract constitutes the entire agreement and understanding between the Parties. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of the Contract are merged in the Contract and are of no further effect. No oral explanation or information provided by a Party to another Party affects the meaning or interpretation of the Contract, or constitutes any collateral agreement, warranty, or understanding.

#### Governing law

102. These Terms, and any Contract of which these Terms form part, will be governed by and construed in accordance with the laws of the State or Territory in which Goods are delivered or Services supplied.

103. The Parties agree to submit to the non-exclusive jurisdiction of the courts of the relevant location under clause 101 and the federal courts and courts competent to hear appeals from those courts.

#### Definitions

104. In these Terms:

**"Business Days"** means a day that is not a Saturday, Sunday, or public holiday in the State or Territory of Australia in which Goods or Services are supplied under these Terms.

**"Contract"** means a contract for the supply of Goods or Services, as constituted by our quotation (if any), your Order, and these Terms.

**"Credit Terms"** means our credit terms, as set out in the credit agreement executed by you (where applicable).

**"Customer," "you," "your"** means the corporation, partnership, person, or other entity acquiring Goods or Services from us.

**"VicMix," "we," "us," "our"** means Detroit Concrete Pty Limited ACN 669 886 720.

**"Excluded Loss"** means any:

- consequential loss;
- loss of revenues;
- loss of reputation;
- loss of profits;
- loss of bargain;
- indirect loss;
- lost opportunities, including opportunities to enter into arrangements with third parties;
- loss or damage in connection with claims against you by third parties; or
- loss or corruption of data.

**"Force Majeure Event"** means any act of God, acts, decrees, or regulations of government authorities, casualty, fire, explosion, storm, flood, earthquake, lightning, inclement weather, cyclone, embargo, industrial action, strike, lockout, civil commotion, riot, insurrection, war, epidemic or pandemic, quarantine or biological contamination, damage to or destruction of facilities, equipment or mechanical breakdown, failure of a third-party supplier or service provider, or any other cause beyond the reasonable control of a Party.

**"Goods"** means all goods supplied by us to you (and where the context so permits includes any performance of Services) and as are described on the invoices, quotation, or any other forms as provided by us to you.

**"GST"** has the meaning given to it by the GST Act.

**"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**"Intellectual Property Rights"** means all industrial and intellectual property rights throughout the world, whether present or future, and whether protectable by statute, at common law or in equity, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents and patentable inventions, including the right to apply for registration of any such rights.

**"Normal Working Hours"** means 07:00am to 5:00pm.

**"Order"** means a written or oral order placed by you offering to acquire Goods or Services from us.

**"Pallets"** means any pallets, drums, bearers, and any other containers supplied in conjunction with the Goods.

**"Parties"** means VicMix and the Customer, and **"Party"** means either one of them.

**"Personnel"** means officers, employees, and agents engaged by each Party (but does not include the other Party) and, in the case of VicMix, includes its subcontractors (and any employee of those subcontractors).

**"Price"** means the price payable for the Goods or the Services, as notified by us to you from time to time.

**"Services"** means all services performed by us (and where the context so permits includes any supply of Goods).

**"Tax Invoice"** and **"Taxable Supply"** have the same meaning as in the GST Act.

**"Terms"** means these terms of trade.

**"Works"** means all literary, artistic, and other works, including all physical works, production materials and subject matter created solely or jointly with others, by us in the course of or in relation to any Contract in which Intellectual Property Rights may subsist and all drafts, variations, alterations, and adaptations of such works or subject matter (whether currently existing or created in the future).

#### Interpretation

105. If there is any conflict, ambiguity, or inconsistency between any of the documents which comprise a Contract, it is expressly agreed the order of precedence will be (highest to lowest):

- any additional terms or conditions contained in our quotation (where applicable);
- our Credit Terms (where applicable);
- these Terms; and
- any other documents issued by us.

106. Unless the contrary intention appears, a reference to:

- these Terms or another document includes any variation or replacement of them notwithstanding any change in the identity of the Parties;
- a reference to a clause is a reference to a clause contained in these Terms;
- the singular includes the plural and vice versa;
- a right includes a benefit, remedy, authority, discretion, or power;
- a person includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority or agency, or other entity;
- a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a Party by novation), and assigns; and
- any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them.

107. Headings are for convenience only and will not affect the interpretation of these Terms.

108. The meaning of general words is not limited by specific examples introduced by including, for example, or similar expressions.

109. Where two or more persons are defined as a Party in these Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.

110. An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.

111. Unless specified otherwise, all reference to sums of money is in terms of Australian currency (AUD), and all documents and correspondence between the Parties will be in the English language.



**PART 6: DEED POLL OF GUARANTEE AND INDEMNITY**

<b>To:</b>	Detroit Concrete Pty Limited ACN 669 886 720 ("VicMix")		
<b>Full Name of Guarantor:</b>		<b>Address:</b>	
<b>Full Name of Guarantor:</b>		<b>Address:</b>	

("Guarantors") hereby covenant and undertake and if more than one, jointly and severally, as follows.

**Consideration**

1. In consideration of VicMix extending or agreeing to extend credit or further credit to the Customer at the Guarantors' request (testified by the Guarantors' execution of this Credit Agreement) for Goods sold or to be sold from time to time or Services provided or to be provided, the Guarantors guarantee payment to VicMix of all money which is now or at any time in the future becomes due and payable to VicMix by the Customer on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Customer to VicMix arising out of a relationship of trustee and beneficiary.

**Guarantee and indemnity**

2. The Guarantors agree to guarantee and indemnify VicMix against all losses damages or expenses that VicMix may suffer as a result, either directly or indirectly, of any failure by the Customer to make due payment of any money owing to VicMix whether for Goods sold, Services provided or otherwise or to observe the terms of any agreement between the Customer and VicMix, including costs on a full indemnity basis of any attempt or attempts to recover from the Customer or any Guarantor and whether successful or not or whether frustrated by the Customer or Guarantor or by operation of law and including costs ordered by a court to be paid by VicMix to the Customer or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to VicMix.

3. This guarantee and indemnity is a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by VicMix to the credit of any account of the Customer or the Guarantors, or deemed to be held on trust by the Customer for VicMix, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 1 and 2 of this guarantee and indemnity.

4. Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and VicMix will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.

5. VicMix will have the right to enforce this guarantee and indemnity, irrespective of whether VicMix has sought to recover the amounts guaranteed from the Customer and with or without notice to the Customer, as if the primary liability for any money owing was the Guarantors' own. Further, VicMix may proceed against the Guarantors (or any one of them) notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.

6. This guarantee and indemnity will continue in force until such time as VicMix releases all of the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders, or owners of the Customer.

7. This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of VicMix against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:

- (a) any other security taken by VicMix from the Customer or from any other person;
- (b) any waiver or indulgence, whether as to time or otherwise, given to the Customer or to the Guarantors or any one or more of the Guarantors;
- (c) by any other act, matter, or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
- (d) any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

**Right of subrogation**

8. In the event of a Guarantor making any payment in respect to an obligation of the Customer whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Customer unless and until VicMix has been paid in full.

9. In the event of the Customer going into liquidation, the Guarantors will be prohibited from proving in competition with the Customer unless and until VicMix has been paid in full.

**Insolvency of Customer**

10. No sum of money which the Customer pays to VicMix and VicMix later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Customer by reason of the *Corporations Act 2001* (Cth), *Bankruptcy Act 1966* (Cth), or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Customer.

**Costs**

11. VicMix is at liberty from time to time to charge the account of the Customer with all costs, charges, and expenses, legal or otherwise that VicMix incurs in connection with:

- (a) the account of the Customer;
- (b) this guarantee and indemnity;
- (c) any other security in respect of the indebtedness of the Customer to VicMix;
- (d) the preparation, completion and stamping of this deed poll; or
- (e) the exercise or attempted exercise of any right, power or remedy conferred on VicMix under or by virtue of this deed poll;

and the same will be part of the monies secured by this deed poll.  
12. The Guarantors agree to pay VicMix's costs and disbursements incurred in recovering monies secured by this guarantee and indemnity, including debt recovery agency fees and legal costs on a full indemnity basis.

**Security/charge**

13. The Guarantors charge in favour of VicMix all of their estate and interest in any real property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with all monies which are now or in the future become owing by the Guarantors to VicMix, including all amounts referred to in clauses 1 and 2.

14. The Guarantors charge in favour of VicMix all of their estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with all monies which are now or in the future become owing by the Guarantors to VicMix, including all amounts referred to in clauses 1 and 2.

15. As security for the payment of the amount of the indebtedness to VicMix from time to time, the Guarantors irrevocably appoint as their duly constituted attorney VicMix's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat VicMix may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

16. This guarantee and indemnity secures the repayment of all monies owed by the Customer whatsoever, and this deed poll constitutes the entire guarantee.

17. Where the Guarantors have previously entered into an agreement with VicMix by which the Guarantors have granted a charge, mortgage, or other security over real or personal property, those charges, mortgages, or other security interests will continue and co-exist with the obligations and security interests created in this deed poll and will secure all indebtedness and obligations of the Guarantors under this guarantee and indemnity. VicMix may, at its election, vary the terms of such previous charges, mortgages, or other securities to reflect the terms herein.

**Variation**

18. The Guarantors authorise VicMix to give time or any other indulgence or consideration to the Customer in respect of compliance with its obligations to VicMix, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

19. The Guarantors agree that this guarantee and indemnity will not be avoided, released, or affected by VicMix making any variation or alteration in the terms of its agreement(s) with the Customer, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

**Severance**

20. If any provision of this guarantee and indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.

**Personal Property Securities Act**

21. For the avoidance of any doubt, the security interest(s) created by this instrument in favour of VicMix constitutes security interests pursuant to the PPSA.

22. The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

**Notices**

23. The Guarantors agree to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in the Credit Agreement or any other address later notified to VicMix by the Guarantors or the Guarantors' authorised representative.

**Jurisdiction**

24. The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws of the State or Territory in which Goods are delivered or Services supplied.

25. The parties to this guarantee and indemnity submit to the non-exclusive jurisdiction of the courts of the relevant location under clause 24 and the federal courts and courts competent to hear appeals from those courts.

**Privacy Act**

26. The Guarantors agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (Cth) contained in Part 2 of the Credit Agreement.

**Definitions**

27. Capitalised terms which have not been defined in this guarantee and indemnity have the meaning given to those terms in the Credit Terms.

<b>Executed as a Deed Poll on (Date):</b>	
<b>Signed, Sealed, and Delivered by the Guarantor</b>	<b>Signature:</b>
	<b>Name (Please Print):</b>
	<b>Title / Position:</b>
	<b>Witness Signature:</b>
	<b>Witness Name (Please Print):</b>

<b>Signed, Sealed, and Delivered by the Guarantor</b>	<b>Signature:</b>
	<b>Name (Please Print):</b>
	<b>Title / Position:</b>
	<b>Witness Signature:</b>
	<b>Witness Name (Please Print):</b>