

**APPLICATION FOR COMMERCIAL CREDIT AND TERMS AND CONDITIONS OF SALE FOR LANGWARRIN
QUARRIES OPERATIONS PTY LTD ACN 664 474 177 (the Supplier, We, Us, Our or LQO)**

This application (**Application** or **Commercial Credit Application**) for a commercial credit account (**Credit Account**) is to be filled out and signed by the applicant (**you, your or Applicant**) and (if requested by us) each guarantor (each a **Guarantor**).

This application incorporates the attached Part B. Privacy consent and acknowledgement, Part C. Terms and Conditions of Credit, Part D: Deed of Guarantee and Indemnity, Part E: National Credit Code Declaration and Part F: Terms and Conditions of Sale.

Please ensure that all parts of this Commercial Credit Application have been completed and signed prior to submitting your application to Us. A failure to complete or sign any part of this Commercial 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 Commercial Credit Application and each of Parts B to F herein.

Part A. Applicant details			
Applicant's name (Trading name or name of trust, if applicable)			
Type of business (cross applicable box)	Sole trader (individual) <input type="checkbox"/>	Public company (Ltd) <input type="checkbox"/>	Private company (Pty Ltd) <input type="checkbox"/>
	Partnership <input type="checkbox"/>	Trust <input type="checkbox"/>	Other (specify details) <input type="checkbox"/> :
ACN (if applicable)		ABN (if applicable)	
Principal business address			
Postal address			
Phone		Mobile	
Type of business / industry			
Bank		Bank branch	
Account number		BSB	
If the Applicant is a company, please complete the following			
Registered company name			
Registered office address			
Date of incorporation		State of incorporation	
ACN		ABN (if applicable)	
Number of directors		Number of employees	
Turnover (\$AUD) p.a.			

Directors' personal guarantees must be signed by all directors for the Applicant in order for this application to be processed:

Details of sole trader / partners / directors			
Surname		First names	
Residential address		Phone	
Position held		Date of birth	
Surname		First names	
Residential address		Phone	
Position held		Date of birth	
Surname		First names	
Residential address		Phone	
Position held		Date of birth	
If sole trader or partnership			
Full name		Driver's licence number/s (copy to be provided)	
Full name		Driver's licence number/s (copy to be provided)	
Full name		Driver's licence number/s (copy to be provided)	
Estimated monthly purchases (i.e. credit limit required (\$AUD))	\$ (Monthly)	Products (Goods) to be purchased	

Trade references – major suppliers

Business name		Phone	
Address		Account type and credit terms (days)	
Email address			
Business name		Phone	
Address		Account type and credit terms (days)	
Email address			

Part B. Privacy consent and acknowledgement

1. This privacy consent and acknowledgement encompasses consents, notifications, and disclosures required under or in relation to the *Privacy Act 1988* (Cth) (“Act”).
2. The terms of this consent and acknowledgement operate together and concurrently with any pre-existing privacy statement, consent, acknowledgement, authorisation, or notification, whether contained in the Commercial Credit Application, Our Terms and Conditions of Credit or Terms and Conditions of Sale or otherwise, save to the extent of any inconsistency in which case the terms of this privacy consent and acknowledgement will prevail.
3. **Defined terms:** For the purpose of this privacy statement, the terms “personal information”, “sensitive information”, “credit eligibility information”, “credit information”, “commercial credit related purpose”, “credit guarantee purpose”, “consumer credit related purpose”, “credit reporting body”, “credit provider”, and “credit reporting information” 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. **Purposes of collection of personal information:** We may collect personal information about you and the Guarantor(s) (if any) for our primary purposes, being the supply of quarry goods and services to you and the assessment of this credit application (and any guarantee) and the provision and ongoing management of any credit provided if the application is approved and management of any guarantee. We will also use personal information about you for internal management purposes, administration processes in current and future applications you make for other goods and services.
5. **Authority to obtain Information:** We may collect, and We may already have collected, Information from you and the Guarantor(s), other credit providers, credit reporting bodies (“CRBs”), and other third parties for the purposes of our functions and activities including, but not limited to, credit, sales, marketing and administration. If yours and the Guarantor(s)’ personal Information is 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.
6. **Authority to exchange Information with CRBs and other credit providers:** You and the Guarantor(s) (if any) consent to Us obtaining and disclosing credit reporting information about you and the Guarantor(s) from and to a CRB, 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. Such Information may include:
 - (a) permitted identification particulars;
 - (b) the fact you have applied for credit and the amount and type of credit;
 - (c) the fact We are a credit provider to you;
 - (d) credit limit; loan start/end dates;
 - (e) repayment history;
 - (f) ‘default information’ (in addition to and without limiting repayment history information), i.e. payments overdue for more than 60 days in specified circumstances; and
 - (g) in relation to those overdue payments at paragraph 6(f), advice about new payment arrangements or that those payments are no longer overdue.
7. **Authority to exchange Information with CRBs:** We may provide your and the Guarantor(s)’ (if any) personal information to any or all of the CRBs detailed within Our privacy policy. We intend to disclose default information to any or all of such listed CRBs. You and the Guarantor(s) consent to such disclosure. Our privacy policy contains a statement of notifiable matters in accordance with section 21C of the Act and items 4.1 and 4.2 of the Privacy (Credit Reporting) Code 2014 (“CR Code”) in respect of disclosure to credit reporting bodies including information about the CRBs to which we are likely to disclose your credit information and 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 and to access your information. Our privacy policy is available on our website at www.langwarrinquarries.com.au or we can provide you with a hard copy upon request.
8. **Authority to exchange Information with other third parties:** We may disclose Information to, and about you, and you and the Guarantor(s) (if any) hereby acknowledge that you and the Guarantor(s) consent to the disclosure of such information to referees listed in the Commercial Credit Application, Our insurers, valuers and third party debt collection agencies, regulatory authorities (e.g. to Australian tax authorities), 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.
9. **Authority to give information to Guarantor(s):** You authorise Us to give any Guarantor(s) information about your creditworthiness, credit standing, credit history or credit capacity, including credit eligibility information, for the purpose of determining if that person wishes to act as a Guarantor and keeping the Guarantor informed of the guarantee and indemnity, and for any purposes related to the proposed or actual enforcement of the guarantee and indemnity.
10. **Authority to use Information for administration purposes:** You authorise Us to use any Information collected in this application and in subsequent administration processes for future applications you may wish to make for other products and/or services and related services, and to disclose this Information to Our related bodies corporate for similar use. Information collected for this purposes will only be used to the extent permitted by law.
11. **Authority to provide Information for funding purposes:** You authorise Us to disclose any personal information about You to another person (including without limitation, any trustee, servicer, credit enhancer, funder, ratings agency) in connection with any funding of Our business or any transactions including by means of an arrangement involving securitisation.
12. **Privacy policy:** A full copy of our [privacy policy](http://www.langwarrinquarries.com.au) can be obtained from Our website (www.langwarrinquarries.com.au) or by making a request in writing directed to our privacy officer as specified in the policy. Our privacy policy contains information about how to access and seek correction of Information, or how to complain about a breach of the Act, the Australian Privacy Principles (“APPs”), code(s) (including the CR Code) and how we will deal with any such complaint.
13. **Acceptance of privacy terms:** 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.

Signed:
Guarantor(s)

Guarantor's full name	
Guarantor's signature	
Trust name & ABN	

Guarantor's full name	
Guarantor's signature	
Trust name & ABN	

Signed:



Applicant

Signing where Applicant is a sole trader / individual

Applicant's full name	
Applicant's signature	
Trust name & ABN	

Signing where Applicant is a company

Executed by:	[Insert company name] in accordance with section 127 of the <i>Corporations Act 2001</i> (Cth)
Signature of director	
Full name of director	
Signature of company secretary / director	
Full name company secretary / director	

Signing where Applicant is a director and sole secretary company

Executed by:	[Insert company name] in accordance with section 127 of the <i>Corporations Act 2001</i> (Cth) (Company)
Signature of sole director and sole company secretary:	
Full name of sole director and company secretary who states that he / she / it is the sole director and sole company secretary of the Company	

Part C. Terms and Conditions of Credit (Credit Terms)**1. Interpretation****1.1 Definitions**

- (a) **"Applicant"** means the party or parties seeking credit and is also referred to as the **"Customer"**.
- (b) **"Application"** or **"Commercial Credit Application"** means the application entitled 'Application for Commercial Credit and Terms and Conditions of Sale for Langwarrin Quarries Operations Pty Ltd ACN 664 474 177' contained available on [LQO's website](#) as updated from time to time.
- (c) **"Bankruptcy Act"** means *Bankruptcy Act 1966* (Cth).
- (d) **"Corporations Act"** means the *Corporations Act 2001* (Cth).
- (e) **"Goods"** means any goods and other items (in each case as described in any Order which LQO has supplied (or has agreed to supply) to the Applicant, including (without limitation):
- (i) soft rock fill;
 - (ii) crushed rock;
 - (iii) non-descript crushed rock;
 - (iv) packing sand;
 - (v) top soil;
 - (vi) turf,
- and other materials as supplied by LQO to the Customer in accordance with these Credit Terms and the Terms and Conditions of Sale.
- (f) **"Guarantee"** shall mean the guarantee and indemnity provided as part of this Commercial Credit Application (if any).
- (g) **"Guarantor"** shall mean each of the guarantors identified in the section entitled "Executed by the Guarantor".
- (h) **"Insolvency Event"** means any of the following events concerning the Applicant, unless the events take place as part of a solvent reconstruction, amalgamation, merger, or consolidation on terms approved by LQO before it takes place and the implementation of the reconstruction, amalgamation, merger or consolidation complies with the terms of the approval:
- (i) 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 Applicant;
 - (ii) if the Applicant becomes bankrupt;
 - (iii) if a controlling trustee is appointed to, or over, any of the property or undertaking of the Applicant;
 - (iv) if the Applicant's property or undertaking becomes subject to a personal insolvency arrangement under part X of the *Bankruptcy Act* or a debt agreement under part IX of the *Bankruptcy Act*;
 - (v) the Applicant is unable to pay its debts when they become due and payable;
 - (vi) if the Applicant ceases to carry on business; or
 - (vii) if any event happens in Australia or any other country or territory in respect of the Applicant that is similar to any of the events or circumstances referred to in this definition.
- (i) **"Order"** has the meaning given in the Terms and Conditions of Sale;
- (j) **"PMSI"** means any "purchase money security interest" and has the meaning given to it by the PPSA.
- (k) **"PPSA"** means *Personal Property Securities Act 2009* (Cth).
- (l) **"Services"** means any service provided by LQO, including the provision of:
- (i) weighbridge services;
 - (ii) personnel and machinery for the loading of Goods into the Customer's or its agent's vehicles at the Site; and
 - (iii) all ancillary or other services in connection with the provision of the Goods.
- (m) **"Site"** means Gate 1, 165 Quarry Rd, Langwarrin VIC 3910.
- (n) **"LQO"** means Langwarrin Quarries Operations Pty Ltd ACN 664 474 177 of 59 Queen Street, Bendigo VIC 3550, in the State of Victoria, Australia and any of its "related bodies corporate" (as defined in section 50 of the *Corporations Act*).
- (o) **"Terms and Conditions of Credit"** or **"Credit Terms"** means the terms and conditions set out in this Commercial Credit Application, as amended, varied, supplemented or replaced from time to time and which are published on the [LQO Website](#), where the current terms are included within this *Part C. Terms and Conditions of Credit* of this Application.
- (p) **"Terms and Conditions of Sale"** means the terms and conditions of supply or trade as amended, varied, supplemented or replaced from time to time and which are published on the [LQO Website](#) where the current terms are included within *Part F. Terms and Conditions of Sale* of this Application.

1.2 Interpretation principles

- (a) Unless the contrary intention appears, a reference to:
- (i) these Credit Terms, or another document includes any variation or replacement of it, notwithstanding any change in the identity of the

parties;

- (ii) the singular includes the plural and vice versa;
 - (iii) a person includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority or agency, or other entity;
 - (iv) a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a party by novation) and assigns; and
 - (v) 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;
- (b) 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.
- (c) 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.
- (d) 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.
- (e) These Credit Terms are not to be interpreted against the interests of a party because that party proposed these terms or some provisions of it or because that party relies on a provision of these Credit Terms to protect itself.

1.3 Conflict between terms – priority of terms

These Credit Terms, together with each of Parts *B. Privacy Information*, *D. Deed of Guarantee and Indemnity*, *E. National Credit Code Declaration*, and *F. Terms and Conditions of Sale*, form the agreement between the Applicant and LQO. If there is any conflict, ambiguity, or inconsistency between any of the documents / parts which comprise this agreement, it is expressly agreed that to the extent of the inconsistency, the order of precedence will be (highest to lowest):

- (a) Part B. Privacy consent and acknowledgement;
- (b) Part F. Terms and Conditions of Sale;
- (c) Part C. Terms and Conditions of Credit; and
- (d) Part D. Deed of Guarantee and Indemnity.

1.4 Term

These Credit Terms commence on the date we accept your completed Commercial 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. General provisions**2.1 The Applicant agrees and acknowledges that:**

- (a) if LQO agrees to supply any Goods or provide any Services to the Applicant, that supply or provision will (at all times) be subject to:
 - (i) the Terms and Conditions of Sale and the Applicant shall be bound by (and will comply with) those Terms and Conditions of Sale as if set out (in full) herein; and
 - (ii) these Terms and Conditions of Credit.
- (b) LQO may, in its sole discretion, vary the Terms and Conditions of Sale, at any time, without notice to the Applicant and each such variation shall be binding on the Applicant.

3. Commercial credit

Where the Applicant is a natural person, the Applicant warrants that it has signed a declaration in the form contained in *Part E. National Credit Code Declaration* in favour of LQO that any credit provided to the Applicant by LQO will be applied wholly or predominately for business purposes and not for personal, domestic or household purposes.

4. Notification of change to Applicant entity

4.1 The Applicant will immediately advise LQO of any detrimental changes to the Applicant's financial position, or any Insolvency Event or change of structure, or a change in the - directors, shareholders or identity of the persons who own or control the Applicant, or change to the Applicant's constitution – being a change of the entity or natural person described in this Commercial Credit Application, including any Guarantor, or any change to its name or details including, if the Applicant or Guarantor is a trustee, the ABN of the relevant trust.

4.2 In the case of a change of directors or shareholders, LQO may ask the Applicant's directors to sign a guarantee and indemnity.

5. Payment

- 5.1 The Applicant will pay the amount shown on each invoice for Goods supplied and Services provided by LQO before the due date for payment.
- 5.2 The Applicant is liable to pay all amounts due to LQO, regardless of whether the Applicant has exceeded its credit limit.
- 5.3 Until LQO notifies the Applicant that the Applicant has been granted a credit facility, all Goods and Services supplied to the Applicant must be paid for on a 'cash on delivery' (i.e. in immediately cleared funds such as EFTPOS, Visa or MasterCard) or performance basis.
- 5.4 If payment is not made when due, LQO may charge interest on all moneys outstanding from the Applicant and interest shall accrue and be calculated on a daily basis at the rate of 10% per annum.
- 5.5 Any sums owed by the Applicant to LQO under these Credit Terms will be made free of any set off, or counterclaim, and without deduction or withholding (including by way of cash retention).

5.6 LQO may deduct any amount that LQO owes the Applicant from any amount the Applicant is liable to pay LQO.

5.7 The Applicant is liable for all purchases made using the credit facility. LQO is not responsible for confirming the authority of persons using the Applicant's account. The Applicant is solely responsible for ensuring there is no unauthorised use of its account.

6. Credit terms

6.1 If any amount due and payable by the Applicant to LQO is not paid on time, all amounts actually or contingently owing under this Commercial Credit Application, whether or not due and payable become immediately due and payable.

6.2 Should an Insolvency Event occur in respect of the Applicant, LQO may, in addition to any other course of action available to it, elect to terminate or rescind this Commercial Credit Application.

7. Credit approval

7.1 LQO will advise the Applicant by email if, subject to these Terms and Conditions of Credit and the Terms and Conditions of Sale, it agrees to extend credit to the Applicant from time to time and the terms of that credit (including the credit limit that will apply) (the **Credit Approval**).

7.2 Unless LQO stated otherwise within the Credit Approval, where LQO grants the Applicant a credit facility, the terms of payment are strictly thirty (30) days from the date of invoice.

7.3 If LQO has granted any Credit Approval under clause 7.1, it may, in its sole discretion, withdraw, reduce, suspend or otherwise vary that Credit Approval (or any terms of that Credit Approval) at any time.

7.4 LQO may, in its sole discretion, vary these Terms and Conditions of Credit from time to time, at any time and without prior notice to the Applicant or a Guarantor.

7.5 LQO reserves the right to close the Applicant's account without notice to the Applicant if the Applicant does not use its credit facility for a period of twelve (12) months.

8. Credit reporting information

8.1 The Applicant signing this Commercial Credit Application acknowledges that LQO may give credit information about the Applicant to a credit reporting body.

8.2 The Applicant acknowledges and agrees that LQO may seek and obtain credit reporting information about the Applicant from a credit reporting body for the purposes of:

- (a) assessing the Applicant's application for and the continuation of commercial credit;
- (b) assessing whether to accept the Applicant's obligations under this Commercial Credit Application; or
- (c) collecting overdue payments in respect of commercial credit provided to the Applicant.

8.3 The Applicant acknowledges and agrees that LQO may give credit eligibility information to a person who is currently a Guarantor, or who has requested to be or is considering becoming a Guarantor of credit that LQO has either provided to the Applicant or the Applicant has applied for to LQO.

8.4 The Applicant acknowledges and agrees that LQO may exchange credit eligibility information about the Applicant with another credit provider for the purposes of any one or more of the following:

- (a) assessing the Applicant's Commercial Credit Application;
- (b) to notify other credit providers of a default by the Applicant; and
- (c) to exchange information with other credit providers as to the status of the Applicant's credit agreement with LQO where the Applicant is in default with one or more other credit providers.

8.5 The Applicant agrees to comply with any reasonable written requests made by LQO from time to time to provide LQO with further information for the purpose of assessing the Applicant's creditworthiness.

9. Application of funds

The Applicant agrees that any funds received by LQO in respect to Goods supplied or Services provided by LQO to the Applicant shall be applied against any debt owed by the Applicant to LQO in the following order:

- 9.1 firstly to any unsecured portion of that debt; and
- 9.2 secondly to any secured non-PMSI liability,

and thereafter against any PMSI or in any other order that LQO may direct from time to time.

10. General

10.1 Severance

The invalidity or unenforceability of any provision of these Credit Terms (or any provision of the Terms and Conditions of Sale) shall not affect the validity or enforceability of the remaining provisions of these Credit Terms and any clerical errors are subject to correction do not bind LQO.

10.2 Jurisdiction

These Credit Terms shall be construed according to the laws that apply in the State of Victoria, Australia and any proceedings in respect of any cause or matter arising hereunder may be instituted heard and determined by a Court of competent jurisdiction at Melbourne.

10.3 Costs

- (a) The Applicant is responsible for its own legal, accounting, and business costs in connection with the execution of these Credit Terms. The Applicant must also pay for all stamp duty and other taxes payable on these Credit

Terms (if any).

- (b) The Applicant will pay any of LQO's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

10.4 Indemnity

(a) The Applicant is liable for and indemnifies LQO 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 LQO may suffer or incur at any time, directly or indirectly, arising out of, or in connection with, any default by the Applicant in the performance or observance of the Applicant's obligations under these Credit Terms.

(b) The Applicant's indemnity is a continuing obligation separate and independent from the Applicant's other obligations and survives termination of these Credit Terms.

(c) LQO need not incur any expense or make any payment before enforcing its rights of indemnity conferred upon LQO by these Credit Terms.

10.5 Trustees

Where the Applicant is a trustee of a trust, the Applicant warrants to LQO that:

- (a) it enters into these Credit Terms in both the Applicant's capacity as trustee and in its personal capacity;
- (b) it has the right to be reasonably indemnified out of trust assets;
- (c) it has the power under the trust deed to sign and enter into these Credit Terms;
- (d) it will not retire as trustee of the trust or appoint any new or additional trustee without advising LQO and having the new or additional trustee sign an agreement on substantially the same terms as these Credit Terms; and
- (e) it must provide LQO a copy of the trust deed upon request.

10.6 Notices

A notice or other communication connected with these Credit Terms 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 or sent by email to the email of the addressee, in each case as set out in the header (top of each page) of these Credit Terms or Part A. Customer Details, as applicable.

10.7 Assignment

The Applicant Party may not assign, transfer, or novate its rights or obligations under these Credit Terms without LQO's prior written consent (which consent must not be unreasonably withheld).

10.8 Waiver

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.

10.9 Variation of Credit Terms

Any proposed variation to these Credit Terms by the Applicant must be requested in writing and LQO may refuse any such request without providing reasons to you for doing so.

Part D. Deed of Guarantee & Indemnity

WARNING: This is an important document. Each Guarantor should consider obtaining independent legal and financial advice regarding it. Understand that, by signing this guarantee, each Guarantor becomes personally responsible, as well as the Applicant, to pay the amount which the Applicant owes to LQO and the reasonable expenses of LQO in enforcing this Guarantee.

1. Interpretation

In this Guarantee:

- 1.1 unless expressly defined otherwise, terms used have the meaning given to them in the Terms and Conditions of Credit;
- 1.2 the use of the expression "Guarantor" in relation to a party is not to be construed as diminishing that party's obligations as an indemnifier under this Guarantee;
- 1.3 the obligations of the Guarantors under this Guarantee bind each person identified as a Guarantor, jointly and severally;
- 1.4 **"Ipso Facto Event"** means the Applicant is the subject of:
 - (a) an announcement, application, compromise, arrangement, managing controller, or administration as described in section 415D(1), 434J(1) or 451E(1) of the Corporations Act; or
 - (b) any process which under any law with a similar purpose may give rise to a stay on, or prevention of, the exercise of contractual rights; and
- 1.5 **"Obligations"** means all the liabilities and obligations owed by the Applicant to LQO at any time under or in connection with the Terms and Conditions of Credit, Terms and Conditions of Sale or the Commercial Credit Application or otherwise and includes any liabilities or obligations which are liquidated or unliquidated, are present, prospective or contingent, are in existence before or come into existence on or after the date of this Guarantee or relate to the payment of money or the performance or omission of any act.

2. Guarantee

- 2.1 Each Guarantor irrevocably and unconditionally guarantees to LQO the satisfaction and payment in full of the Obligations.
- 2.2 If the Applicant does not pay or satisfy any Obligation in full on the due date, each Guarantor will immediately on demand by LQO satisfy or pay that Obligation in full.
- 2.3 If an Ipso Facto Event has occurred or is continuing, each Guarantor will immediately on demand by LQO satisfy or pay the Obligations in full (as if that Guarantor was the Applicant).
- 2.4 This clause 2 shall be a principal obligation of each Guarantor and shall not be treated as ancillary or collateral to any other right or obligation.

3. Indemnity

Each Guarantor, as a separate additional and primary liability, irrevocably and unconditionally agrees to indemnify LQO and keep LQO indemnified against any cost, liability, loss, damage, claim, demand or action suffered by LQO arising from:

- 3.1 any failure by the Applicant to satisfy the Obligations; or
- 3.2 any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Applicant for any reason, whether or not LQO knew or ought to have known of that reason.

4. Liability

The liability of each Guarantor under this Guarantee:

- 4.1 is absolute and is not subject to the performance of any condition precedent or subsequent, including any condition between the Applicant and LQO; and
- 4.2 will not be affected by any act, omission, matter or thing which, but for this clause, might release that Guarantor from that liability or reduce the liability of that Guarantor (other than an express release of that Guarantor from all of its liabilities under this deed) including any of the following:
 - (a) the occurrence before, on or at any time after, the date of this Guarantee of any "Event of Insolvency" (as defined in the Terms and Conditions of Credit as if the reference to Applicant was to 'Applicant or any Guarantor') in relation to the Applicant or any Guarantor;
 - (b) any document or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
 - (c) LQO not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any power it has for the enforcement of any Obligation;
 - (d) any variation to the Terms and Conditions of Credit, Terms and Conditions of Sale or the Commercial Credit Application, whether or not that variation is substantial or material or imposes an additional liability on or disadvantages any Guarantor; or
 - (e) the full, partial or conditional release or discharge by LQO by operation of law or otherwise of any other Guarantor from this Guarantee or any obligation under this Guarantee.

5. Agreement and acknowledgements

Each Guarantor further agrees and acknowledges that:

- 5.1 this Guarantee is a continuing guarantee and indemnity and shall not be affected

by any claim which the Applicant or the Guarantor(s) may have against LQO on any account whatsoever and the Guarantor(s) shall not be entitled to any deductions, set off or counterclaim;

- 5.2 the Guarantors will pay to LQO all costs, charges and expenses incurred by LQO on an indemnity basis, in relation to any action by LQO in respect of this Guarantee;
- 5.3 all dividends, compositions and payments received by LQO from the Applicant, whether liquidated or otherwise, shall be taken and applied by LQO as payments in gross and any Guarantor's right to be subrogated to LQO in respect thereof shall not arise until LQO has received the full amount of all LQO claims against that relevant Guarantor and this Guarantee shall be security to LQO for the payment of any ultimate balance which may remain due to LQO in respect to credit supplied to the Applicant as aforesaid;
- 5.4 this Guarantee becomes binding on such of the Guarantor(s) that sign this Guarantee irrespective of whether or not all intended signatories execute this Guarantee;
- 5.5 this Guarantee may not be unilaterally revoked by the Guarantor(s) and remains in force until such time as the Guarantor(s) receive written confirmation from LQO that they are released from their obligations and liabilities under this Guarantee. Any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid;
- 5.6 the Guarantor(s) sign this Guarantee in both their personal capacity and as trustee of the trust specified on the last page of this Guarantee;
- 5.7 the Guarantor(s) agree to notify LQO of any change in the Applicant's structure (for example, any change in the Applicant's company constitution) or management that it is aware of including any sale or disposition of any part of the business of the Applicant, any change in directorships, shareholders or management or change in partnership or trusteeship 7 days prior to any such change taking effect; and
- 5.8 each Guarantor confirms that it has not entered into this deed in reliance on, or as a result of, any statement or conduct of any kind of or on behalf of LQO (including, without limitation, any advice, warranty, representation or undertaking).

6. Consents

The Guarantor(s) acknowledge and give consent that LQO may:

- 6.1 obtain credit reporting information about the Guarantor(s) from a credit reporting body for the purposes of assessing whether to accept the Guarantor(s) as a guarantor in relation to credit provided or to be provided by LQO to a company or another individual; and
- 6.2 exchange credit eligibility information about the Guarantor(s) with another credit provider for the purposes of assessing whether to accept the Guarantor(s) as a guarantor to credit provided or to be provided by LQO to a company or another individual.

7. Judgment against the Applicant

A judgment obtained against the Applicant will be conclusive against the Guarantor(s).

8. Further acts

The Guarantor(s) must promptly do all further acts and execute and deliver all further documents (in form and content satisfactory to LQO, acting reasonably, and at the entire cost of the Applicant) required by law or requested by LQO, acting reasonably, to more satisfactorily secure the payment of any amounts payable by the Guarantor(s) under this Guarantee or to improve the powers or rights afforded to LQO or created, or intended to be afforded or created, by this Guarantee.

9. Severance

The invalidity or unenforceability of any provision of this Guarantee shall not affect the validity or enforceability of the remaining provisions and any clerical errors, subject to correction, do not bind LQO.

EXECUTED BY THE GUARANTORS

SIGNED by each Guarantor who warrants that he/she/it has read and fully understands the Commercial Credit Application, the Terms and Conditions of Credit, the Terms and Conditions of Sale and the Privacy consent and acknowledgement and the terms and conditions of this Guarantee and agrees to be bound by the same as if he or she or it were the Principal/Applicant.

Dated this _____ day of _____ 20____

Executed as a deed poll

Signing where Guarantor/s is/are individuals

Signed, sealed and delivered:

Guarantor's full name	
Guarantor's signature	
Trust name & ABN	

Witness' full name	
Witness' signature	

Guarantor's full name	
Guarantor's signature	
Trust name & ABN	

Witness' full name	
Witness' signature	

Signing where Guarantor/s is/are companies

Where more than one director – to be signed by two directors, or a director and company secretary

Executed as a deed by:	[Insert company name] in accordance with section 127 of the <i>Corporations Act 2001</i> (Cth)
Signature of director:	
Full name of director:	

Signature of company secretary / director	
Full name company secretary / director	

Where the Guarantor/s is/are a sole director and sole secretary company

Executed as a deed by:	[Insert company name] in accordance with section 127 of the <i>Corporations Act 2001</i> (Cth)
Signature of sole director and sole company secretary:	
Full name of sole director and company secretary who states that he / she / it is the sole director and sole company secretary of [Insert company name] :	

Part E. Business Purpose Declaration
IMPORTANT

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

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

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

I / We declare that the credit to be provided to me/us by the credit provider is to be applied wholly or predominantly for:

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

DECLARED BY THE APPLICANT

Dated this _____ day of _____ 20____

Signed by:
Signing where Applicant is a sole trader / individual

Applicant's full name	
Applicant's signature	
Trust name & ABN	
Witness' full name	
Witness' signature	

Signing where Applicant is a company

Where more than one director – to be signed by two directors, or a director and company secretary

Executed by:	[Insert company name] in accordance with section 127 of the <i>Corporations Act 2001</i> (Cth)
Signature of director:	
Full name of director:	
Signature of company secretary / director	
Full name company secretary / director	

Where the Applicant is a sole director and sole secretary company

Executed by:	[Insert company name] in accordance with section 127 of the <i>Corporations Act 2001</i> (Cth)
Signature of sole director and sole company secretary:	
Full name of sole director and company secretary who states that he / she / it is the sole director and sole company secretary of [Insert company name] :	

**INTERNAL USE ONLY – TO BE COMPLETED BY
 LANGWARRIN QUARRIES OPERATIONS PTY LTD**

The Applicant's Commercial Credit Application is accepted. Signed on behalf of LQO:

Full name		Title / position	
Signature		Credit terms	
Account reference number (if any)		Credit limit approved	\$
Completion of PPS Registration?	Yes <input type="checkbox"/> No <input type="checkbox"/>	PPS Registration number	
Date			

Part F. Terms and Conditions of Sale

1. Definitions and interpretation

1.1 Definitions

In these Terms. Unless the context or subject matter otherwise required:

- (a) **“Attaches”** has the meaning given to it in the PPSA;
- (b) **“Australian Consumer Law”** means the Australian Consumer Law as contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- (c) **“Business Day”** means a day that is not a Saturday, Sunday, or public holiday in the State of Victoria, Australia;
- (d) **“Claim”** means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, Liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent and **“Claims”** has a corresponding meaning;
- (e) **“Collateral Document”** means any Encumbrance, deed or instrument that is supplemental or collateral to these Terms which is intended to provide collateral security (including, without limitation, by means of assignment) for the payment of the Secured Money, including pursuant to (where applicable) the Terms and Conditions of Credit;
- (f) **“Commercial Credit Application”** means an application for commercial credit in accordance with the Terms and Conditions of Credit as available on the Company’s website or on request as amended, varied, supplemented or replaced from time to time;
- (g) **“Company”** or **“LQO”** means Langwarrin Quarries Operations Pty Ltd ACN 664 474 177;
- (h) **“Company’s Agents”** means the employees, officers, contractors, subcontractors, servants, agents, representatives and related parties of the Company;
- (i) **“Consequential Loss”** means any loss, damage or liability in contract, tort (including negligence) or under statute which is either consequential loss, indirect or remote or abnormal or unforeseeable loss, loss of revenue, loss of goodwill, loss of profits, loss of actual or anticipated savings, loss of reputation, lost opportunities, wasted overheads, business interruptions, loss of production, loss of product or loss of use, any exemplary or punitive damages of any kind or any similar loss whether or not in the reasonable contemplation of the parties;
- (j) **“Consumer”** has the meaning given to it in section 3 of the Australian Consumer Law;
- (k) **“Contract”** means these Terms and the Order;
- (l) **“Corporations Act”** means the *Corporations Act 2001* (Cth);
- (m) **“Customer”** means any partnership, firm, body corporate, organisation, trust or other person or entity that purchases or otherwise acquires Goods or Services from the Company;
- (n) **“Customer’s Agents”** means the employees, officers, contractors, subcontractors, servants, agents, representatives and related parties of the Customer;
- (o) **“Default Event”** has the meaning given in clause 9.1;
- (p) **“Delivery”** has the meaning given in clause 5.3;
- (q) **“Delivery Docket”** means a document (digital or paper based) prepared by the Company which records the delivery details in respect of the Delivery, including any:
 - (i) number uniquely identifying a Delivery to be used as a reference;
 - (ii) Customer name and, if any, an account number;
 - (iii) date and times of weigh-out on the weighbridge, and if specified by the Company, the arrival and finish time at the Site;
 - (iv) purchase order number (if any) from the Customer;
 - (v) Customer’s or its nominated carriage provider / third party’s delivery vehicle identity;
 - (vi) quantity (e.g. weight) of Goods;
 - (vii) the rate and value of any Goods provided by the Company; and
 - (viii) description of any Services provided by the Company.
- (r) **“Dispose”** of means:
 - (i) sell, transfer, assign, alienate, surrender, dispose of, sub-let, deposit, part with possession of, or lease; and
 - (ii) enter into any agreement or arrangement to do or allow any of the things referred to in subclause (i) of this definition;
- (s) **“Encumbrance”** means:
 - (i) any Security Interest, mortgage, charge, debenture, bill of sale, lien, pledge, trust, writ, warrant, retention of title, security, pledge, deposit of title, security, option to acquire, lease, licence, caveat, preferential interest, preferential right, trust arrangement or other estate, interest, claim or arrangement (including, without limitation, any set off or flawed-asset arrangement) having the same or equivalent commercial effect as a grant of security relating to property (whether real or personal); and
 - (ii) any agreement or document to create or give any arrangement referred to in subclause (i) of this definition;
- (t) **“Event of Force Majeure”** means the occurrence of an event or

circumstances beyond the reasonable control of the Company, including (without limitation):

- (i) a war (declared or undeclared), insurrection, civil commotion, military action, or an act of sabotage;
 - (ii) a strike, lockout or industrial action, dispute or disturbance of any kind;
 - (iii) an act of a government or a Government Authority;
 - (iv) an act of God;
 - (v) a storm, tempest, fire, flood, earthquake or other natural calamity;
 - (vi) accidents breakdowns and plant shutdowns;
 - (vii) epidemic or pandemic; or
 - (viii) unavailability of raw materials or inclement weather.
- (u) **“Financing Statement”** has the meaning given to it in the PPSA;
 - (v) **“Gross Vehicle Mass”** or **“GVM”** or **“Gross Vehicle Weight”** or **“GVW”** means the maximum permissible weight of a vehicle (i.e. including vehicle loads) specified by the manufacturer of the vehicle;
 - (w) **“Goods”** means goods and other items (in each case as described in the Order) which the Company has supplied (or has agreed to supply) to the Customer, including (without limitation):
 - (i) soft rock fill;
 - (ii) crushed rock;
 - (iii) unspecified (non-descript) crushed rock;
 - (iv) packing sand;
 - (v) top soil;
 - (vi) turf,
 and other specified or unspecified materials as supplied by the Company to the Customer in accordance with either or both (as applicable) of the Terms and Conditions of Credit and these Terms;
 - (x) **“Government Authority”** means any local, State or Federal government, a Minister or government department of each of those governments, a corporation or authority constituted for a public purpose, the holder of an office for a public purpose, a local authority and any agent or employee of any of them;
 - (y) **“GST”** means a tax imposed under the GST Law;
 - (z) **“GST Law”** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or if that Act does not exist for any reason, means any Act imposing or relating to a GST and any regulation made under it and includes, where the context permits, any Australian Taxation Office ruling or determination;
 - (aa) **“Insolvency Event”** means any of the following events concerning the Customer, unless the events take place as part of a solvent reconstruction, amalgamation, merger, or consolidation on terms approved by the Company before it takes place and the implementation of the reconstruction, amalgamation, merger or consolidation complies with the terms of the approval:
 - (i) if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the Corporations Act) is appointed to, or over, any of the property or undertaking of the Customer;
 - (ii) if the Customer becomes bankrupt;
 - (iii) if a controlling trustee is appointed to, or over, any of the property or undertaking of the Customer;
 - (iv) if the Customer’s property or undertaking becomes subject to a personal insolvency arrangement under part X of the *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX of the *Bankruptcy Act 1966* (Cth);
 - (v) the Customer is unable to pay its debts when they become due and payable;
 - (vi) if the Customer ceases to carry on business; or
 - (vii) if any event happens in Australia or any other country or territory in respect of the Customer that is similar to any of the events or circumstances referred to in this definition.
 - (bb) **“Law”** means:
 - (i) the common law; and
 - (ii) the requirements of all statutes, rules, regulations, proclamations, ordinances, codes and by-laws, present or future, and whether State, Federal or otherwise;
 - (cc) **“Liabilities”** means all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatsoever description;
 - (dd) **“Order”** means an order placed by the Customer for the purchase of Goods and Services as described in clause 2;
 - (ee) **“Perfectd”** has the meaning given to it in the PPSA;
 - (ff) **“PPSA”** means the *Personal Property Securities Act 2009* (Cth);
 - (gg) **“Proceeds”** has the meaning given to it in the PPSA;
 - (hh) **“Relevant Security Interest”** has the meaning given to it in clause 7.3;
 - (ii) **“Secured Money”** has the meaning given to it in clause 7.3(b);
 - (jj) **“Secured Property”** means any Goods in respect of which title has not

passed to the Customer under clause 7.1 and any Proceeds derived from any dealing with such Goods (whether or not permitted under these Terms);

- (kk) **"Security Interest"** has the meaning given to it in the PPSA;
- (ll) **"Services"** means any service provided by the Company, including the provision of:
 - (i) weighbridge services;
 - (ii) personnel and machinery for the loading of Goods into the Customer's or its agent's vehicles at the Site; and
 - (iii) all ancillary or other services in connection with the provision of the Goods;
- (mm) **"Site"** means the Customer's site located at Gate 1, 165 Quarry Rd, Langwarrin VIC 3910;
- (nn) **"Supply"** has the meaning given to it in the GST Law;
- (oo) **"Taxable Supply"** has the meaning given to it in the GST Law;
- (pp) **"Terms and Conditions of Credit"** or **"Credit Terms"** means the terms and conditions set out in this Commercial Credit Application, as amended, varied, supplemented or replaced from time to time; and
- (qq) **"Terms"** or **"Terms and Conditions of Sale"** means these terms and conditions of supply or trade, as amended, varied, supplemented or replaced by the Company from time to time, and those terms, if any, which are implied and which cannot be excluded by Law.

1.2 Interpretation

In these Terms, unless the context or subject matter otherwise requires:

- (a) singular includes plural and vice versa;
 - (b) any gender includes every gender;
 - (c) a reference to a person includes corporations, trusts, associations, partnerships, government authorities, and other legal entities, and where necessary, include successor bodies;
 - (d) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
 - (e) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time; and
 - (f) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.
- 1.3 These Terms are not to be interpreted against the interests of a party because that party proposed these terms or some provisions of it or because that party relies on a provision of these Terms to protect itself.
- 1.4 Where the Company has granted the Customer a credit facility, the Credit Terms apply. In the event of any conflict, ambiguity, or inconsistency between these Terms and the Credit Terms, these Terms prevail to the extent of the conflict, ambiguity, or inconsistency.

2. Orders

- 2.1 An Order constitutes an offer by the Customer to purchase the Goods and any Services specified in the Order on and subject to these Terms.
- 2.2 The Customer acknowledges and agrees that an Order is irrevocable once accepted by the Company and the Order cannot be cancelled, either wholly or partially, by the Customer without the written consent of the Company (which consent may be given or withheld in the Company's absolute discretion).
- 2.3 The Company:
- (a) will not in any circumstances be under an obligation to accept the whole or any part of any Order; and
 - (b) may in its sole discretion reject, cancel or terminate any Order made by the Customer at any time without being required to provide a reason for the rejection, cancellation or termination.
- 2.4 An Order is not binding on the Company unless it is accepted in writing by a duly authorised officer of the Company.

3. Pricing, payment and finance

- 3.1 The Company may (but is not obliged to) provide a quotation or price list to the Customer in respect of certain Goods, however any such quotation or price list:
- (a) does not constitute an offer by the Company of any kind; and
 - (b) is provided as a pricing guide only and is not binding.
- 3.2 Unless otherwise agreed between the Company and Customer in writing, prices are subject to any variations to currency exchange rates and are subject to periodic revision by the Company as notified to the Customer from time to time.
- 3.3 The Customer acknowledges and agrees that:
- (a) unless otherwise agreed by the Company at its sole discretion; or
 - (b) unless and until the Customer completes a Commercial Credit Application and has been notified by the Company that the Customer has been granted a credit facility in accordance with the Terms and Conditions of Credit,
- all Goods and Services supplied by the Company to the Customer must be paid for on a 'cash on delivery' (i.e. in immediately cleared funds such as EFTPOS, Visa or MasterCard) or performance basis.
- 3.4 The Customer acknowledges and agrees that:
- (a) the Customer must pay the amount of each invoice issued by the Company on or before the due date for payment (without set off, counterclaim, abatement, deduction or otherwise); and

- (b) time is of the essence in respect of payment by the Customer of amounts owing to the Company under or in connection with any Contract.

3.5 Without in any way affecting the Company's other rights, if the Customer does not pay any amount which is payable to the Company by the due date for payment, the Customer must pay to the Company interest:

- (a) which shall accrue and be calculated on a daily basis at the rate of 14% per annum on the amount remaining unpaid from the due date or dates for payment until those amounts are actually received as clear funds by the Company;
- (b) on any judgement which the Company obtains against the Customer (or any person who has guaranteed the Customer's obligations under these Terms) (at the rate set out in clause 3.5(a) or, if higher, fixed by or payable under that judgement) from the date of the judgment until the judgment has been satisfied.

4. GST and other taxes

- 4.1 Unless otherwise agreed between the Company and Customer in writing, any consideration payable for any Supply under these Terms is exclusive of GST.
- 4.2 If any Supply made by one party (the **"Supplier"**) to the other party (the **"Recipient"**) under or in connection with these Terms is a Taxable Supply:
- (a) the amount payable by the Recipient for that Supply will be increased by the amount of GST payable for that Supply so that the net amount retained by the Supplier after payment of that GST is the same as if the Supplier was not liable to pay any GST in respect of that Supply; and
 - (b) the Supplier must issue a GST invoice to the Recipient.
- 4.3 The Customer must promptly pay all stamp duty, transaction, registration and similar taxes, including fines and penalties which may be payable to, or required to be paid by, any appropriate Government Authority or determined to be payable in connection with the execution, delivery, performance or enforcement of the Contract or any payment, receipt or other transaction contemplated by the Contract.

5. Delivery, passing of risk and description of Goods

- 5.1 The parties acknowledge and agree that all Goods provided by the Company to the Customer under these Terms is to be delivered ex-bin (i.e. to be delivered by the Company to the Customer at the Site), where the Company will provide assistance to load such Goods on to the Customer's or its third party's / agent's vehicle(s).
- 5.2 The Customer agrees and acknowledges that:
- (a) in order to facilitate safe Delivery of Goods at the Site, the Customer (or any of the Customer's Agents, as applicable) is required to provide any specified information requested by the Company or the Company's Agents, including the GVM / GVW of the Customer's or the Customer's Agent's pick-up vehicle and the Customer warrants to the Company that all information provided is complete and accurate;
 - (b) where, following loading of the Customer's or Customer's Agent's vehicle at the Site, the weight of such vehicle (as recorded on the weighbridge) exceeds its GVM / GVW (subject to any tolerance detailed in clause 5.2(c)), the Customer or the Customer's Agent will be required to:
 - (i) undertake a tip-off (e.g. partial or fully unloading) of the vehicle;
 - (ii) enable the Company or the Company's Agents to re-load the vehicle; or
 - (iii) undertake such other activity reasonably required and instructed by the Company or the Company's Agents to ensure the weight of the loaded vehicle does not exceed that vehicle's GVM; and
 - (c) the Company and the Company's Agents are authorised to load the Customer's or any Customer's Agent's vehicle within a tolerance of 100kg below or above that vehicle's GVM and the Company will not, to the extent permitted by Law, be liable to the Customer or the Customer's Agents or any third party for any Liability, Claim, loss or damage suffered by the Customer or any third party in any way or in connection with loading any such vehicle within these tolerances;
- 5.3 Subject to clause 6.1, Delivery is deemed to occur, and the Goods ordered by the Customer are deemed to have been accepted by the Customer, at the time:
- (a) the Customer, or any third party on the Customer's behalf, collects the Goods from the Company at the Site;
 - (b) the Company loads the Goods onto the Customer or its nominated carrier's vehicle at the Site; or
 - (c) the Customer's nominated carrier takes possession of the Goods at the Site, in which case the carrier will be deemed to be the Customer's agent,
- and in each case following weighing on the weighbridge at the Site the Company or the Company's Agent signs (physically or electronically) the Delivery Docket and, where requested by the Customer, attaches a photo (physically or electronically) of the loaded vehicle to the Delivery Docket, (each referred to as **"Delivery"**).
- 5.4 Any scheduled time for Delivery is an estimate only and the Customer releases the Company from any Liabilities and all Claims which the Customer suffers, incurs or is liable for in connection with any failure or delay in Delivery.
- 5.5 Any delay in Delivery does not extinguish, reduce or limit the Customer's obligation to:
- (a) accept the Goods on Delivery; or
 - (b) pay for the Goods by the relevant due date for payment.
- 5.6 The Customer acknowledges and accepts that the Company may deliver the Goods by instalments and the Company reserves the right to require payment for each separate instalment in accordance with these Terms.
- 5.7 The risk of loss of or damage to the Goods will pass to the Customer on Delivery, and for the avoidance of doubt, this is the earlier of:
- (a) the time that the Goods are Delivered to the Customer;

- (b) the time that the Goods are collected by or on behalf of the Customer; or
- (c) the time that the Customer otherwise takes possession of the Goods.
- 5.8 Where the Customer has ordered the Goods to comply with particular specifications, the Customer warrants that it has verified those specifications and has satisfied itself that the Goods are fit for purpose.
- 5.9 The Customer is responsible for examining and testing the Goods, at the Customer's own expense, to ensure they are fit and suitable for the Customer's purposes. To the maximum extent permitted by Law, the Company accepts no liability for the fitness or suitability of the Goods for any particular purpose of the Customer.
- 6. Returns**
- 6.1 The Customer must, within 7 days of the date of Delivery, provide the Company written notice, with particulars of any Claim that the Goods delivered are not in accordance with the Customer's Order. If the Customer fails to provide such timely notice, then to the extent permitted by Law, the Customer is treated as having accepted the Goods.
- 6.2 Unless otherwise agreed in writing, the Customer must pay all costs associated with the return of any Goods, including freight, insurance, handling and other charges.
- 6.3 The Company accepts no liability for any damage that occurs to Goods in return transit to the Site.
- 7. Title to Goods**
- 7.1 Title to any Goods will remain with the Company until the Company has received payment in full and in clear funds for:
- (a) those Goods; and
- (b) all Liabilities and other amounts that are then due and payable by the Customer to the Company.
- 7.2 Until such time as it obtains title to any Goods under clause 7.1, the Customer (without prejudice to the Company's rights under the PPSA):
- (a) acknowledges that it is in a fiduciary relationship with the Company;
- (b) acknowledges that it holds those Goods as bailee for the Company;
- (c) if the Customer uses the Goods with or in other items so that the Goods become part of a product or mass, such Relevant Security Interest in the Goods (as specified in clause 7.3 below) shall continue in that product or mass (together with any Proceeds);
- (d) if the Customer sells the Goods in the ordinary course of its ordinary business, the Security Interest shall attach to the Proceeds from such sale;
- (e) must not part with possession of those Goods otherwise than in accordance with these Terms (or as otherwise agreed by the Company in writing);
- (f) must ensure those Goods are kept in a good and merchantable condition;
- (g) must comply with all requirements of the Company in relation to the storage, maintenance and preservation of those Goods; and
- (h) must not grant, create, give or allow to come into existence any Encumbrance over those Goods (other than an Encumbrance in favour of the Company).
- 7.3 The Customer and the Company agree that these Terms and any Goods supplied on credit in accordance with these Terms and the Terms and Conditions of Credit gives rise to a Security Interest in favour of the Company over the Secured Property (the "**Relevant Security Interest**") and that that Relevant Security Interest:
- (a) is a "purchase money security interest"; and
- (b) secures payment of the purchase price of the Goods and of all other amounts payable by the Customer to the Company (including, without limitation, the Liabilities and any amount payable to the Company by the Customer under and in connection with any Collateral Document) (the "**Secured Monies**") and the performance by the Customer of the Customer's obligations under these Standard Terms.
- 8. Security for payments**
- 8.1 The Customer:
- (a) acknowledges that if the Company accepts any Order from the Customer or otherwise supplies Goods to the Customer, it does so on the basis that it is obtaining the benefit of the Relevant Security Interest; and
- (b) must promptly do all acts, matters and things required by the Company to:
- (i) procure the grant of any Encumbrance as requested by the Company from time to time to provide more effective security to the Company over the Secured Property for the payment of the Secured Money; and
- (ii) enable the Company to protect and exercise its rights under these Standard Terms or in respect of the Relevant Security Interest,
- including, without limitation, obtaining consents, signing and producing documents, completing documents and supplying information;
- (c) must not Dispose of any Secured Property without the Company's prior written consent; and
- (d) must not grant, create or give any Encumbrance or other interest inconsistent with or in priority to the Relevant Security Interest without the Company's prior written consent (which may be withheld by the Company in its absolute discretion).
- 8.2 The Customer:
- (a) authorises the Company to:
- (i) register all Financing Statements (and other documents); and
- (ii) do all things (including completing and adding schedules to this document to further identify the Secured Property), which the Company considers, in its sole and absolute discretion, to be necessary or desirable for the purposes of:
- (A) protecting and preserving the Secured Property;
- (B) ensuring the Relevant Security Interest is Attached, enforceable, Perfected and otherwise effective;
- (C) enabling the Company to apply for registration, or give any notification, in connection with the Relevant Security Interest so that the Relevant Security Interest has the priority required by the Company; or
- (D) enabling the Company to exercise its rights in connection with the Relevant Security Interest; and
- (b) agrees to promptly do anything which the Company requires for the purposes of:
- (i) protecting and preserving the Secured Property;
- (ii) ensuring the Relevant Security Interest is Attached, enforceable, Perfected and otherwise effective;
- (iii) enabling the Company to apply for registration, or give any notification, in connection with the Relevant Security Interest so that the Relevant Security Interest has the priority required by the Company; or
- (iv) enabling the Company to exercise its rights in connection with the Relevant Security Interest, including, without limitation, obtaining consents, signing and producing documents, completing documents and supplying information.
- 8.3 To the extent that Chapter 4 of the PPSA applies to a Relevant Security Interest and to the extent permitted by Law, for the purposes of:
- (a) section 115(1) and 115(7) of the PPSA, the Company need not comply with, and the following sections of the PPSA are excluded - sections 95, 96, 121(4), 125, 129, 130, 132(3)(d), 132(4); 135, 142 and 143; and
- (b) section 115(7) of the PPSA, the Company need not comply with sections 132 or 137(3) of the PPSA.
- 8.4 To the extent the Law permits, the Customer waives its rights to receive any notice that is required by any provision of the PPSA (including notice of any verification statement). Nothing in this clause prohibits the Company from giving a notice under the PPSA or any other Law.
- 8.5 The Company and the Customer agree not to disclose information of the kind referred to in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if the Company approves. Nothing in this clause will prevent any disclosure by the Company that it believes is necessary to comply with its other obligations under the PPSA.
- 8.6 The Customer will immediately notify the Company in writing if it changes its name, ABN, ACN, ARBN or ARSN.
- 8.7 The Customer irrevocably appoints the Company and each of its directors jointly and each of them severally to be the Customer's duly constituted lawful authority for the purpose of:
- (a) drawing, executing, registering and enforcing any Relevant Security Interests as required by the Company from time to time including, without limitation, a mortgage or caveat and any ancillary documents necessary to perfect such mortgage or caveat;
- (b) executing on behalf of and in the name of and as the act and deed of the Customer, any document required by the Company under clause 8; and
- (c) doing all other things and sign all other documents required by the Company to give effect to clause 8.
- 8.8 The Customer must:
- (a) ratify and confirm all acts of each attorney done or made under clause 8.7; and
- (b) pay to the Company on demand the costs, expenses or other liabilities incurred by or on behalf of the Company or an attorney appointed under clause 8.7.
- 8.9 Each attorney appointed under clause 8.7 has the power at any time to appoint a substitute as the attorney of the Customer.
- 8.10 The Customer and the Company agree that each attorney appointed under clause 8.7 may exercise powers notwithstanding that the exercise may or will involve or result in a conflict between the duty of that attorney to the Customer and the interests of that attorney.
- 9. Default Event**
- 9.1 Each of the following events is a "**Default Event**":
- (a) the Customer fails to pay the Company any payment within 3 days after the due date for payment;
- (b) the Company considers (in its sole and absolute discretion) that the Customer is or will be unable to make any payment required in accordance with these Terms;
- (c) the Customer does not comply with any one or more of its obligations under these Terms or any Collateral Document; or
- (d) the Customer suffers an Insolvency Event;
- 9.2 If a Default Event occurs, then, without in any way affecting the Company's other rights, the Company may:
- (a) require immediate payment of all amounts outstanding (whether or not then due and payable) and sue for all unpaid amounts irrespective of the due date

for payment of such amounts;

- (b) reject, cancel or terminate any Order made by the Customer;
- (c) retake possession of all Secured Property without prior notice to the Customer;
- (d) resell any Secured Property without prior notice to the Customer and recover any loss or shortfall on resale from the Customer;
- (e) collect, realise and sell the Secured Property to satisfy the Customer's indebtedness to the Company (or appoint a receiver, administrator or appropriate person to do so);
- (f) recover from the Customer all Liabilities, costs and expenses (including legal costs on an indemnity basis) incurred or suffered by the Company as a result of the Default Event (including Liabilities, costs and expenses incurred in the recovery or attempted recovery of any overdue amounts or the exercise of the Company's other rights);
- (g) engage in any combination of the above.

9.3 The Customer grants to the Company and the Company's Agents an irrevocable licence to enter the Customer's premises at any time and without prior notice for the purposes of:

- (a) inspecting the Secured Property;
- (b) verifying compliance by the Customer with its obligations under these Terms;
- (c) identifying, removing and taking possession of any Secured Property in the exercise of its rights under these Terms;
- (d) satisfying the Company's obligations under these Terms or at Law; and
- (e) exercising the Company's other rights under these Terms or at Law,

and the Customer agrees to indemnify and keep indemnified the Company (and the Company's Agents) against all Liability and Claims suffered or incurred by the Company (and the Company's Agents) in connection with the entry by the Company (and the Company's Agents) into or upon the Customer's premises.

10. Indemnity

The Customer indemnifies (except to the extent caused by the willful misconduct or gross negligence of the Company or the Company's Agents), the Company and the Company's Agents against any Liabilities and all Claims which the Company and the Company's Agents suffer, incur or are liable for in connection with:

- 10.1 the use or misuse of the Goods by any person;
- 10.2 the storage or handling of the Goods by any person;
- 10.3 any act, omission, negligence or default of the Customer (or the Customer's Agents);
- 10.4 to the extent permitted by Law, any breach of warranty provided by the Customer to the Company in these Terms;
- 10.5 a breach of any Law by the Customer (or the Customer's Agents);
- 10.6 the occurrence of a Default Event; or
- 10.7 any injury to or death of any person or any damage to or loss of property resulting from any negligence, wrongful act or omission, or breach of statutory duty by the Customer (or the Customer's Agents).

11. Limitation of liability

11.1 To the maximum extent permitted by Law, the Customer acknowledges and agrees that:

- (a) it has exercised and relied solely on its own independent skill and judgment in acquiring Goods from the Company;
- (b) no advice or representations (other than those given or implied by Law which cannot be excluded) are or have been given (or shall be implied) and the Customer has not relied on any advice or representation made or given by or on behalf of the Company with respect to:
 - (i) the acceptable quality, the condition, state of repair, suitability or sufficiency or fitness for purpose of the Goods;
 - (ii) the nature or condition of the Goods; or
 - (iii) compliance by the Goods with any Laws or any requirements of any government authorities; and
- (c) the Company does not make any guarantees or warranties (whether statutory, express or implied) other than those which are deemed to be given by the Company by virtue of the Australian Consumer Law in respect of the supply of Goods to the Customer under these Terms.

11.2 To the maximum extent permitted by Law, the Customer releases the Company from any Liabilities and all Claims which the Customer suffers, incurs or is liable for in connection with these Terms (or any transaction contemplated by them), including without limitation, any Liabilities and all Claims arising out of or in connection with:

- (a) the rejection, cancellation or termination of any Order by the Company;
- (b) the supply of goods or services by the Company; or
- (c) the exercise by the Company of any of its rights under or in connection with these Standard Terms.

11.3 To the maximum extent permitted by Law, the Company's liability (under any conditions, guarantee or warranty which cannot legally be excluded) in respect of goods supplied to the Customer is limited to one of the following (at the Company's option):

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

- (d) the payment of the cost of having the goods repaired.

11.4 To the maximum extent permitted by Law, the Company's liability (under any conditions, guarantee or warranty which cannot legally be excluded) in respect of any services supplied to the Customer is limited to one of the following (at the Company's option):

- (a) supplying the Services again; or
- (b) the payment of the cost of having the Services supplied again.

11.5 To the maximum extent permitted by Law, the Company will not be liable for Consequential Loss of any kind whatsoever and the Customer agrees to indemnify and keep indemnified the Company in respect of any such liability.

11.6 If:

- (a) the Company supplies Goods or Services to the Customer; and
- (b) the Customer is taken to have acquired those Goods or Services as a Consumer under the Australian Consumer Law,

then:

- (c) certain statutory guarantees are (or may be) deemed to be given by the Company under the Australian Consumer Law (which cannot be excluded) in relation to those Goods or Services; and
- (d) the Customer has (or may have) certain rights under the Australian Consumer Law in respect of any guarantee that is deemed to be given by the Company by virtue of the Australian Consumer Law in relation to those Goods or Services.

11.7 Any exclusions of warranties, guarantees, representations or liability by the Company under these Terms do not (and do not purport to) exclude statutory rights of the Customer which cannot lawfully be excluded.

12. Force majeure

If the Company is prevented, hindered or delayed from performing its obligations under these Terms by an Event of Force Majeure, then as long as that situation continues, the Company shall be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation shall be extended accordingly.

13. General

13.1 Waiver

The Company's right to require strict performance of these Terms will not be affected by any indulgence, waiver of course of dealing, and any waiver will be deemed not to be a continuing waiver.

13.2 Assignment

Any assignment of rights or obligations under these Terms by the Customer will be void unless the written consent of the Company is first obtained. The Company may assign any of its rights, benefits or obligations under or connection with these Terms without the Customer's consent.

13.3 Jurisdiction

The laws that apply in Victoria, Australia, govern these Terms and any supply made under these Terms. The parties agree to submit to the non-exclusive jurisdiction of the courts in the State of Victoria, Australia and the federal courts and courts competent to hear appeals from those Victorian courts.

13.4 Severance

If any provision of these Terms should be for any reason invalid or unenforceable, the validity and enforceability of all other provisions will not be affected.

13.5 Nature of relationship

The Company performs its obligations under these Terms as an independent contractor. Except where otherwise stated, noting 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 otherwise.

13.6 Variation of Terms

- (a) No variation of these Terms, or any Contract of which these Terms form part, requested by the Customer will be effective, unless varied in writing and agreed between the parties.
- (b) The Company may amend these Terms by notifying the Customer in writing where, following notification, the amended Terms will apply to any future Order placed by the Customer.

13.7 Notices

Any letter or notice given under these Terms will be validly and sufficiently given if sent by pre-paid post or electronic mail to the address details notified by one party to the other from time to time. A notice sent by post shall be deemed to have been received on the third Business Day following the day of posting. A notice sent by electronic mail shall be deemed to have been received on the date specified on the email delivery receipt.

13.8 Miscellaneous

- (a) The Company is entitled to offset any amount owing to it by the Customer against any amount owed to the Customer by the Company.
- (b) These Terms shall apply to the supply of Goods and Services by the Customer to the exclusion of any other terms and conditions contained in any document submitted by the Customer to the extent that such last mentioned terms and conditions are inconsistent therewith or with any rights of the Company (whether express or implied).
- (c) By placing an Order with the Company for the supply of the Goods, the Customer is deemed to have accepted these Terms.
- (d) Each supply the Company makes following its acceptance of an Order will be regarded as a separate Contract, which is subject to these Terms.