

# TERMS AND CONDITIONS

## 1. DEFINITIONS

1.1 “Bins” means skip bins or containers for the storage and removal of waste material.

1.2 “Customer” means a person or entity whose order for the purchase or hire of Goods or request for supply of Services is accepted by the Supplier.

1.3 “Director” means where the Customer is a corporation, all directors of that corporation and where the Customer is a trust that has a corporate trustee all directors of the trustee.

1.4 “Goods” means goods supplied by the Supplier to the Customer (and where the context so permits shall include any supply of Hired Goods and Services (including Labour Hire) as hereinafter defined).

1.5 “Guarantor” means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer and includes all directors of the Customer where the Customer is a corporation and where the Customer is a trust all trustees of the trust and all directors of the trustee if there is a corporate trustee of the trust.

1.6 “Hired Goods” means the provision by the Supplier to the Customer of Goods on a hire basis (i.e. the Goods are being hired, and are not being sold, transferred, given or passed, from the Supplier to the Customer).

1.7 “Labour Hire” means the provision by the Supplier to the Customer of the Supplier’s labour hire workers as required by the Customer to perform the Services.

1.8 “Price” means the cost of the Goods and/or the Services as agreed between the Supplier and the Customer subject to clause 7 of these Terms.

1.9 “Price List” means the Supplier’s price lists for the supply of Goods and/or Services, including but not limited to any documents referenced as “Our Team Price List” and/or “Equipment Price List”.

1.10. “Quoted Date” means the date of delivery as agreed between the Supplier and the Customer.

1.11 “Services” shall mean all services supplied by the Supplier to the Customer, including any supply of services relating to Concrete care or Labour Hire.

1.12 “Supplier” shall mean Perfect Contracting Pty Ltd (ABN 64 146 561 453), Perfect Hire Pty Ltd (ABN 68 605 002 819) and/or Perfect Concrete Care (ABN 55 605 120 152) (Perfect Group) and includes their successors and assigns.

1.13 “Terms” means these terms and conditions and where the context so permits shall include the agreement formed between the Supplier and the Customer and/or Directors and Guarantor/s.

1.14 “Existing Customer” means a current customer of ours who has previously submitted the “Credit Application Form” and been approved for a post-paid account with us.

1.15 “New Customer” means a customer who has not previously submitted the “Credit Application Form” and does not have a current post-paid account with us.

1.16 “Guest Customer” means a customer who has not previously submitted the “Credit Application” and does not have a current post-paid account with us and does not register for one but requests goods and or services from the Supplier without having an account set up. A guest customer must be in advance by way of credit card or direct debit.

1.17 “Account Facility” means a post-paid account whereby we issue an invoice for payment of goods/and or services provided by the Supplier. Only customers who have completed the “Credit Application Form” and are approved by us have an account facility.

## 2. CUSTOMER OBLIGATIONS / ACKNOWLEDGMENTS

2.1 The headings used in this agreement do not form part of these Terms and are for convenience only.

2.2 Words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and references to a person shall be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency.

### 3. GENERAL

3.1 These Terms replace any previous agreements or terms and conditions of sale or negotiation, understanding, or communication in relation to the supply of Goods and/or provision of Services.

3.2 Unless otherwise agreed in writing by the Supplier, any terms and conditions of the Customer's deviating from or inconsistent with these Terms are expressly rejected by the Supplier. Any variations to these Terms not expressly agreed to in writing by the Supplier are expressly rejected by the Supplier.

3.3 A quotation shall not constitute an offer to sell Goods and/or provide Services to the Customer. No contract for the supply of Goods and/or provision of Services shall exist between the Supplier and the Customer unless the Customer's order for Goods and/or Services has been accepted by the Supplier. The Supplier may accept or refuse any order for Goods and/or Services in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.

3.4 Once an order from a Customer has been accepted by the Supplier:

a) the order cannot be cancelled by the Customer without the written consent of the Supplier; and

b) the order cannot be varied by the Customer anytime after 4 hours of the Customer submitting the order to the Supplier.

3.5 The Supplier may vary these Terms by notice in writing to the Customer, including through notified variations made on the Supplier's website. The Customer agrees that the purchase of any Goods and/or Services after the date of a notice of variation will be deemed to be an acceptance of such varied Terms.

3.6 Should there be any variation to any of the information supplied by the Customer to the Supplier concerning the structure or nature of the Customer's business (such as a conversion to or from a Company or Trust) the Customer shall forthwith notify the Supplier in writing. If this information is not provided, and the Supplier suffers loss as a result, the Customer agrees to compensate the Supplier for an amount that is no less than the amount of loss that the Supplier suffered.

3.7 Any order received by the Supplier from the Customer for the supply of Goods and/or provision of Services and the Customer's acceptance of Goods and/or Services supplied by the Supplier shall constitute acceptance of these Terms.

3.8 Upon acceptance of these Terms by the Customer the Terms are irrevocable and can only be varied in

accordance with these Terms.

3.9 The Supplier's agents or representatives are not authorised to make any representations, or statements on behalf of the Supplier (including any purporting to vary these Terms or enter further agreements) and the Supplier shall not be liable for any unauthorised representations or statements made by the Supplier's agents or representatives.

3.10 In the event that the whole or any part or parts of any provisions in these Terms should be held to be void or unenforceable in whole or in part such provision or part thereof shall to that extent be severed from these Terms but the validity and enforceability of the remainder of these Terms shall not be effected.

3.11 The Supplier reserves the right to sub-contract the manufacture and/or supply of the Goods or provision of Services or any part thereof to a third party.

3.12 The Customer agrees that a statement in writing signed by the Supplier's credit manager certifying that monies are payable by the Customer to the Supplier shall be prima facie evidence of the monies so payable.

3.13 The Supplier shall be under no liability whatsoever to the Customer or any third party for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer or third party arising out of a breach by the Supplier of these Conditions.

3.14 In the event of any breach of these Conditions by the Supplier the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Services.

3.15 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

3.16 The failure by the Supplier to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.

3.17 Each party must execute any document and perform any action necessary to give full effect to these terms, whether before, or after performance of these Terms.

3.18 The Supplier and/or Customer and/or Guarantor agree and acknowledge that this application may be completed by the Customer utilising the Supplier's online application process through the Supplier's website. This may include the insertion of the Customer's and/or Guarantor's electronic signature. Once this application is completed in this method and if the application is deemed acceptable by the Supplier, the Supplier and/or Customer and/or Guarantor agree

that the Supplier may rely on this application (and any accompanying Guarantee) as if it had been executed in writing by the Customer and/or Guarantor in writing. To be clear, once the application is accepted by the Supplier, if Goods and/or Services are supplied by the Supplier to the Customer, the Customer and/or any Guarantor agree that such supply of Goods and Services are made on the basis of these Terms as if the Terms had been executed by the Supplier and/or Customer and/or Guarantor in writing.

3.19 The Supplier may at any time assign, novate or otherwise dispose of or deal with its rights and obligations under these Terms by notice in writing to the Customer. The Customer agrees that any order for the purchase of Goods and/or provision of Services submitted by the Customer to the Supplier after the date of a notice of assignment will be deemed to be an acceptance of such assignment.

3.20 These Terms and the supply of the Goods and/or provision of Services by the Supplier to the Customer shall be governed by and construed in accordance with the laws of New South Wales.

3.21 Notice to be given by the Customer to the Supplier may be delivered personally or sent to the Supplier at its current business address. Notices to be given to the Customer by the Supplier may be delivered personally, or sent to the Customer's last known address provided by the Customer to the Supplier and unless the contrary is proved shall be taken as delivered on the second business day following posting. Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post.

3.13 You must not transfer, assign, encumber, loan or sell the equipment and must not (except for the purpose of returning the equipment) remove the equipment or allow it to be removed from the site address notified to us for the use of the equipment without the written consent from us.

3.14 You must not alter, make any additions to or deface or alter any identifying mark, plate or number on or in the equipment or interfere with the equipment in any manner.

3.15 You must ensure that the equipment is not stolen.

3.16 You must accept full responsibility for the safe-keeping of the equipment and indemnify us for all loss, theft or damage to the equipment.

3.17 You must indemnify us for all loss, theft or damage to the equipment.

3.18 You agree that we are entitled to assume that any one appearing to be an authorised person is authorised to sign a schedule and enter into any dealings in

respect of this agreement. 3.19 You agree that you accept delivery of the equipment in an "as is" condition unless you indicate otherwise at the time of delivery

3.20 You agree that you understand the safe and proper use of the equipment and have received adequate training in its operation and use.

3.21 You agree that we may inspect, repair or remove (in the event of any default by you) the equipment at any time and access to the equipment must be granted for that purpose.

3.22 You agree that if we are collecting the equipment at the expiration or earlier determination of the hire period, the equipment must be left in an appropriate, easily identified and accessible area and we will not be deemed to have accepted return of the equipment in good repair and condition until such time as the equipment has been fully inspected by us at its depot following its return.

3.23 You agree that it is your responsibility to collect and return the equipment. We may agree to do so at an additional cost to you. You must arrange for labour necessary to load and unload the equipment. If you or your authorised persons are not at the delivery site we may elect to unload the equipment which will be at your risk from the time of delivery.

3.24 We are not a common carrier and do not accept the obligation as such. We may refuse the handling, lifting and or carriage of equipment for any person in our discretion and without being bound to give reason for such refusal.

## 4. REGISTRATION AND ELIGIBILITY

4.1 Anyone is able to browse listings on the website, however in order to rent goods or services through our website a customer must create an online account or sign in as a guest.

### EXISTING CLIENTS

4.2 Existing clients of the Supplier who have previously submitted a current version of "Credit Application Form" and have been granted an account by the Supplier can register for an online account. It is at the discretion of the Supplier whether such an account is granted.

4.3 After an existing client creates an online account, they can submit an online order to hire services and goods which may be provided by the Supplier.

4.4 After a client makes a request to hire goods/and or services, we will check availability of the goods/and or services and contact the client directly to confirm or deny the request.

4.5 If the goods and/or services requested by the client are available, the client is required to pay the account by way of invoice/ account facility. In this regard, the client must comply with the terms and conditions in relation to payment specified in clause 10 of these terms and conditions.

## **NEW CLIENTS**

4.6 New clients, can request to hire goods/and or services through the website by either creating an account with us or logging in as a guest user.

### **CREATING AN ACCOUNT**

4.7 A new client can create an online account by completing the online Credit Application Form.

4.8 We will then review your account and determine if an account will be granted. You acknowledge that by requesting an online account, there is no obligation on us to grant you such an account/ account facility.

4.9 If we grant you an account facility, you will be notified of this by way of email.

4.10 If you are granted an online account and account facility/ you will be issued with an invoice for any hire of goods/and or services and you agree to the terms and conditions in respect of payment/account terms as outlined in clause 10 of these terms and conditions.

### **GUEST USERS**

4.11 A new client can log in as a “guest user” and request to hire goods/and or services.

4.12 If a client elects to log in as a guest user, they are not entitled to pay by way of a post-paid invoice/ account and must pay the full account in advance by credit card or direct debit. We will not provide you with the requested goods/and or services until the full account is paid in advance.

4.13 A client can log in as a guest user as many times as desired and there is no obligation to obtain a postpaid account with us, however the client must pay the account in advance by credit card or direct debit on each occasion.

## **5. ONLINE CUSTOMER ACKNOWLEDGEMENTS**

5.1 When a client makes an online request to hire goods/and or services, we retain complete discretion to determine if we will hire you the goods/and or services as we see fit and without explanation to you.

5.2 A client acknowledges that the goods/and or services may not be available on the days or at the time requested and we are under no obligation to provide the goods/and or services at the time

requested by you. We do not warrant that that goods/ and or services will be available on the days or at the time in which you wish to hire them.

5.3 You acknowledge that in the event we are unable to provide or supply the goods/and or services, the Supplier may in its discretion cancel the order despite the order being accepted by us and your account being charged or you having paid for the goods/and or services. In the event that we cancel the goods/and or services, the client will be provided with a refund. We will not be responsible for any loss or damage arising out of the cancellation.

5.4 In order for an online order to be considered to commence on the following day, an order must be placed by 2pm on the business day before the proposed commencement date.

5.5 We cannot guarantee that goods and or services will be provided on weekends and or public holidays or that Supplier will review or process a request submitted on a weekend and or public holiday.

5.6 Each client, including existing clients, new users with an account or guest users must provide accurate information when they create an account and agrees to keep this information accurate, current and complete.

5.7 We reserve the right to cancel or suspend an online account should the information that has been provided by the client be inaccurate or false.

5.8 It is the responsibility of the client to keep their account information safe, secure and confidential. The client will be liable for any unauthorised activity on their account, including any rental transactions entered into and purchases made on its account. The client agrees that he/she/it will not provide passwords or log in information to a third party and is responsible for any activity, including unauthorised activity undertaken on its account.

5.9 The user is required to immediately notify the Supplier of any unauthorised activity on its account.

5.10 You acknowledge and agree that all pictures displayed on the website of items are intended to be a guide only and you may be provided with a different brand or model at the discretion of the Supplier upon commencement of the rental period. We will not be liable for any claims arising out of our inability to supply the advertised brand or model.

## **6. GOODS AND SERVICES**

6.1 The Goods and/or Services are as described on the Price Lists, invoices, quotations, work authorisation, hire schedule or any other work commencement forms provided by the Supplier to the Customer.

6.2 The parties acknowledge that the Supplier may supply Goods, Services or a combination of Goods and/or Services to the Customer.

6.3 The Customer agrees that it does not rely on the information, skill or judgment of the Supplier in relation to the suitability of the Goods for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier in relation to the Goods is provided without any liability by the Supplier whatsoever.

6.4 The Customer agrees that the Supplier relies on the instructions, directions, information, skill and judgement provided to the Supplier by the Customer in order for the Supplier to provide the Services. The Customer agrees that it does not rely on the information, skill or judgment of the Supplier in relation to the provision of any Services, including Labour Hire. Any advice, recommendation, information or assistance provided by the Supplier in relation to the Services, including Labour Hire, is provided without any liability by the Supplier whatsoever.

6.5 The Customer will have in place all necessary insurance for the supply of the Goods and/or provision Services to the Customer by the Supplier in order to cover any loss, damage or costs suffered or incurred by either the Customer or the Supplier as a result of the supply of the Goods and/or the provision of Services.

6.6 If the Supplier is unable to supply the Goods and/or provide the Services to the Customer, the Supplier may in its discretion supply alternative goods and/or provide alternative services to the Customer. If the alternative goods and/or services are not suitable to the Customer, the Supplier will not be liable for any claims arising out of the Supplier's inability to supply the Goods and/or provide the Services or alternatives suitable to the Customer. This is in addition to the Supplier's rights to decline to supply the Goods and/or provide the Services to the Customer.

6.7 The Customer acknowledges that the Supplier may hire, lease or sell its Goods and/or Services from a third party and in that event title to the Goods and/or Services remains with that third party. The Customer agrees, upon reasonable notice, to allow that third party to access the location where the Goods and/or Services are located from time to time to inspect the Goods and/or Services. The Customer acknowledges and agrees that if the Supplier's agreement with that third party terminates during the hire period for any Hired Goods, unless otherwise agreed by the Supplier in writing any hire of Hired Goods by the Supplier to the Customer under these Terms will automatically terminate and the Supplier may immediately recover possession of the Hired Goods from the Customer. The Supplier will not be liable to the Customer in any circumstance for any claim that the Customer may have, or for any loss or damage suffered, as a result of

such termination.

6.8 The Customer acknowledges that the Supplier may immediately cancel any particular supply of Goods and/or provision of Services to which these Terms apply at any time before the particular Goods and/or Services to which these Terms relates are provided by giving written notice to the Customer. The Supplier will not be liable for any loss or damage whatsoever arising from such cancellation.

6.9 If the Customer (or any entity related to the Customer) has contact with an employee of the Supplier through or in connection with the provision of Services, and thereafter employs or engages that employee during or within 12 months of those Services being performed, then the Customer agrees that it will pay to the Supplier a placement fee. The placement fee is calculated by reference to 10% of the employee's anticipated remuneration with the Supplier. The Supplier can waive the placement fee in its absolute discretion.

## 7. HIRED GOODS

If the provision of Goods from the Supplier to the Customer includes Hired Goods, then the following additional terms and conditions in this clause 7 apply:

7.1 The Supplier agrees to provide Hired Goods to the Customer for the hire period between the commencement date and the completion date being the hire period, and the Supplier will observe so far as practicable these dates, but cannot guarantee strict compliance as to the date and time, and will not be under any liability which by law cannot be excluded if the Customer's requirements are not met.

7.2 The Customer must sign a hire schedule and such other documents as the Supplier may require in relation to the Hired Goods. By taking delivery of Hired Goods, even if a hire schedule is not signed, the Customer agrees to these Terms.

7.3 Each hire schedule and such other documentation are not a separate contract but form part of these Terms between the Supplier and the Customer, together with any credit applications, guarantee or other contractual documents.

7.4 The Supplier may in its sole discretion determine that the off-hire date is when the Hired Goods become off-hired and not at the end of any specified hire period. Otherwise, the Supplier may in its sole discretion, decide whether to accept return of the Hired Goods before the end of the hire period. Such an acceptance does not alter the hire period and the Customer will remain liable for all Prices payable to the Supplier despite early return of the Hired Goods.

7.5 The Customer must ensure the Hired Goods are used for the purpose for which they was designed by

the manufacturer of the Hired Goods, and are used by the Customer through an authorised person of the Customer having the appropriate qualifications, training and licences to operate the Hired Goods and in accordance with all applicable laws and regulations in a skilful, safe and tradesmanlike manner not extending beyond the Hired Good's capacity (having regard to manufacturer's specifications) and not having to endure more than normal wear and tear.

7.6 The Customer must properly attach any operating or safety signs supplied with the Hired Goods and ensure that they are visible, legible and drawn to the attention of every person who uses or operates the Hired Goods before they do so.

7.7 The Customer agrees to perform all necessary searches and checks to the site on which the Hired Goods will be used, including any "dial before you dig" search, even if the Hired Goods are to be operated or used by the Labour Hire.

7.8 The Customer must notify the Supplier immediately if any of the Hired Goods break down, malfunction or are damaged.

7.9 The Customer must not undertake any repair to the Hired Goods without the Supplier's prior consent.

7.10 The Customer must properly maintain and clean the Hired Goods during the hire period and return the Hired Goods to the Supplier in good, clean repair and condition before the end of the hire period.

7.11 The Customer agrees to pay any costs of repairing or replacing damaged or missing Hired Goods or for the cleaning of such Hired Goods.

7.12 The Customer agrees to pay the cost of fuels and consumables in relation to the Hired Goods provided by the Supplier and that are not returned to the Supplier by the Customer.

7.13 The Customer must ensure that a check of all levels, fuelling, greasing, oiling and proper servicing of all Hired Goods is carried out on a daily basis.

7.14 The Customer must not transfer, assign, encumber, loan, lease or sell the Hired Goods and must not (except for the purpose of returning the Hired Goods) remove the Hired Goods or allow the Hired Goods to be removed from the Customer's address notified to the Supplier where the Hired Goods were to be used, without the written consent from the Supplier.

7.15 The Customer must not alter, make any additions to or deface or alter any identifying mark, plate or number on or in the Hired Goods or interfere with the Hired Goods in any manner.

7.16 The Customer must ensure that the Hired Goods

are not stolen. The Customer accepts full responsibility for the safe-keeping of the Hired Goods and agrees to indemnify the Supplier for all loss, theft or damage to the Hired Goods during the hire period.

7.17 The Customer agrees that the Supplier is entitled to assume that any one appearing to be an authorised person of the Customer is authorised to sign a hire schedule and enter into any dealings in relation to the Hired Goods and in accordance with these Terms.

7.18 The Customer agrees that it accepts delivery of the Hired Goods in an "as is" condition unless it indicates otherwise at the time of delivery.

7.19 The Customer agrees that it understands the safe and proper use of the Hired Goods and has received adequate training in their operation and use.

7.20 The Customer agrees that the Supplier may inspect, repair or remove (in the event of any default by the Customer) the Hired Goods at any time and access to the Hired Goods must be granted to the Supplier for that purpose.

## 8. LABOUR HIRE

If the provision of Services from the Supplier to the Customer includes Labour Hire, then the following additional terms and conditions in this clause 8 apply:

8.1 The minimum Labour Hire period payable by the Customer is 4 hours.

8.2 The Customer will provide the Labour Hire with any specific tools, equipment and consumables so required to allow the performance of the work required of the Labour Hire unless the Customer requests the Supplier to inform the Labour Hire to provide their own specific tools, equipment and consumables. If so, additional charges will apply to the tools, equipment and consumables that the Supplier supplies via the Labour Hire to the Customer.

8.3 The Customer will provide no less than 8 hours notice of cancellation or notice of postponement to the Supplier. If such notification is made with less than 8 hours notice being given to the Supplier, a minimum of 4 hours' cost will be payable by the Customer.

8.4 In the event of inclement weather or any other emergency when a full schedule of work (8 hours) is not accomplished by the Labour Hire, a minimum of 4 hours' cost will be payable by the Customer.

8.5 The Customer recognises that the Supplier makes every effort to maintain high standards of integrity and reliability among the Labour Hire. However, the Supplier does not accept responsibility for any claim, damage, expense or delay arising from any failure by itself to provide the Customer with Labour Hire for all or part of a booking or from any lack of skill, negligence

or misconduct in relation to the Labour Hire provided to the Customer.

8.6 The hourly rate for Labour Hire payable by the Customer must be agreed upon between the Supplier and the Customer, either verbally or in written format. Acceptance by the Customer of Services that include Labour Hire is deemed to also be acceptance of such reasonable Labour Hire hourly rate as determined by the Supplier in its sole discretion, where no explicit rejection, either verbally or written, of such hourly rates has been provided by the Customer. To be clear, the hourly rate of Labour Hire will not be less than the hourly rate of pay that the Customer's employees and/or contractors receive for performing the same or substantially similar work to that to be performed by the Labour Hire.

8.7 The Customer will charge the Supplier a penalty hourly rate, and the Supplier will pay that penalty hourly rate, where the Supplier is required to pay the Labour Hire assigned to the Customer a penalty hourly rate, in accordance with the following:

- a) Monday to Friday, between 6am and 6pm first 8 hours at the agreed upon rate;
- b) Monday to Friday, between 6am and 6pm after 8 hours at 1.5 times the agreed upon rate;
- c) Monday to Friday, between 6pm and 6am first 8 hours at 1.5 times the agreed upon rate;
- d) Monday to Friday, between 6pm and 6am after 8 hours at 2.0 times the agreed upon rate;
- e) Saturday, first 2 hours at 1.5 times the agreed upon rate;
- f) Saturday, after 2 hours at 2.0 times the agreed upon rate; and
- g) Sunday and public holidays, at 2.0 times the agreed upon rate.

8.8 The Customer must comply with all laws applicable to each site at which Labour Hire is utilised, including in relation to the property, plant and equipment made available by the Customer and those employees of the Customer who work with the Labour Hire. Without limiting the generality of this requirement, the Customer is responsible for all inspections, permits and approvals required by law and for ensuring that all plant and equipment made available by the Customer (including motor vehicles and machinery) is registered where required and meets all applicable standards required by law.

8.9 During the period of the Services, the Customer must have adequate insurance to cover loss or damage to the Customer's property or the property of other persons including machinery, motor vehicles and other plant and equipment and death or personal injury (to the Customer's personnel or any other person including the Labour Hire) caused or contributed to by the Labour Hire whilst it is being provided to the Customer. To be clear, this insurance must cover the Supplier and its Labour Hire.

8.10 The Customer will ensure that each Labour Hire person maintains a timesheet recording the number of hours worked, and when those hours were worked. The timesheet must be countersigned by the Customer's authorised representative at the end of each week.

8.11 Whilst the Supplier will use all reasonable endeavours to meet the Customer's requirements and ensure the quality of the Labour Hire, the Supplier is not liable for any loss or damage (including consequential loss or damage) arising from any negligence, dishonesty, carelessness or lack of skill of the Labour Hire.

8.12 To the extent that the Supplier's liability cannot be limited as provided in these Terms, the Supplier's liability is limited to the Supplier supplying the Services again or paying the actual market value cost of replacing the supply of the Services.

8.13 The Customer is responsible for the care and supervision of the Labour Hire whilst they are providing Services to the Customer.

8.14 The Customer is responsible for providing a safe and healthy workplace, and safe systems of work, for the Labour Hire.

8.15 The Customer is responsible for the operation and/or use of any Hired Goods by the Labour Hire.

8.16 The Customer acknowledges and agrees that it will comply with all applicable occupational, health, safety, environmental and associated legislation, regulations and codes of practice.

8.17 The Customer acknowledges and agrees that it will provide a comprehensive structured site and job safety induction for the Labour Hire.

8.18 The Customer acknowledges and agrees that it will provide adequate instruction and training to the Labour Hire.

8.19 The Customer acknowledges and agrees that it will advise the Supplier prior to any change in the nature of the tasks undertaken, equipment operated, and chemicals (or other consumables) used by the Labour Hire.

8.20 The Customer acknowledges and agrees that it will adequately supervise the Labour Hire at all reasonable times.

8.21 The Customer acknowledges and agrees that it will promptly advise the Supplier of any incidents and injuries involving the Labour Hire and assist in the rehabilitation of the Labour Hire injured at the Customer's site by the provision of suitable alternative duties.

8.22 The Supplier may, from time to time, attend the Customer's site for the purpose of carrying out occupational health and safety inspections, safety/ toolbox meetings with the Labour Hire on site and the investigation of incidents and injuries.

8.23 The Customer is responsible for providing a workplace that complies with all other legal requirements relating to the work environment.

8.24 If any issue arises concerning the performance of any Labour Hire person or any potential or alleged misconduct of any Labour Hire person, the Customer must immediately advise a senior Supplier manager and the Customer must provide the Supplier with reasonable access to the Labour Hire person in question and reasonable co-operation to enable the Supplier to deal with the matter as the Supplier considers appropriate.

## 9. PRICING AGREEMENT

9.1 The Prices of Goods and/or Services shall be indicated on any Price List, invoice, quotation, delivery docket, hire schedule or other commercial form provided by the Supplier to the Customer in respect of Goods and/or Services supplied, plus any transportation, freight, postage, packaging, handling, insurance and GST (where applicable, GST will be charged at the appropriate rate at the date of invoice).

9.2 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that the taxes and duties are expressly included in any quotation given by the Supplier.

9.3 The Customer must immediately check all Prices, and any disputes in relation to those Prices must be communicated to the Supplier in writing within 7 days of the invoice date. In the event that no communication is received from the Customer within that 7 day period, the Prices are deemed to be accepted by the Customer.

9.4 The Prices for Hired Goods is calculated by multiplying the number of days or weeks in the hire period by the daily rate or weekly rate (as applicable), whether or not the Hired Goods are used in that period.

9.5 If a minimum hire period applies in relation to the Hired Goods, then the minimum Prices payable for the Hired Goods are those in respect of that period regardless of the off hire date.

9.6 The Supplier may charge additional costs for the Hired Goods at the daily rate for periods during which the Hired Goods are being delivered to or collected from the Customer or during which the Supplier is unable to deliver or collect the Hired Goods through no fault of its own or during periods

when the Hired Goods are unavailable for hire by the Supplier due to damage caused by the Customer. The imposition of these additional costs does not mean that the Supplier agrees to extend the hire period for the Hired Goods.

9.7 In relation to Services that include Labour Hire, the following applies:

a) All Prices include worker compensation insurance, public liability insurance, payroll tax and superannuation.

b) The Supplier will render invoices to the Customer for the Labour Hire at intervals as it sees fit upon receipt of any timesheets in respect of the Labour Hire who have prepared those timesheets. The Customer agrees to pay such invoices in accordance with any payment terms identified on those invoices or these Terms.

c) All such invoices are a claim for payment under the Building and Construction Industry Security of Payment Act 1999.

9.8 Where the Price of the Goods and/or Services has been quoted by the Supplier that Price shall be binding upon the Supplier provided that the Goods and/or Services are delivered to and/or provided to the Customer, and accepted by the Customer, within thirty (30) days of the invoice, quotation, delivery docket or other commercial form. The Customer agrees to pay those Prices.

9.9 Notwithstanding any prior acknowledgment by the Supplier of the Price of Goods and/or Services, the Prices specified for Goods and/or Services may at the Supplier's option be subject to the Supplier's own prices and charges in effect at the time of delivery. For example, the Supplier shall be entitled to alter the Price of Goods and/or Services in the invoice or Price as a consequence of currency fluctuations, taxes, customs duty or other government imposts. Further, the Supplier is entitled to revise its Prices and related charges without prior notice being given to the Customer. The Supplier may also revise its Prices and any related charges in circumstances where the Supplier incurs further costs or such charges as a result of non-disclosure of information by the Customer to the Supplier, unforeseen Customer site problems or incorrect physical dimensions, weights or distances given by the Customer and relied on by the Supplier.

## 10. ACCOUNT TERMS

10. Unless otherwise agreed in writing by the Supplier, the Customer shall pay for all Goods delivered at the time of delivery of the Goods.

10.2 Unless otherwise agreed in writing by the Supplier, the Customer shall pay for all Services performed within 7 days of such performance.

10.3 At the Supplier's sole discretion a non-refundable



deposit may be required from the Customer.

10.4 Where the Supplier has agreed to extend credit to the Customer for the purchase and/or hire of Goods and/or supply of Services, the Customer must pay for the Goods and/or Services within 30 days of the Goods being delivered or the Services provided.

10.5 Credit extended to the Customer for all Goods sold will be provided in the absolute discretion of the Supplier.

10.6 Any credit limit approved by the Supplier is approved for the Supplier's internal purposes only and does not limit or restrict the Customer's account. Any claims for credit by the Customer must be made within 7 days of receiving the Supplier's invoice.

10.7 For a client who is a guest customer the guest customer will nominate a time period of work and prepay for that period, the labourer will not work more hours than what is paid for, and the client will not be eligible for a credit if the hours worked are less than what is paid for.

10.8 The Supplier will be entitled to set off against any money owing to the Customer amounts owed to the Supplier by the Customer on any account whatsoever.

10.9 Payment for Goods must be made by cash, or by cheque, or by bank cheque, or by direct credit, or by credit card, or by any other method as agreed to between the Customer and the Supplier. Payments will be applied to outstanding invoices of the Customer at the sole discretion of the Supplier. The Supplier reserves the right to charge a credit card handling fee at its discretion and at rates advised by the Supplier from time to time.

10.10 If the Customer does not pay the Supplier by the due date, the Customer shall pay interest on monies due, charged on a daily basis at 12% per annum from the date of the invoice until the actual date of payment. If the Customer has a credit account with the Supplier, the Supplier may debit the Customer for any interest that accrues at such other times that it chooses.

10.11 If the Customer does not pay the Supplier by the due date, the Customer shall pay to the Seller an administration fee which shall be the greater of \$50.00 or 10.00% of the amount overdue on an unpaid invoice. The Customer and the Supplier agree that the administration fee is a reasonable liquidated cost of administering an abnormal payment and the Supplier may debit the Customer at such other times that it chooses for such administration fees.

10.12 The Customer shall pay any legal costs (on a solicitor/Customer indemnity basis), stamp duties and other expenses payable on these Terms or any credit application, guarantee or other security documents

signed by the Customer together with all collection costs including legal fees (on a solicitor/Customer indemnity basis) and dishonoured cheque fees suffered or incurred by the Supplier in connection with the supply of Goods and/or Services by the Supplier.

10.13 The Supplier may withdraw the Customer's credit facilities at any time or vary the Customer's credit limit, without notice to the Customer or any guarantor of the Customer.

10.14 The Customer shall not set off against the Price amounts due from the Supplier.

10.15 In the event that:

a) the Supplier retains possession or control of the Goods; and

b) payment of the Price is due to the Supplier; and

c) the Supplier has made a demand in writing to the Customer for payment of the Price and the Supplier has not received the Price for the Goods, then whether property in or title to the Goods has passed to the Customer or has remained with the Supplier, the Supplier may dispose of the Goods and may claim from the Customer any loss to the Supplier on such disposal.

## 11. INTELLECTUAL PROPERTY

11.1 Where the Supplier has designed, drawn, written, prepared, manufactured or hired Goods for the Customer, then the copyright (or any other attaching intellectual property right) in those designs and drawings, prototypes, productions, documents and Goods shall remain vested in the Supplier, and shall only be used by the Customer at the Supplier's discretion.

Where the Customer has supplied drawings, designs or concepts for Goods to be supplied by the Supplier, the Customer warrants that all designs or instructions provided to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order, and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

## 12. DELIVERY OF GOODS

12.1 Goods will be delivered or deemed to be delivered when they are delivered to the delivery place nominated by the Customer, included to any third party's address. If no such address is nominated then delivery will be deemed to occur at the time when the Goods are ready for collection at the Supplier's premises. The Supplier will endeavour to deliver the Goods on or before the Quoted Date. The Customer must ensure that there is an authorised person available to accept the Goods upon delivery.

12.2 The Customer recognises that the Supplier is not a common carrier and does not accept the obligation as such. Therefore the Supplier may refuse the handling, lifting and/or carriage of Goods, including Hired Goods, for any person in its sole discretion and without being bound to give reason to the Customer for such refusal.

12.3 The Customer shall pay to the Supplier packing, crating and delivery charges in accordance with the Supplier's current rates, as at the date of dispatch. If there is no current rate, then a reasonable delivery charge shall be paid by the Customer.

12.4 The Supplier reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Supplier for such information.

12.5 The Customer authorises the Supplier to deliver Goods to the place nominated by the Customer and to leave the Good at such place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery of the Goods to the nominated delivery place.

12.6 The Supplier shall not be obliged to obtain a signed receipt or other acknowledgement from any person at the nominated place for delivery but if a signed receipt or other acknowledgement is obtained from someone believed by the Supplier to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgement shall be conclusive evidence of the Customer's acceptance of the Goods delivered.

12.7 Any notified times for delivery are estimates only and the Supplier shall not be liable to the Customer for any failure to deliver or for delay in delivery of Goods occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of the Supplier.

12.8 The Customer shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.

12.9 The Supplier reserves the right to deliver Goods by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment or deliver any instalment on time shall not be a repudiation of the contract and will not entitle the Customer to determine the contract in whole or in part.

12.10 The Supplier shall not be liable to the Customer for any loss or damage attributable to failure by the Supplier to deliver the Goods.

12.11 Where the Supplier cannot access the Customer's address to deliver the Goods, the Goods shall be delivered and left as close as practicable to the Customer's address. Or in the event the Customer requests the Supplier to enter a property to deliver the Goods, then the Supplier accepts no responsibility for any damage caused by the Supplier in doing so.

12.12 Unless agreed otherwise in writing, prior to delivery, the unloading of Goods is the Customer's responsibility. The Supplier is not responsible for any damage resulting from the unloading of Goods by the Customer, or by anyone on its behalf.

12.13 In relation to Hired Goods:

a) The Customer agrees that it is their responsibility to collect and return the Hired Goods from and to the Supplier. The Customer must arrange for labour necessary to load and unload the Hired Goods from any delivery vehicle. If the Customer or its authorised persons are not at the delivery site the Supplier may elect to unload the Hired Goods which will be at the Customer's risk from the time of delivery.

b) The Customer agrees that if the Supplier agrees to collect the Hired Goods from the Customer's premises, the Hired Goods must be left in an appropriate, easily identifiable and accessible area and the Supplier will not be deemed to have accepted return of the Hired Goods in good repair and condition until such time as the Hired Goods have been fully inspected by the Supplier at its depot following such collection.

## 12. DELIVERY OF GOODS

12.1 Goods will be delivered or deemed to be delivered when they are delivered to the delivery place nominated by the Customer, included to any third party's address. If no such address is nominated then delivery will be deemed to occur at the time when the Goods are ready for collection at the Supplier's premises. The Supplier will endeavour to deliver the Goods on or before the Quoted Date. The Customer must ensure that there is an authorised person available to accept the Goods upon delivery.

12.2 The Customer recognises that the Supplier is not a common carrier and does not accept the obligation as such. Therefore the Supplier may refuse the handling, lifting and/or carriage of Goods, including Hired Goods, for any person in its sole discretion and without being bound to give reason to the Customer for such refusal.

12.3 The Customer shall pay to the Supplier packing, crating and delivery charges in accordance with the Supplier's current rates, as at the date of dispatch. If there is no current rate, then a reasonable delivery charge shall be paid by the Customer.

12.4 The Supplier reserves the right to make a

reasonable charge for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Supplier for such information.

12.5 The Customer authorises the Supplier to deliver Goods to the place nominated by the Customer and to leave the Good at such place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery of the Goods to the nominated delivery place.

12.6 The Supplier shall not be obliged to obtain a signed receipt or other acknowledgement from any person at the nominated place for delivery but if a signed receipt or other acknowledgement is obtained from someone believed by the Supplier to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgement shall be conclusive evidence of the Customer's acceptance of the Goods delivered.

9.2 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that the taxes and duties are expressly included in any quotation given by the Supplier.

12.7 Any notified times for delivery are estimates only and the Supplier shall not be liable to the Customer for any failure to deliver or for delay in delivery of Goods occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of the Supplier.

12.8 The Customer shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.

12.9 The Supplier reserves the right to deliver Goods by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment or deliver any instalment on time shall not be a repudiation of the contract and will not entitle the Customer to determine the contract in whole or in part.

12.10 The Supplier shall not be liable to the Customer for any loss or damage attributable to failure by the Supplier to deliver the Goods.

12.11 Where the Supplier cannot access the Customer's address to deliver the Goods, the Goods shall be delivered and left as close as practicable to the Customer's address. Or in the event the Customer requests the Supplier to enter a property to deliver the Goods, then the Supplier accepts no responsibility for any damage caused by the Supplier in doing so.

12.12 Unless agreed otherwise in writing, prior to

delivery, the unloading of Goods is the Customer's responsibility. The Supplier is not responsible for any damage resulting from the unloading of Goods by the Customer, or by anyone on its behalf.

12.13 In relation to Hired Goods:

a) The Customer agrees that it is their responsibility to collect and return the Hired Goods from and to the Supplier. The Customer must arrange for labour necessary to load and unload the Hired Goods from any delivery vehicle. If the Customer or its authorised persons are not at the delivery site the Supplier may elect to unload the Hired Goods which will be at the Customer's risk from the time of delivery.

b) The Customer agrees that if the Supplier agrees to collect the Hired Goods from the Customer's premises, the Hired Goods must be left in an appropriate, easily identifiable and accessible area and the Supplier will not be deemed to have accepted return of the Hired Goods in good repair and condition until such time as the Hired Goods have been fully inspected by the Supplier at its depot following such collection.

## 13. PROPERTY AND RISK

13.1 The Goods shall be at the sole risk of the Customer as soon as they are dispatched from the Supplier's premises.

13.2 The Supplier may mark or label the Goods to identify the Goods in any manner which the Supplier considers appropriate.

13.3 At no time does Property in and title to Hired Goods ever pass to the Customer.

13.4 Property in and title to Goods being sold to the Customer (i.e. excluding Hired Goods) will not pass to the Customer until such time as the Price and all other amounts owed to the Supplier by the Customer have been paid for in full and the Customer has complied with these Terms and until then:

a) the Customer will hold the Goods as trustee and agent for the Supplier;

b) the Goods must be stored separately and in a manner enabling them to be identified as Goods of the Supplier and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix the Goods with other products or items such that the Goods are no longer separately identifiable then the Customer and the Supplier will be owners in common of the new product;

c) the Customer may sell the Goods in the ordinary course of its business as trustee and agent of the Supplier and will hold the proceeds of sale in a separate account on trust for the Supplier and account to the Supplier for those proceeds; and

d) the Supplier may require the Customer to return the Goods to the Supplier or its authorised

13.5 If any of the Goods are damaged or destroyed prior to property in and title to the Goods passing to the Customer, the Customer hereby assigns to the Supplier all insurance proceeds payable to the Customer for the loss or damage of the Goods. The Customer shall at the time that it makes any claim on an insurer in connection with the loss or damage to the Goods notify that insurer of the assignment of rights pursuant to this clause.

13.6 Unless agreed in writing by the Supplier, the Supplier will not accept any return of Goods that are being sold to the Customer.

13.7 Goods that are accepted for return by the Supplier will attract a charge to the Customer to cover restocking and repackaging charges. The amount of this charge will be determined by the Supplier but will be not less than 15% of the price of the Goods. Such charge shall be deducted from the amount or credit allowed. The original invoice number and a copy of the original invoice must accompany all Goods returned to the Supplier. The Supplier, in its sole discretion, may request immediate payment of this charge by the Customer upon return of the Goods.

13.8 The Customer shall insure the Goods (including any Hired Goods) against theft or any damage until such Goods have been paid for, or until they are sold by the Customer, or until the Hired Goods have been returned to the Supplier, whichever occurs first, and the Supplier will be entitled to call for details of the insurance policy. If the Customer does not insure the Goods or fails to supply details of its insurance policy the Customer will reimburse the Supplier for the cost of any insurance which the Supplier may reasonably arrange in respect of the Goods supplied to the Customer.

13.9 The Customer agrees to store the Goods in good and serviceable condition, and in such a manner as to identify that the Goods remain the property of the Supplier until the conditions in clause 11.4 are met, and the Customer agrees to keep complete records as to the use and sale to third parties of such Goods.

## 14. CLAIMS FROM CUSTOMER

14.1 Subject to clause 12.5, all claims by the Customer relating to failure by the Supplier to comply with an order of the Customer whether due to shortfall, defect, incorrect delivery or otherwise must be made by written notice to the Supplier within seven (7) days of the date of delivery. If the Customer fails to provide such notice within seven (7) days then the Customer shall be deemed to have accepted the Goods and shall not be entitled to make any claim against the Supplier.

14.2 These Terms shall not exclude, or limit the application of any provisions of any statute including any implied condition or warranty the exclusion of

which would contravene any statute (including the Australian Consumer Law) or cause any part of this clause 14 to be void or unenforceable. To the extent permitted by law all conditions, warranties and undertakings are expressly excluded.

14.3 Unless the Goods supplied by the Supplier are of a kind ordinarily acquired for domestic household or personal use or consumption, the Supplier's liability under clause 14.2 for breach of a non-excludable condition or warranty is limited at the Supplier's option, to any one of the following:

a) in the case of Goods:

- (1) the replacement of the Goods or the supply of equivalent Goods;
- (2) the repair of the Goods;
- (3) the payment of the cost of providing replacement Goods or of acquiring equivalent Goods; or
- (4) the payment of the cost of having the Goods repaired.

b) in the case of Services:

- (1) the supplying of the Services again; or
- (2) the payment of the cost of having the Services supplied again.

14.4 Subject to clause 14.2 the Supplier shall not be liable for any direct or indirect loss whatsoever including consequential loss, loss of profits, loss of opportunity or loss of use.

14.5 The Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

14.6 The Customer failing to properly maintain or store any Goods

a) The Customer using the Goods for any purpose other than that for which they were designed;

b) The Customer continuing the use of any the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

c) The Customer failing to follow any instructions or guidelines provided by the Supplier; or

d) Fair wear and tear, any accident or act of God.

## 15. GST

15.1 In this clause the expressions "GST", "Input tax credit", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

15.2 With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable by Customer under these Terms are exclusive of GST. acknowledgement shall be conclusive evidence of the Customer's acceptance of the Goods delivered.

15.3 If GST is imposed on any supply made under or in accordance with these Terms, the recipient of the taxable supply must pay the Supplier an additional amount equal to the GST payable on or for taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply subject to the provision of a tax invoice.

## 16. DEFAULT BY CUSTOMER AND TERMINATION

16.1 In the event of:

a) any default or failure by the Customer in making due and punctual payment to the Supplier of any moneys owing by the Customer;

b) an administrator, liquidator or provisional liquidator is appointed in respect of the Customer;

c) a receiver and manager, administrator or controller is appointed in respect of any assets or groups of assets of the Customer;

d) the Customer goes into bankruptcy or is wound up;

e) the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due;

f) there is a breach by the Customer of any of these Terms,

g) the Customer offers the Goods for sale through the internet, then all monies payable by the Customer to the Supplier shall become immediately due and payable notwithstanding the due date of payment shall not have expired, and the Supplier may without prejudice to any other rights it may have do any or all of the following:

(1) withdraw any credit facilities which may have been extended to the Customer;

(2) withhold any further deliveries of Goods;

(3) in respect of Goods (including Hired Goods) already delivered onto the Customer's premises enter onto those premises and recover and resell the Goods;

(4) recover from the Customer the cost of materials or Goods acquired for the purposes of future deliveries;

(5) any discount, markdown, reduction or special price, previously offered by the Supplier to the Customer may be withdrawn, or cancelled, and the Price shall become the Supplier's standard Price as at the date of the original sale; and/or

(6) cease to supply Goods (including Hired Goods) and Services (including Labour Hire) to the Customer.

16.2 The Customer agrees to pay to the Supplier all losses, damages, costs and other expenses whatever suffered by the Supplier as a result of any Customer event noted in clause 16.1.

## 17. TRUST AND TRUSTEES

17.1 Where the Customer is a trustee:

a) the Customer agrees to produce a stamped

copy of the trust deed (with all amendments) and accounts of the trust if and when requested by the Supplier.

b) the Customer warrants that it has full power and authority to enter into this agreement on behalf of the trust and that it shall be bound by these Terms both personally and in their capacity as trustee irrespective of whether or not it discloses to the Supplier that it is a trustee at the time of entering into any credit agreement with the Supplier.

c) the Customer warrants that the trust has agreed to indemnify the trustee in respect of all liability incurred by the trustee pursuant to this agreement.

d) the trustee of the trust acknowledges that it has entered into this agreement in its capacity as trustee of the trust and also in its own capacity.

## 18. COVENANTS BY THE CUSTOMER

18.1 Fixed and Floating Charge

a) in consideration of the Supplier selling or hiring to the Customer Goods on credit, the Customer as beneficial owner does hereby charge all and every undertaking and all of its assets (including rights, titles and interests) of whatsoever nature and wheresoever situate both present and future with the payment to the Supplier of all moneys now or hereafter to become owing or payable to the Supplier by the Customer or enforcement of these Terms.

b) the charge hereby created ("the Charge") shall operate as:

(1) a fixed charge as regards to freehold and leasehold property, uncalled capital, engines, machinery, plant, stock, books of account, debts, vouchers and other documents relating in any way to the business transactions of the Customer and all securities negotiable or otherwise, shares and documents evidencing title to or right to possession of any property and whether or not deposited with the Supplier by the Customer and the property mentioned in any such documents;

(2) as a floating charge in respect of all other assets hereby charged.

c) the Customer shall immediately upon demand made on it by the Supplier execute in favour of the Supplier a deed of fixed and floating charge containing such covenants as the Supplier may reasonably require including without limitation the provisions of the Supplier's standard form of deed of fixed and floating charge.

18.2 Mortgage

a) the Customer shall immediately upon demand being made upon it by the Supplier execute in favour of the Supplier as mortgagee, a mortgage payable on demand in registrable form over all or any part of the freehold or leasehold land of the Customer referred to in Clause 16.2 hereof ("the Mortgage") containing such covenants as the Supplier may require including without limitation the covenants contained

in Memorandum 2447323 presently filed in the New South Wales Land Property Information in respect of real property situate in New South Wales or in the case of real property in other jurisdictions, the provisions of the Supplier's standard form of mortgage.

b) the Supplier shall be entitled to lodge a caveat in respect of the agreement to grant a mortgage contained in Clause 18 or the Mortgage or in respect of all or any of the real property of the Customer charged to the Supplier under Clause 18.1. The Customer shall not object to the lodgement of the said caveat or take any steps to have any such caveat removed from the Land Titles Office register.

### 18.3 Future Assurances

At the cost of the Customer, the Customer shall from time to time at the written request of the Supplier execute any deed, dealing, assurance or other document which the Supplier shall in its absolute discretion require the Customer to execute and do all such other acts, matters and things as the Supplier shall consider reasonable for the purpose of preserving, perfecting or protecting the Charge and the Mortgage or more effectively securing the powers, remedies, rights, declarations and authorities of the Supplier under the Charge and/or the Mortgage.

18.4 The Customer indemnifies the Supplier from and against all of the Supplier's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Supplier's rights under this clause 18.

18.5 The Customer hereby acknowledges and agrees that the Supplier has a lien over all Goods in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.

### 18.6 Power of Attorney

The Customer hereby irrevocably appoints the Supplier and every authorised officer of the Supplier jointly and each of them severally the attorney of the Customer for the purpose of doing either in the Customer's name or in the name of the attorney and in either cases as the Customer's act and deed all such acts, matters and things as the attorney from time to time considers necessary or expedient for the purpose of carrying into effect all the powers and authorities herein contained and without limiting the power and authority:

- a) do any act including the execution of the Charge and/or the Mortgage and the execution of such documents as may be necessary to register the Charge and/or the Mortgage in the Customer's name as mortgagor pursuant to this application;
- b) to execute and deliver on behalf of the Customer a lease of the said freehold or leasehold land of the Customer or any part thereof for such period as the Supplier may think fit;
- c) to bring, proceed with, defend or compromise any legal proceedings on behalf of the

Customer in connection with the said land or property the subject of the Mortgage and to execute and appeal from any judgment or judgments in connection therewith.

18.7 The Customer warrants that all statements made and documents provided in connection with this agreement and all representations that the Customer has made or may make during the Terms to the Supplier are true and correct.

18.8 The Customer warrants that the credit account is required for the Customer's business or commercial purposes and will not be used for personal, domestic or household purposes.

18.9 The Customer acknowledges that the Supplier has relied on the correctness of these warranties in approving the credit application and continues to rely on these warranties in its further dealings with the Customer.

## 19. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

19.1 In this clause:

- a) financing statement has the meaning given to it by the PPSA;
- b) financing change statement has the meaning given to it by the PPSA;
- c) security agreement means the security agreement under the PPSA created between the Customer and the Supplier by these Terms; and
- d) security interest has the meaning given to it by the PPSA.

19.2 Upon assenting to Terms in writing the Customer acknowledges and agrees that these Terms:

- a) constitute a security agreement for the purposes of the PPSA; and
- b) create a security interest in:
  - (1) all Goods previously supplied (sold, hired or otherwise) by the Supplier to the Customer (if any); and
  - (2) all Goods that will be supplied (sold, hired or otherwise) in the future by the Supplier to the Customer.

19.3 The Customer undertakes to:

- a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
  - (1) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (2) register any other document required to be registered by the PPSA;
  - (3) correct a defect in a statement referred to in clause 19.1(a) or 19.1 (b);
  - (4) comply with section 275 of the PPSA.
- b) indemnify, and upon demand reimburse,

the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;

d) not 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 without the prior written consent of the Supplier; and

e) immediately advise the Supplier of any material changed in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

19.4 The Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.

19.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

19.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

19.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

19.8 The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 19.3 to 19.7.

19.9 The Customer must not dispose or purport to dispose of, or create or purport to create or permit to create any security interest in the Goods other than with the express written consent of the Supplier. The Customer must not lease, hire, bail or give possession ("sub-hire") of the Goods to anyone else unless the Supplier (in its absolute discretion) first consent in writing. If the Supplier does consent any such sub-hire must be in writing in a form acceptable to the Supplier and must be expressed to be subject to the Supplier's rights under these Terms. The Customer may not vary a sub-hire without the prior written consent of the Supplier (which may be withheld in its absolute discretion).

19.10 The Customer must ensure that the Supplier is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hiree, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Goods.

19.11 The Supplier must take all steps including registration under the PPSA as may be required, to ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and

otherwise effective under the PPSA, enabling the Customer to gain (subject always to the Supplier's rights) first priority (or any other priority agreed to by the Supplier in writing) for the security interest, and enabling the Customer and the Supplier to exercise the Customer respective rights in connection with the security interest.

19.12 To assure performance of the Customer's obligations under this clause the Customer hereby gives the Supplier an irrevocable power of attorney to do anything the Supplier considers necessary to protect its interest in the Goods. The Supplier may recover from the Customer the cost of doing anything under this clause, including registration fees.

## 20. BINS

20.1 The Customer acknowledges that the Bins are to be used by the Customer for the sole purpose of depositing waste products into, and may not be used for food, animal waste, fibrolite, asbestos cement and asbestos products (unless the Bins have been specifically provided for that purpose and that purpose has been disclosed to the Supplier in writing at the time of booking), paint, oil, fuels, liquid or chemicals.

20.2 The Bins can be collected by the Supplier at the end of the relevant booking period without notice to the Customer. If, at no fault of the Supplier, collection of the Bins is not possible, the Customer acknowledges that it will be liable to the Supplier for any additional charges, fees and costs the Supplier incurs as a result of the extension of the booking period.

20.3 Bins can remain on-site at a Customer's premises for a maximum of 7 days. Bins may be picked up on-site after 7 days at the Supplier's discretion.

20.4 Damages to Bins incurred during any period that they remain with the Customer will result in additional charges, fees and costs that the Customer agrees to pay to the Supplier.

20.5 Instant rubbish collection and removal service allows for 1 hour loading time. Any additional time will be charged at \$65.00 per hour + GST

20.6 The actual weight and volume of waste/rubbish that is removed must not exceed what has been quoted/booked in, or must not exceed the capacity of the vehicle or Bin collecting the waste/rubbish. If the weight or volume exceeds what was specified in the quote/booking additional charges will apply which the Customer agrees to pay to the Supplier.

## 21. LIMITATION OF LIABILITY AND INDEMNITY

21.1 The Supplier agrees that all Goods (including Hired Goods) and their use and the Services shall be

at the Customer's sole risk and the Supplier will not be liable for any loss, damage or injury that the Customer may incur or that may arise from any cause whatsoever including any fault or other defect in the Goods and/or provision of Services.

21.2 The Customer agrees that the Supplier is not liable for any special, indirect or consequential loss arising in any way in respect of the Goods or their use, or in respect of any Services provided and this exclusion of liability applies whether that loss or liability arises at general law or under these Terms and whether or not including loss or liability arising as a consequence of negligence.

21.3 The Supplier is not liable for any loss or damage to any property or for death or personal injury (to the Customer's personal or any another person) caused or contributed to by the Labour Hire (whether by negligence or otherwise) during the provision of any Services to the Customer.

21.4 The Customer accepts full responsibility for, and indemnifies the Supplier against all claims in respect of any injury to persons, or damage to property, arising out of the use of the Goods however arising, whether from the Customer's negligence or that of the Supplier and without limiting the foregoing whether or not the Goods were being operated or transported by an agent or servant of the Supplier's or any other person for whose acts the Supplier may be held to be responsible for.

21.5 The Customer agrees to indemnify the Supplier for any costs or loss or damage incurred in recovering Goods, whether those Goods were abandoned, unlawfully detained or otherwise not returned to the Supplier in accordance with these Terms.

21.6 Without limiting the Supplier's liability at law in tort, the Customer agrees to indemnify, and keep indemnified, the Supplier and its directors, officers, agents and assigns against any liability for any claims made against the Supplier, or employees, arising out of or in connection with any breach by the Customer of this application or these Terms, or any loss, damage or injury suffered by a third party, caused by any negligence, or deliberate act, by the Labour Hire in the course of performing Services for the Customer.

21.7 Where the Supplier gives advice, recommendations, information, assistance and/or service to the Customer regarding the suitability or purpose of the Goods and/or Services, or in connection with the design, delivery times, dimensions, installation or use of the Goods and/or Services, then it is given in good faith and the Supplier shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on any such advice, recommendations, information, assistance and/or service.

## 22. ACKNOWLEDGMENT

22.1 Each of the Customer and the Directors hereby acknowledge, affirm and agree that:

a) this application has been provided to the Supplier to enable each of the Customer and the Directors to take it away and read it so that they may fully understand and comprehend the terms conditions and provisions contained herein;

b) they have read, fully understand and comprehend the terms, conditions and provisions contained in this application;

c) they have been advised by the Supplier prior to the execution of this application that a copy of this application form containing the forms of this application has been provided to the Customer and each Director to enable them to obtain independent legal advice and they have take such advice as to us has seemed appropriate;

d) they have full power and authority to enter into this agreement;

e) this agreement is signed and delivered as a Deed; the Supplier will rely on all information given to the Supplier by the Customer and the Directors and this information is true and correct.

## 23. USE OF ONLINE ACCOUNT

23.1 The Supplier reserves the right to refuse to supply goods and or services to any client and to terminate a client's account, including a client's online account and registration.

23.2 If it becomes known to the Supplier that there are any fraudulent activities occurring through the use of the website, the Supplier reserves the right to immediately terminate any account involved in such fraudulent activity and if necessary contact the relevant authorities and provide all necessary assistance to law enforcement agencies.

23.3 The Supplier reserves the right to terminate a user's account, including any online account should the user in the Supplier's views committed a breach of these terms and conditions.

## 24. USER GENERATED CONTENT

24.1 A client or guest user after renting a good and or service is requested to provide feedback on an optional basis and if they provide feedback this will be published on the website.

24.2 Only clients and guest users who have rented a good and or service will be permitted to provide feedback on the website.

18.3 Future Assurances

24.3 By making available on the site, any User generated content or intellectual property, the author acknowledges that they grant to the Supplier a



worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free licence to the content that has been generated and intellectual property. This includes granting the Supplier with the right to use, copy, adapt, modify, distribute, licence, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast, access, or otherwise exploit such user content and intellectual property on the website.

24.4 The User is solely responsible for all user content and intellectual that it makes available through the site and in doing so warrants that:

I. It is either the sole and exclusive owner of all the user content and intellectual property that it generates on the site, or has the rights, licences, consents and releases that are necessary to grant to the Supplier the rights in such user content or intellectual property;

II. He or she will not submit any content that is false, inaccurate or misleading, infringes, or violates or third party's patent, trademark, trade secret, copyright, moral rights or other intellectual property or rights of publicity or privacy or result in the violation of any applicable law or regulation;

III. That violates any law, statute or regulation;

IV. That could be considered to be defamatory, hateful, libelous, racially or religiously biased or offensive, unlawfully threatening or unlawfully harassing to any individual, partnership or corporation;

V. The Supplier may at its sole discretion remove any content generated by a user which is offensive, inappropriate or a breach of these terms and conditions;

VI. Content for which you have been compensated or granted any consideration by a third party;

VII. Will not publish any content that contains computer viruses, worms or other potentially damaging programs or files;

VIII. Material that contains any information that includes a reference to other websites, addresses, contact information including email addresses and phone numbers.

24.5 You agree to indemnify the Supplier against all claims, demands and damages arising out of a breach of your representations and warranties set forth above or your violation of any law or the rights of any third party.

## 25. PRIVACY STATEMENT

### GENERAL

1.1 Each of the undersigned Customer and/or Directors of the Customer acknowledge that the information provided in this application is the basis for valuation by the Supplier of the financial standing and credit worthiness of the Customer and each of them and do hereby:

a) confirm that the information provided in this application is true and correct;

b) authorise the Supplier to make such enquiries and receive such information (including personal information and/or sensitive information) from the bankers and business referees mentioned in the application and otherwise from anyone as the Supplier may consider necessary;

c) acknowledge that the Supplier has informed us, in accordance with the Privacy Act 1988 as amended, that certain items of personal information and/or sensitive information, including an opinion, about us are permitted to be kept on a credit information file and might be disclosed to third parties including credit reporting agencies;

d) in accordance with the Privacy Act 1988 as amended:

(1) agree to the Supplier obtaining from a business which provides information (including personal information and/or sensitive information) about the commercial credit worthiness of persons, information concerning our commercial activities or commercial credit worthiness and using such information for the purpose of assessing this application:

(2) authorise the Supplier to exercise our rights of access to our credit information files and credit reports;

(3) agree that the Supplier may give to and seek from any credit providers (whether or not named in this application) reports and information that have any bearing on our credit worthiness, credit standing, credit history or credit capacity for any of the following purposes:

(i) to assess an application by us for credit or commercial credit;

(ii) to notify other credit providers of a default by us;

(iii) to exchange information with other credit providers as to the status of our account where we are in default with the Supplier or other credit provider;

(iv) to assess our credit worthiness, credit standing or credit history at any time;

(v) to assess whether to continue supply credit to the Customer;

e) agree that the Supplier may seek, from a credit reporting agency, a credit report containing personal information and/or sensitive information about us to assess whether to accept us as guarantors for credit applied for, or provided to, the Customer;

f) agree that these authorisations shall continue to have effect for the duration of the period during which credit or commercial credit is provided or sought by the Customer from the Supplier;

g) are aware that we are generally entitled to access personal information and/or sensitive information that the Supplier's holds about us is except where access can or must be denied or limited by the Privacy Act 1988.

## 26. GUARANTEE AND INDEMNITY

THIS GUARANTEE AND INDEMNITY is given by the Guarantor/s in favour of Perfect Contracting Pty Ltd (ABN 64 146 561 453) and/or Perfect Hire Pty Ltd (ABN 68 605 002 819) and/or Perfect Concrete Care (ABN 55 605 120 152) (Perfect Group) (Supplier).

### INTRODUCTION

A. The Guarantor/s have asked the Supplier to supply Goods and/or Services to the Customer and to extend (or continue to extend) credit to the Customer.

B. The Supplier has agreed to the request of the Guarantor/s in consideration of their agreement as follows.

### IT IS AGREED:

26.1 The Guarantor/s guarantee to the Supplier the punctual payment of the monetary liabilities of the Customer (on any account and in any capacity whatsoever and including liabilities in respect of the Goods or Services) which are now owing, or may from time to time be owing by the Customer to the Supplier (Debt). The Guarantor/s acknowledge and agree that the Debt includes any legal and other costs and expenses incurred or to be incurred by the Supplier in seeking payment from the Customer or in enforcing this Guarantee and Indemnity against the Guarantor/s.

26.2 For the purpose of securing payment of the Debt, the Guarantor/s hereby charge in favour of the Supplier all legal, equitable and beneficial interest in real property which it, he or she now or might subsequently acquire a legal or beneficial interest in, and authorise and consent the Supplier to lodge a Caveat upon Title of the Guarantor/s real property.

26.3 The obligations of the Guarantor/s under this Guarantee and Indemnity are principal obligations and are not affected by:

- a) any variation which may be agreed by the Supplier and the Customer in respect of the Terms on which the Goods are delivered or Services provided and paid for;
- b) any waiver, extension of time or indulgence given by the Supplier to the Customer or a Guarantor;
- c) any right or claim which the Customer may assert to resist making payment of any part of the Debt;
- d) any increase in the amount of the Debt;
- e) any failure or omission by the Supplier to give notice to the Guarantor/s of any default by the Customer; or
- f) any act, omission, matter or other thing whatsoever.

26.4 This Guarantee and Indemnity is a continuing obligation of each Guarantor/s for the amount of the

Debt which may be owing from time to time and, binds the successors and assigns of the Guarantor/s and will not be affected by:

a) the death, incapacity, bankruptcy, of a Guarantor or the Customer; or

b) a Guarantor or the Customer which is a company becoming an externally administered company pursuant to the Corporations Act 2001 (Cth).

26.5 If the obligation of any Guarantor in respect of any part of the Debt is unenforceable, the Guarantor's obligations in respect of the balance of the Debt will not be affected by such unenforceability.

26.6 If any payment or other transaction relating to or affecting the Debt is:

a) void, voidable or unenforceable in part or in whole; or

b) is claimed to be void, voidable or unenforceable and that claim is upheld, conceded or compromised in whole or in part; the liability of each of the Guarantor/s is the same as if:

c) that payment or transaction (or the void, voidable or unenforceable part of it); and

d) any release, settlement or discharge made in reliance on anything referred to in paragraph (b) above has not been made and the Guarantor/s must immediately take all action and sign all documents necessary or required by the Supplier to pay to or restore to the Supplier the Debt in full.

26.7 If all or any of the Debt is:

a) not recoverable from the Customer; or

b) not recoverable from a Guarantor under this Guarantee and Indemnity; each of the Guarantor/s, as a separate and principal obligation, indemnifies the Supplier against any loss, liability, expense or outgoing suffered, paid or incurred by the Supplier in relation to such amounts and must pay the Supplier an amount equal to such amounts.

26.8 This Guarantee and Indemnity binds each of the signatories below as Guarantor/s notwithstanding that one or more of the persons named below may never execute this document.

26.9 For the avoidance of doubt it is expressly acknowledged by the Guarantor/s that the Guarantor/s' obligations extend to and may include debts and other obligations of the Customer which have arisen before or after the date of this Guarantee.

## 27. ACKNOWLEDGMENT

27.1 Each of the Guarantor/s hereby acknowledge, affirm and agree that he/she:

- a) Had an opportunity to and sought independent legal advice before entering into the Guarantee and Indemnity;
- b) The nature of the Guarantee and Indemnity;
- c) The liability which the Guarantor would incur by executing the Guarantee and Indemnity; and
- d) The manner in which such liability could be enforced.

## **28. ASSIGNMENT AND NOVATION**

28.1 The Supplier may at any time assign, novate or otherwise dispose of or deal with its rights and obligations under these this Guarantee by notice in writing to the Guarantor/s. The Guarantor/s agrees that any order for the purchase of Goods submitted by the Customer to the Supplier after the date of a notice of assignment will be deemed to be an acceptance of such assignment.

## **29. LAWS TO GOVERN PROVISIONS OF THE GUARANTEE AND INDEMNITY**

29.1 This Guarantee and Indemnity shall be governed by and construed in accordance with the laws of New South Wales.