

# Gunlake Concrete & Gunlake Quarries

## CREDIT ACCOUNT APPLICATION

Date: .....

To: Gunlake Concrete and/or Gunlake Quarries, each being a Division of Rollers Australia Pty Ltd (ABN 50 087 309 091) and all of its subsidiaries, present and future assigns or successors in title ("Supplier").

The Customer named below agrees, declares and acknowledges that:

- (1) If this application is accepted by the Supplier, all of the application's provisions, including the General Credit Terms **plus** the Supplier's Terms and Conditions of Sale as amended from time to time ("**Terms of Sale**") will be binding on purchases by the Customer; and
- (2) The Customer has been given and has read and understood the Supplier's current Terms of Sale prior to completing this application.
- (3) The Customer represents and warrants to you that the particulars set out below are true and correct in every particular and that where there is more than one person who is the applicant all of us shall be jointly liable and each of us shall be severally liable to you.
- (4) The applicant authorises you to make any enquiries, exchange or disclose any information concerning credit from or to any person or source authorised under the Privacy Act and acknowledges that you may supply this information to a Credit Reporting Agency
- (5) Until all indebtedness under the credit account due to you however arising is discharged in full, title to goods does not pass to the Applicant.
- (6) The Customer understands that the information permitted to be disclosed under the Privacy Act 1988 (Cth) includes:
  - (a) Details to identify the Customer – that is name, sex, date of birth, current and two (2) previous addresses, current or last known employer, and driver's licence number;
  - (b) the fact that the Customer has applied for credit and the amount;
  - (c) advice that payments are unpaid;
  - (d) payments overdue for at least 60 days or for which collection action has started;
  - (e) cheques for more than \$100 drawn by me/us which have been dishonoured more than once;
  - (f) in specified circumstances, that in the opinion of the Supplier the Customer has committed a serious credit infringement; and
  - (g) the fact that payments due to the Supplier by the Customer have been paid or otherwise discharged.

### PRIVACY

**The Customer understands that it need not give any of the personal information requested in this application. However, without this information it may not be possible to process this application or provide the Customer with an appropriate level of service. By signing this application the Customer authorises the Supplier to collect, maintain, use and disclose the personal information within current privacy legislation guidelines**

### PARTICULARS OF APPLICANT WHO IS REFERRED TO ABOVE AS THE CUSTOMER (Please answer all relevant questions)

1. Credit Account for a  Sole Trader  Partnership  Private Co (Pty Ltd)  Public Co (Ltd)
2. Registered and/or Trading Name: .....("the Customer")
3. Registered Address: .....
4. ACN: ..... ABN: .....
5. Postal Address: ..... Postcode: .....
6. Business Address: ..... Postcode: .....
7. Tel (Bus) ( ) ..... Mobile: ..... Fax: ( ) .....
8. Email: .....

9. Business premises  Owned  Rented If owned, value \$..... Mortgage \$.....  
 Paid Up Capital: \$..... Net Worth (assets minus liabilities) is at least: \$.....

10 Please state whether applicant is Trustee for any Trust:  Yes  No

If the answer is "Yes" please complete the following:

Full Name of the Trust: .....  
*(Customer to supply copy of Memorandum & Articles of Association and copy of stamped Trust Deed with this application.)*

11. Nature of Business: ..... Year business commenced: .....

12. Type of Contracting Licence: ----- Licence No: .....

13. Name of Trading Bank: ..... Branch: .....

14. Estimated monthly credit requirements: \$.....

15. Names and addresses of Sole Trader, Partners or Company Directors:

(i) Full Name: ..... (ii) Full Name: .....  
 Residential Address: ..... Residential Address: .....  
 .....Postcode: ..... .....Postcode: .....  
 Phone No: ..... Licence No: ..... Phone No: ..... Licence No: .....  
 Owned  Rented DOB: .....  Owned  Rented DOB: .....

(iii) Full Name: ..... (iv) Full Name: .....  
 Residential Address: ..... Residential Address: .....  
 .....Postcode: ..... .....Postcode: .....  
 Phone No: ..... Licence No: ..... Phone No: ..... Licence No: .....  
 Owned  Rented DOB: .....  Owned  Rented DOB: .....

16. Cash Flow  
 The Customer declares that to the best of it's knowledge the Customer will have adequate cash flow to meet its obligations to you.

17. **Trade References**

Name	Fax No	Telephone No
1		
2		
3		
4		

18 Enter details of Assets and Liabilities

ASSETS		LIABILITIES	
DESCRIPTION	\$VALUE	DESCRIPTION	\$VALUE
1.		1.	
2.		2.	
3.		3.	
4.		4.	

**Signature:** ..... **Date:** .....  
 (Signed for the Customer)

## General Credit Terms and Conditions

### 1. DEFINITIONS

The following definitions apply unless the context requires otherwise.

**Supplier** means Gunlake Concrete and/or Gunlake Quarries, each being a Division of Rollers Australia Pty Ltd (ABN 50 087 309 091) or any of its related bodies corporate (as defined by the Corporations Act 2001) or present and future assigns or successors in title from whom goods are purchased.

**Customer** means the party making this application.

**Property** means all property owned by the Customer now or in the future solely or jointly.

NOTE: The standard conditions of sale and delivery for Gunlake Concrete and/or Gunlake Quarries apply. A copy is provided with this application.

### 2. PAYMENT

The Customer must pay for all goods and services supplied by the Supplier by the due date.

### 3. TERMS OF ACCOUNT

The Customer must advise the Supplier in writing of any change to their business structure within two (2) business days of such a change occurring. The person or entity named in the Supplier's records as the Customer, remains liable to the Supplier for goods supplied until the Supplier has accepted a fresh credit application from the new entity or person now operating the business.

### 4. WITHDRAWAL OR SUSPENSION OF CREDIT

- (a) The Supplier may at any time, without the need to provide a reason, vary, suspend or withdraw credit facilities granted to the Customer.
- (b) Without limiting Clause 4(a), if an event or default occurs, the Supplier may, without prejudice to its other rights, call up moneys owed to it by the Customer, retain all moneys paid on account, or cease further deliveries and recover from the Customer all loss of profits arising from and/or take immediate possession of any products not paid for.

### 5. OVERDUE ACCOUNTS

- (a) Any amount not paid by the due date will bear interest from the date of delivery until payment is received at the interest rate of 10% per annum calculated on a daily basis.
- (b) Payments received from the Customer will be credited first against any interest charges and costs. The Supplier may in its absolute discretion, waive its entitlement to interest.
- (c) The Supplier may claim from the Customer all costs, expenses, stamp duties and charges incurred on any account whatsoever including but not limited to any action taken by the Supplier to recover moneys from the Customer. This includes but is not limited to any Mercantile agents costs, legal costs and disbursements on a solicitor/client basis. Upon notice of these amounts the Customer agrees to immediately pay them.
- (d) The Customer agrees to charge all their equitable interest in freehold or leasehold property. The Customer agrees to deliver to the Supplier (as mortgagee) within seven (7) days of demand a properly executed memorandum of mortgage (mortgage) in an approved form incorporating covenants:
  - (1) That all money owed is payable on demand;
  - (2) Charging interest on all the money owed at the rate of 10% per annum calculated on a daily basis; and
  - (3) otherwise contained in memorandum no Q860000 registered at the office of the Registrar General in Sydney
- (e) The Customer authorises and consents to the Supplier registering a caveat against the title to any real property owned by the Customer. The Customer authorises any credit manager or solicitor nominated by the Supplier to be the Customer's true and lawful attorney to execute and register such mortgage and caveat and all other documents to give effect to this security.
- (f) If the charge created by this paragraph is or becomes void or unenforceable, it may be severed from this agreement without any effect on its validity and the Customer shall not be exonerated in whole or in part, nor shall the Supplier's rights, remedies or recourse against the Customer be in any way prejudiced or adversely affected by such severance.



All Correspondence to:

**Gunlake Concrete and/or Gunlake Quarries**

Accounts:

Ph: 1300 132 447

Fax: 1300 132 617

Email: [beverly@gunlake.com.au](mailto:beverly@gunlake.com.au)

Postal Address:

PO Box 1665

Double Bay NSW 1360

Concrete Plant Locations:

South West Plant

8-10 Sedgwick Street

Smeaton Grange NSW 2567

Ph: (02) 4647 2211

Fax: (02) 4647 2231

North West Plant

9-11 Belfast Place

Glendenning NSW 2761

Ph: (02) 9675 5662

Fax: (02) 9675 5362

Quarry Location:

715 Brayton Road

Marulan NSW 2579

Ph: (02) 4841 1355

Fax: (02) 4841 1366

## STANDARD CONDITIONS OF SALE AND DELIVERY

### 1. DEFINITIONS

The following definitions apply unless the context requires otherwise.

**Supplier** means Gunlake Concrete and/or Gunlake Quarries, both being divisions of Rollers Australia Pty Ltd (ABN 50 087 309 091)

**Conditions** means these Standard Conditions of Sale;

**Customer** includes the purchaser of concrete, quarry materials, goods or services from the Supplier or any agent, employee, sub-contractor or representative of such purchaser.

**Delivery** means the delivery to and discharge of concrete and/or quarry products at nominated location;

**Delivery Address** means the address for delivery nominated by the Customer at time of quotation or placement of order;

**Delivery Location** means the point at Delivery Address where concrete is to be discharged or quarry materials are to be unloaded from the Supplier's delivery vehicle;

**Discharge Records** means the information recorded on the Supplier's delivery dockets relating to quantity of concrete not used and returned from site, waiting time and Excess Water.

**Excess Water** means water added to concrete either by or at the direction of the Customer and which the Customer has acknowledged in writing on the Supplier's delivery docket.

**Price** means the price payable for concrete, quarry products, goods and services specified in the Supplier's quotation to the Customer or, in the absence of a quotation, at the Supplier's ruling rates. The Price may be varied by application of special charges.

**Public Holidays** are those days on which it is a public holiday in the place of the Discharge Location.

**AS1012** means the latest edition at the time of Delivery of Standards Australia publication AS1012 "Test Methods for Plastic and Hardened Concrete".

**AS1379** means the latest edition at the time of Delivery of Standards Australia publication AS1379 "Specification and Supply of Concrete". References to special charges are calculated in accordance with the Supplier's current rate for that event or item.

**AS2758** means Australian Standard publication 2758 "Quarry Aggregates"

### 2. AGREEMENT

2.1 These Conditions, the quotation (if any) and any other documents specified in the quotation form the entire agreement between the Supplier and the Customer with respect to which the Supplier will supply concrete and/or quarry materials to the Customer. They set out the only conduct relied on by the parties and supersede all earlier conduct by the parties. Any variations, alterations or additions to these Conditions must be acknowledged in writing by the Supplier.

2.2 Where concrete and/or quarry materials are supplied in more than one load, a separate agreement shall be deemed to be in respect of each load or by conduct by delivery of such load.

### 3. QUOTATIONS AND ACCEPTANCE

3.1 Quotations remain open for acceptance by Customer for a maximum period of thirty (30) days and are based on Customer's indicated total quantity of concrete and/or quarry materials required as shown on the Supplier's quotation. If the quantities required by Customer subsequently varies from that shown on the Supplier's quotation, it reserves the right to vary the Price accordingly.

3.2 Orders for concrete/quarry products based on oral quotations by the Supplier are subject to these Conditions.

3.3 Placement of an order with the Supplier by the Customer, either orally or in writing, constitutes the Customer's acceptance of these Conditions.

### 4. PRICE

- 4.1 Unless otherwise agreed, price is for normal-class concrete of 80mm slump and 20mm aggregate size delivered to delivery address.
- 4.2 Price for supply and delivery of concrete under these terms may be varied by notice by the Supplier to its Customers of the change. Orders made after the Supplier's notification of price changes are binding on all quotations and contracts.
- 4.3 Price for quarry products is based on volume sold rather than weight.
- 4.4 Price is strictly net of all discounts and tax, if applicable, is not included in Price.
- 4.5 Price is partly based on the costs to the Supplier of transport, labour and materials at the time of quotation. After 30 days from the date of the quotation, the Supplier may vary Price in accordance with any variation to any such cost prior to Delivery.

## **5. PAYMENT**

- 5.1 Unless alternative prior arrangements have been agreed, payment of price is due in full prior to supply
- 5.2 Payment terms for all credit accounts is "Net 30 days" meaning the Supplier must receive payment in full in respect of its invoices to the Customer on or before the last working day of the month following the date of Delivery to which the invoices relate.
- 5.3 Acceptance by the Supplier of any late payment by the Customer, or the Customer exceeding the credit limit set by the Supplier shall not amount to:
  - (a) a waiver by the Supplier of its right to payment "Net 30 days" pursuant to clause 5.2; or
  - (b) an agreement to provide credit other than in accordance with these conditions.
- 5.4 The Supplier may require the Customer to provide security for payment in a form acceptable to it prior to Delivery.
- 5.5 The Customer shall pay the Supplier the cost of any bank fees arising from dishonoured cheques given by the Customer to the Supplier and also pay for any legal or other debt collection costs, stamp duty and expenses incurred by the Supplier as a result of any breach by the Customer of these Conditions on a full indemnity basis.
- 5.6 The Supplier may vary, withdraw or terminate any credit arrangements with the Customer at any time and without any liability whatsoever to the Customer or any party claiming through the Customer.
- 5.7 The Customer is not entitled to partly or wholly withhold payment of Price by way of retention. The Customer shall waive any right of set off (legal or equitable) it may acquire against the Supplier in connection with any matter arising out of any Deliveries.

## **6. CONCRETE STANDARD**

- 6.1 Subject to clause 6.3, concrete shall comply with Australian Standard AS 1379, "Specification and supply of concrete".
- 6.2 If the Customer requires special-class concrete, or a slump in excess of 80mm, or aggregate with a maximum size other than 20mm, or air entrainment, special charges may apply.
- 6.3 The Supplier does not undertake to add heating or cooling agents to control concrete temperature and hence does not undertake that concrete will meet the temperature limitations of AS 1379.
- 6.4 The volume of concrete delivered shall be calculated in accordance with AS 1379.

## **7. DELIVERY**

- 7.1 The Customer shall give the Supplier advance notice of estimated daily requirements.

- 7.2 All delivery times made known to or agreed with the customer shall be an estimate only. The Supplier will:
- (a) use its reasonable endeavours to meet customer's delivery time requirements;
  - (b) not be liable for any loss, damage or expense (direct or indirect) sustained by customer arising from the Supplier's failure to deliver pursuant clause 7.6 or any failure to deliver on any day resulting from plant or delivery equipment breakdown, traffic delay, labour dispute, strike, weather or other cause whatsoever beyond the Supplier's control or to the inability to obtain raw materials or equipment from the source expected by it.
- 7.3 In the event of the Supplier's failure to deliver due to any of the causes stated in clause 7.2(b), it may suspend deliveries for such period as it thinks fit or terminate supplies to the customer (whether or not it has suspended deliveries) and shall not be liable for any loss or damage sustained by Customer or by any other person by reason of such suspension or termination.
- 7.4 Any delivery by the Supplier shall be to the discharge location at the delivery address.
- 7.5 If the Supplier's delivery vehicle is required to leave a public road to gain access to discharge location, the customer shall:
- (a) ensure that the delivery vehicle has a safe, suitable and unrestricted route between the kerbside adjacent to delivery address and discharge location; and
  - (b) notwithstanding clause 16, indemnify the Supplier against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against it arising from gaining access unless solely caused by its negligent act or omission.
- 7.6 The Supplier may in its absolute discretion refuse to deliver if it is of the opinion that Customer has failed to perform its obligations under clause 8.5(a).
- 7.7 If the Supplier is unable to complete the delivery of any part of an order, the customer shall accept such part of the order as is able to deliver pro-rata at the same rates as the whole of the order agreed to be sold and on the same terms, including (without limitation) terms relating to payment by the customer.
- 7.8 If the customer does not accept delivery of any concrete ordered by it after batching by the Supplier, or if the concrete is not delivered due to refusal by the Supplier to deliver pursuant to clause 8.6, a special charge will be payable by the customer calculated in accordance with the following:
- (a) the price of the concrete not delivered;
  - (b) cartage costs; and
  - (c) the cost of handling and disposal of that concrete.
- 7.9 Delivery shall take place between 6.30 am and 4.00 pm on Weekdays (not including Public Holidays) and 6.30 am and 12.00 pm on Saturdays. Any batching or delivery of concrete or delivery of quarry products outside these hours will result in a special charge which the customer agrees to pay.
- 7.10 The customer shall be present at discharge location at the time of delivery. If the customer is not present, the Supplier may complete the delivery without obligation to have its delivery docket signed by the customer, whereupon:
- (a) the Supplier shall have no liability to the customer in respect of any discrepancy between the quantity delivered and the customer's order; and
  - (b) the customer acknowledges that any and all rights it has to reject the delivery referred to in the delivery docket are waived.
- 7.11 Prior to discharge of any concrete or unloading of any material from the Supplier's delivery vehicle, the customer shall check that the description and quantity appearing on the Supplier's delivery docket conforms with the customer's order. The customer shall acknowledge receipt of the delivery by signing the Supplier's delivery docket. If:
- (a) there are any discrepancies between the products and quantities described in the delivery docket and customer's order;

- (b) Customer disagrees with any discharge records in the delivery docket; and/or
- (c) Customer disagrees that the addition of any excess water referred to in the delivery docket has been done at customer's request.

the customer shall record in writing full details thereof on the delivery docket prior to the departure of the delivery vehicle from delivery address.

7.12 Where Customer fails to carry out any or all of its obligations under either or both of clauses 8.10 and 8.11, the Supplier's records shall be deemed conclusive evidence of:

- (a) Delivery to the Customer of concrete/quarry products which conforms with the customer's order
- (b) any:
  - (i) addition of excess water to the concrete at customer's request and risk; and/or
  - (ii) application of delivery related special charges to the price under the conditions;

referred to in the Supplier's records.

7.13 Any changes made to any delivery docket by the Customer without prior written consent (other than in compliance with customer's obligations under clause 8.11) shall be void and deemed to have no effect.

## **8. TESTING OF CONCRETE**

8.1 At the request of the Customer, the Supplier will endeavour (without obligation) to arrange and carry out testing of the concrete supplied to the Customer in accordance with AS 1012.

8.2 The cost of any testing and subsequent reports shall be payable by the Customer at the Supplier's then current ruling rates. The Customer agrees to pay for the cost of testing.

8.3 Any concrete testing not carried out by the Supplier must be:

- (a) sampled at the discharge chute of the mixer on the delivery vehicle;
- (b) performed in accordance with AS 1012; and
- (c) carried out by a laboratory which is accredited by the National Association of Testing Authorities.

8.4 Copies of all testing reports not arranged by the Supplier shall be forwarded by the Customer to the Supplier without delay.

## **9. WAITING TIME – CONCRETE DELIVERIES**

9.1 Upon arrival of the delivery vehicle at the delivery address, an unloading time of 21 minutes per delivery is allowed. An additional 7 minutes for each cubic metre in excess of 3 cubic metres of concrete delivered is allowed.

9.2 A special charge will apply to any period in excess of the times allowed in clause 9.1. The customer agrees to pay for this special charge.

## **10. ADDITIONAL CARTAGE – SMALL LOADS**

11.1 Price is based on minimum individual deliveries of 3 cubic metres of concrete.

11.2 An additional cartage special charge will be charged for deliveries of less than 3 cubic metres of concrete. The customer agrees to pay for this special charge.

## **11. PUMPED CONCRETE**

11.1 The customer must give prior notice to the Supplier when concrete is to be placed by pump.

11.2 Due to variables beyond its control, the Supplier does not warrant that concrete designed to be placed by concrete pump will in fact pump in all circumstances.

## **12. SITE PRACTICES BY CUSTOMER**

The Supplier shall not be liable for the failure of concrete to perform to any standard due to:

- (a) excess water and/or any other material being added to the concrete by or at the request of the customer before or after delivery;
- (b) concrete not being placed and compacted within the time limit provisions of AS 1379; or
- (c) any or all of such site practices of the customer as are specified in clauses 15(a) and 15(b) and/or any other act or omission of the customer.

### **13. SUPPLY OF QUARRY PRODUCTS**

- 13.1 Quarry products are sold by volume rather than weight. The volume will be determined by the loose uncompacted volume as measured on the delivery vehicle at the time of loading at the quarry.
- 13.2 The Supplier will make the relevant quarry product available for inspection and sampling provided adequate written notice is given to the supplier.
- 13.3 If quarry products are returned at the Customer's request, the Supplier reserves the right to charge for return cartage, handling and disposal costs.
- 13.4 Quarry products are supplied in accordance with Australian Standard AS2758, unless otherwise agreed to by the parties.
- 13.5 Price is based on a minimum load charge of 12 per tonne for all quarry products.
- 13.6 All bogey loads attract a surcharge of \$2.50 per tonne

### **14. WARRANTIES**

- 14.1 Subject to clause 7.12, the Supplier warrants that the concrete Delivered is in accordance with the description on its delivery docket.
- 14.2 All other conditions or warranties which would be implied into these Conditions by law or statute are excluded unless such exclusion is forbidden or made void by statute.

### **15. THE SUPPLIER'S LIABILITY**

- 15.1 Subject to clause 15.2:
  - (a) The Supplier's liability to the customer in tort or contract or in any way whatsoever for loss or damage of every kind in relation to defective or non-conforming or non-complying concrete and/or quarry products is limited to supplying replacements of any:
    - (i) defective or non-conforming or non-complying concrete and/or quarry products; and
    - (ii) steel reinforcement and formwork directly affected;
  - (b) The Supplier shall not be liable for any claim for indirect or consequential loss or damage arising out of the supply of concrete and/or quarry products; and
  - (c) The Supplier shall not be liable for any claim by the customer in respect of any matter arising out of the supply of concrete and/or quarry products unless a fully particularized claim is lodged in writing with the Supplier not later than 14 days after the occurrence of the events or circumstances on which the claim is based.
- 15.2 For deliveries to "Consumers" as defined by section 4B of the Trade Practices act 1974 (for instance, certain owner builders) the Supplier's liability for a breach of a condition or warranty implied by Division 2 of part V of that Act (other than Section 69 thereof) is limited to any of the following:
  - (a) the replacement of concrete or quarry products or the supply of equivalent concrete or quarry products;
  - (b) the repair of concrete;
  - (c) payment of the cost of replacing concrete or of acquiring equivalent goods and services; or
  - (d) payment of the costs of having concrete repaired;at the Supplier's election.

## **16. CUSTOMER'S INDEMNITY**

The customer shall indemnify the Supplier against each claim, action, proceeding, judgement, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the Supplier arising from any cause whatsoever including, without limitation, any act or omission of the customer including (without limitation):

- (a) the faulty handling or placing or curing of concrete by the Customer;
- (b) any faulty construction practice carried out by the Customer;
- (c) the addition of excess water and/or any other material to concrete by or at the request of the customer before or after the concrete's discharge from the Supplier's delivery vehicle; or
- (d) the time taken for the placement and compaction of concrete delivered to the customer not being in accordance with AS 1379.

But the indemnity shall be reduced proportionately to the extent of any contribution by the negligent act or omission of the Supplier or its agents or contractors (not being employed by the customer).

## **17. CUSTOMER'S SPECIFICATION**

The Supplier shall not be taken to have approved any concrete or material specification supplied to it by the Customer as being suitable for any particular purpose and the customer shall not be liable for any loss or delay, or any costs associated therewith that result from any defects in or unsuitability of such specification.

## **18. TERMINATION**

If the Customer:

- (a) fails to make any payment it owes to the Supplier;
- (b) fails to abide by the terms of any credit account facility it has with the Supplier;
- (c) fails to satisfy the Supplier of its ability to pay for goods and materials supplied when requested to do so;
- (d) is declared bankrupt, resolves to go into liquidation or administration, or has a petition for its bankruptcy or winding up presented or enters into a scheme of arrangement with creditors, or if a liquidator, receiver, administrator or official manager is appointed in relation to its affairs, or enters into an insolvency agreement of any type; or
- (e) breaches any of its obligations under these conditions.

then the Supplier may without notice:

- (i) suspend further performance of its obligations for such period as it thinks fit; or
- (ii) terminate its obligations hereunder at any time;

without affecting any right or remedy of the Supplier against the customer.

## **19. NO WAIVER**

The Supplier's failure to enforce at any time any of these conditions or the granting by the Supplier of any time or other indulgence shall not be construed as a waiver of any condition or any right of the Supplier to enforce that or any other condition.

## **20. GOVERNING LAW**

These conditions are governed by the laws of New South Wales. The parties submit to the jurisdiction of the New South Wales courts.

## PERSONAL GUARANTEE, INDEMNITY AND CHARGE

**THIS PERSONAL GUARANTEE, INDEMNITY AND CHARGE IS AN IMPORTANT LEGAL DOCUMENT AND YOU SHOULD CONSIDER OBTAINING LEGAL ADVICE BEFORE SIGNING IT. THE MAIN EFFECT OF THE DOCUMENT IS TO MAKE YOU PERSONALLY LIABLE FOR THE DEBTS OF THE COMPANY IN THE EVENT THAT THE COMPANY DOES NOT PAY OR CANNOT PAY. IMPORTANT – ONLY SIGN IF YOU UNDERSTAND IT.**

### INTRODUCTION

Under the terms of this agreement you will be personally liable should the company not be able to pay its debts.

Prior to signing the agreement you should satisfy yourself that you understand the full nature and effect of your liabilities and obtain appropriate advice, legal or otherwise, if you are uncertain of your position.

This document must be completed and signed by all directors, and business partners in the presence of independent witnesses (not spouses or family members). Spouses of all Directors, Sole Traders and Business Partners are requested to also sign as Guarantors in the presence of Independent Witnesses.

### AGREEMENT

To: GUNLAKE CONCRETE AND/OR GUNLAKE QUARRIES, (ABN 50 087 309 091) each being a division of Rollers Australia Pty Ltd (hereinafter called "the Supplier") and its assigns or successors and each corporation (within the meaning of that term in Section 9 of the Corporations Law) which is now or may later be taken to be related to any of them (within the meaning of Section 50 of the Corporations Law) from whom the Customer purchases goods, materials or services.

IN CONSIDERATION OF either or any of you agreeing to supply or to continue to supply:

..... ABN: .....  
(called "the Customer") with goods, materials, services or the provision of credit facilities or any combination of these.

I, the Guarantor AGREE with you:

1. To be jointly and severally responsible to you for payment of all of the Money Owed by the Customer to the Supplier ("the Guaranteed Money").
2. This guarantee and indemnity is:
  - (a) Enforceable even if it is not dated or the signature of the guarantor is not witnessed; and
  - (b) Enforceable against each executing party despite a failure by any person (including any anticipated co-surety) to execute this document or any other document.
3. Both my indemnity and guarantee are continuing security and shall remain in force so long as the Customer maintains an account with the Supplier. All guarantees and indemnities shall be continuing and will only terminate in writing from the Supplier. It will remain in full force and effect until all the Guaranteed Moneys are paid or satisfied in full and is in addition to and not affected by any other security or Guarantee held by the Supplier for the payment of Guaranteed Moneys.
4. To pay the Money Owed upon written demand being made to me by the Supplier and includes any demand by your solicitor. A certificate by the Supplier shall be conclusive evidence of the amount of the Money Owed by the Customer, me or any other guarantor at the date of that certificate..
5. You may, without notice to me, make any variation or alteration in the terms of any guarantee with either the Customer or any guarantor (including the amount of credit granted to the Principal) without discharging or releasing me or avoiding or affecting this guarantee.
6. This guarantee is in addition to, and is not to be in any way prejudiced by, any collateral or other security now or in future held by you, and your rights under this guarantee will not be merged in any other security.
7. This guarantee remains binding notwithstanding any act by you which may be construed as prejudicial to me.
8. This guarantee remains binding upon me if the Money Owed is extinguished or reduced by operation of law as between you and the Customer and notwithstanding the liquidation, bankruptcy or any administration in insolvency, dissolution, death or other change in the status, nature or constitution of the Customer.
9. Where the Customer is subject to any administration in insolvency it is agreed that:
  - (a) Any payment made to you and later avoided by the application of any statutory provision shall not

- discharge my liability.
- (b) In such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.
  - (c) Where I have received the right to prove in the liquidation and bankruptcy, I shall do so and hold any dividends received on that proof in trust for you.
10. Where the Customer has given to me any security, I shall hold that security as trustee for your benefit.
11. This guarantee may be withdrawn by the Guarantor only at the expiry of thirty (30) days from the day on which written notice of withdrawal is actually received and acknowledged in writing by the Supplier, but will continue in force in respect of all debts incurred up to the date of withdrawal.

## CHARGE

12. (a) As a separate agreement to secure all the Money Owed by the Principal to you I, as beneficial owner, charge all my freehold and leasehold interests in property whether or not any demand has been made upon either the customer or any guarantor to pay the Money Owed.
- (b) I agree to deliver to you (as *mortgagee*) within 7 days of demand a properly executed memorandum of mortgage (*mortgage*) in an approved form incorporating covenants:
- (1) that all the Money Owed is payable on demand;
  - (2) charging compound interest on all the Money Owed at a rate of 10% per annum calculated on a daily basis; and
  - (3) otherwise contained in memorandum no Q860000 registered at the office of the Registrar General in Sydney.
  - (4) I consent to the Supplier registering a caveat against the title to any real property owned by me. I irrevocably authorize any credit manager or solicitor nominated by the Supplier to be my true and lawful attorney to execute and register such mortgage and caveat and all other documents to give effect to this security.
- (c) If the charge created by this paragraph is or becomes void or unenforceable, it may be severed from this agreement without any effect on its validity and I shall not be exonerated in whole or in part, nor shall your rights, remedies or recourse against me or any other guarantor be in any way prejudiced or adversely affected by such severance.

## DEFINITIONS

**'Costs'** includes costs on the basis of solicitor and own client, mercantile agency fees, stamp duty and expenses

**'Goods'** includes concrete, concrete testing, quarry products and other materials sold to the Customer.

**'Guarantee'** means the personal guarantee and indemnity agreement.

**'Money Owed'** means all the money owed by the Customer to you, now or in the future, alone, together, or with any other person, and for any reason, including any one or more of the following:

- (a) Money owed by the Principal now or in the future to you for goods supplied under the Standard Terms and Conditions of Sale.
- (b) The amount of credit from time to time which you have agreed to extend to the Principal for goods to be supplied.
- (c) Any costs or losses you incur, including any costs or losses you incur if you exercise your rights (including your rights on default) under this guarantee indemnity and charge or any related security.
- (d) Any costs you incur in recovering Money Owed by the principal under the guarantee, indemnity and charge or any related security.
- (e) Any amount for which the guarantor must indemnify you.

**'Property'** means all property owned by me now or in the future, solely or jointly.

**WARNING: THIS IS A LEGAL DOCUMENT AND IF YOU ARE UNSURE OF ITS MEANING AND EFFECT YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE.**

**CERTIFICATE OF GUARANTEE**

**Executed as a Deed**

**Agreement to Terms of the Personal Guarantee and Indemnity**

By signing below as Guarantor, in the presence of a Witness, I certify that I have read the terms of the Personal Guarantee and Indemnity Agreement and understand its terms and that it is an important legal document. I understand that if the Principal fails to make any required payments to the Supplier, the Supplier may recover the amount of these payments from me personally. In this case, the Supplier may, amongst other recovery rights, take a charge over any real property that I have a legal or equitable interest in. Further, I have read and consent to the terms under the Privacy Act 1988 as detailed in Clause 6 of the Credit Applications Terms and Conditions. I certify that prior to the execution of the Personal Guarantee and Indemnity agreement, I have had the opportunity of taking independent legal advice regarding its meaning and effect.

ALL GUARANTORS AND INDEPENDENT WITNESSES SIGN BELOW

..... Signature of Guarantor	..... Signature of Guarantor
..... Print Name of Guarantor	..... Print Name of Guarantor
..... Print Residential Address of Guarantor	..... Print Residential Address of Guarantor
<i>In the presence of:</i>	<i>In the presence of:</i>
..... Signature of Witness	..... Signature of Witness
..... Print Name of Witness	..... Print Name of Witness
..... Print Residential Address of Witness	..... Print Residential Address of Witness
..... Date	..... Date
..... Signature of Guarantor	..... Signature of Guarantor
..... Print Name of Guarantor	..... Print Name of Guarantor
..... Print Residential Address of Guarantor	..... Print Residential Address of Guarantor
<i>In the presence of:</i>	<i>In the presence of:</i>
..... Signature of Witness	..... Signature of Witness
..... Print Name of Witness	..... Print Name of Witness
..... Print Residential Address of Witness	..... Print Residential Address of Witness
..... Date	..... Date

**WARNING: THIS IS A LEGAL DOCUMENT AND IF YOU ARE UNSURE OF ITS MEANING AND EFFECT YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE**