

STANDARD SUPPLY TERMS – SUPPLY OF CONCRETE, QUARRY MATERIALS AND LABORATORY SERVICES

All supplies of concrete products and quarry materials are governed exclusively by these Standard Supply Terms. No person employed by or acting as an agent of **Gunlake Concrete NSW Pty Ltd, Gunlake Quarries NSW Pty Ltd or G Lab Material Testing Pty Ltd** or purporting to do so has authority to supply such products on any other terms and conditions or to vary these Terms in any way whatsoever.

Definitions

Batching or batched means the process for combining cement and other raw materials with water to produce concrete.

Business Day means a day that is not a Saturday, a Sunday or a public holiday where the place of delivery is located.

Company means Gunlake Concrete NSW Pty Ltd (ACN 606 681 850) for concrete supplies, Gunlake Quarries NSW Pty Ltd (ACN 606 681 869) for quarry materials supplies and G Lab Material Testing Pty Limited (ACN 641 331 633) for laboratory and testing services.

Company Website means the website of the Company located at www.gunlake.com.au.

Credit Agreement means an agreement between the Company and the Customer for the provision of credit to the Customer.

Customer means the party, including its employees, agents, subcontractors, permitted assignees, nominees or those acting on its behalf, placing the Order with or purchasing Products or Services from the Company.

delivery docket means a delivery docket issued by the Company and includes (for concrete Products deliveries) a digital ticket for supply of the relevant Product.

Diesel Fuel Levy means the levy stated in the Fees & Surcharges Schedule or otherwise notified by the Company from time to time (including by publishing details of the levy on the Company Website).

Discharge Location means the delivery point where concrete is to be discharged or quarry materials are to be unloaded (as the case may be), which location may be a site, plant, vehicles or equipment operated by any 3rd party (not owned or controlled by the Customer) which the Company is directed to unload any of the Products to. In the case of concrete Products, the location will be the point at which the concrete Products are discharged from the agitator vehicle. In the case of quarry materials, the location will be applicable site, kerb alignment or edge of the road in the Order, or upon loading onto the Customer's vehicle at the point of initial collection (as applicable), unless otherwise agreed.

Fees & Surcharges Schedule means the list of rates, fees and prices located at the Company Website.

NATA means the National Association of Testing Authorities.

Order means an offer by a Customer to purchase Products or Services from the Company and which is subject to these Terms.

PPS Act means the *Personal Property Securities Act 2009* (Cth) and associated Regulations as varied or replaced from time to time.

PPSR means the Personal Property Securities Register established under the PPS Act.

Product(s) means concrete and quarry materials the subject of an Order (as applicable) and includes any other agreed product or service supplied by the Company on the Order of the Customer.

Public Holidays are those days on which it is a public holiday in NSW.

Quotation means a list and specification of the Products or Services prepared by the Company with prices, either individually or in aggregate, which is made subject to these Terms.

Services means the testing, laboratory and associated services carried out by G Lab Materials Testing Pty Limited, which may be separately set out in any Quotation.

Terms means these Standard Supply Terms as varied by the Company from time to time, including the Fees and Surcharges Schedule, the Testing Services Surcharges Schedule, any Credit Agreement and any other document or terms stated to form part of these Terms.

Testing Services Surcharges Schedule means the list of rates, fees and prices for the Services located at the Company Website.

1 Application and updates of these Terms

- 1.1 These Terms apply to all agreements or arrangements between the Company and the Customer in connection with the supply of the Products and Services, including all Quotations, Orders, supplies, enquiries or other sales, and will prevail over all other terms and conditions or other matters agreed between the parties, except to the extent of inconsistent terms contained in any Credit Agreement, issued by the Company. These Terms shall at all times prevail over any other terms of the Customer, howsoever notified, and the application of any Customer or other terms is expressly excluded by these Terms.
- 1.2 These Terms may be varied from time to time by the Company either by notice to the Customer or as may be updated on the Company Website from time to time. Such updated Terms shall automatically apply to the supply of Products made pursuant to any Order made on or from the date of notice or publication (whichever is earlier).
- 1.3 The Customer acknowledges and agrees that the Company makes no representation as to the accuracy or suitability of any Product or Services information, descriptions, specifications, illustrations, drawings, data, dimensions, weights, tolerances or other information supplied by the Company or otherwise contained in catalogues, price lists, advertising or in other material of the Company. Such information is indicative only and the Customer agrees that it shall be responsible for carrying out its own assessment and inquiries to verify any such information prior to issuing any Order.
- 1.4 Any standards, codes or guidelines referenced in these Terms shall be the version in force as at the date of these Terms.

2 Quotations and Orders for Products and Services

- 2.1 Any Quotations (including, pricing, fees, surcharges or rates) issued by the Company are estimates only and the Company shall not be bound by them, including to the extent of any error, inaccuracy, omission, changes in direct, indirect or 3rd party costs, or any changes as a result of changes to volumes or order quantities by a Customer.
- 2.2 The pricing specified by the Company in any Quotation will remain valid for a period of thirty (30) days from the date of the Quotation.
- 2.3 The Customer shall at all times retain responsibility for the accuracy and completeness of any Customer supplied information or directions provided for the purposes of or used by the Company in any Quotation, and the Company shall at all times be entitled to rely on the accuracy and completeness of such information. The Company

reserves the right to withdraw or amend any Quotation to the extent of any error or omission in Customer supplied information.

- 2.4** For quarry materials Products, Quotations are made on a weight or volume basis and may be subject to variations due to weather conditions, compaction, loading, stockpile or supply locations, and cartage configurations.
- 2.5** All Orders and Quotations are made subject to these Terms (including the terms and requirements of any Credit Agreement) unless expressly stated otherwise in writing by the Company.
- 2.6** Notwithstanding any other terms referred to or issued by the Customer, the Customer shall be deemed to have accepted these Terms over any others:
- (a) upon any request for a Quotation from the Company
 - (b) upon placing any Order;
 - (c) in the case of Services, upon the Customer providing any samples to be tested;
 - (d) when applying for credit; and
 - (e) upon delivery of any of the Products at the Discharge Location.
- 2.7** The Company reserves the right in its absolute discretion to reject, in whole or in part, any Order upon notice to the Customer.
- 2.8** Change or cancellation of Orders less than 24 hours prior to the time of delivery shall be subject to the applicable fee in the Fees and Surcharges Schedule or for Services, the Testing Services Surcharges Schedule.
- 2.9** All Orders are subject to lead times and availability of product, personnel, materials and transport.
- 2.10** The Customer must make its own enquiries prior to placing any Order.

3 Delivery of Products

- 3.1** Delivery of the Products shall be deemed to have taken place at the time of discharge, collection, transfer or unloading at the Discharge Location, as applicable.
- 3.2** The Customer must at its own cost and risk, make all arrangements necessary or reasonably requested by the Company to enable safe and efficient delivery of the Products at the Discharge Location, including but not limited to any access, consents or approvals (including the approval of any 3rd party land owner or authority). The Customer shall take full responsibility for assessing the requirements for traffic management associated with any access required, and for putting in place traffic management measures to facilitate access and delivery by the Company.
- 3.3** If the Customer requires the delivery vehicle to leave a public road to gain access to the Discharge Location, the Customer must:
- (a) ensure that the vehicle has a safe, suitable and unrestricted route (which does not risk damage to the mixer vehicle) between the kerbside nearest to the Customer's nominated address and the Discharge Location; and
 - (b) release and indemnify the Company against any loss, damage, cost, liability or claim arising from events occurring while gaining, or caused by such access, except to the extent caused solely by the Company's negligence.
- 3.4** If discharge is not completed within 45 minutes after arrival at the Discharge Location, waiting time in excess thereof will be charged at the rates specified in the Fees & Surcharges Schedule, or as notified to the Customer from time to time, except any delay caused solely by the Company's negligence.
- 3.5** In the event that the Company is prevented from safely delivering the Products at the Discharge Location (in the Company's absolute discretion), the Customer will be liable for storage, redelivery and disposal costs as

applicable in the Fees & Surcharges Schedule, as invoiced by the Company.

- 3.6** The Customer shall at all times be responsible to check the delivery docket and confirm that it is in accordance with the Customer's requirements before any Product is delivered at the Discharge Location. If delivery of the Product made in accordance with the description in the docket is accepted, the Customer shall be liable to pay for it and shall have no claim against the Company for the Product not being as ordered.
- 3.7** While the Company uses reasonable endeavours to achieve delivery times, the Customer acknowledges that all times quoted for delivery are estimates only.
- 3.8** Delivery times are between 6.00 am and 5.00 pm on weekdays (not including Public Holidays) and 6.00 am and 12.00 pm on Saturdays. Any Batching or delivery of concrete Products outside these hours will result in an additional charge in accordance with the Fees & Surcharges Schedule.
- 3.9** In the event that there is failure by the Company to deliver the Product at a specified time, promptly or at all for reasons including, but not limited to, compliance with Clause 3.3, access restrictions, strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, plant or delivery equipment breakdown, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of the Company, the Company will not be liable for any loss or damage or expense arising from the failure of the Company to deliver at a specific time or at all, and the Customer shall not be entitled to treat any Order or these Terms as repudiated.
- 3.10** A delivery docket signed by the Customer (or anyone appearing to act on its behalf) or delivery confirmation via a digital ticket will be deemed confirmation that the delivery of Products is in accordance with the Order. Failing signing by the Customer or persons authorised to accept delivery on behalf of the Customer, discharge or unloading at the Delivery Location shall be deemed acceptance by the Customer that the Products meet the requirements of the Order.
- 3.11** The Customer or an authorised representative must be at the Discharge Location at the time of delivery. If the Customer or their authorised representative is not present at the time of delivery, the Company may (if reasonably practicable) complete the delivery by discharge or unloading at the Discharge Location and the delivery docket shall be evidence of delivery and deemed acceptance by the Customer that the Products meet the requirements of the Order. Where delivery cannot be made by the Company despite reasonable efforts by the Company, the Customer must still pay the full cost of the Order, together with any other fees and charges for cartage, handling and disposal in accordance with the Fees & Surcharges Schedule, as invoiced by the Company.
- 3.12** The volume of concrete Products delivered shall be calculated in accordance with AS 1379-2007 using the mass of all the batch constituents divided by the average tested density or mass per cubic metre.
- 3.13** The Customer may be required to give the Company advance notice of estimated daily requirements and must provide to the Company such information promptly on request.
- 3.14** Where concrete Products are to be delivered to pump equipment, the Customer must notify the Company at the time of placing the Order. While the Company will use reasonable efforts to accommodate such a request, it does not warrant and shall not be responsible if any concrete Products cannot be pumped due to variations in pumps and concrete characteristics.

4 Pricing, Fees & Surcharges for Products and Services, Diesel Fuel Levy

- 4.1 The price of Products and Services will be calculated in accordance with the Fees & Surcharges Schedule and for Services, the Testing Services Surcharges Schedule (as applicable) and subject to clause 2.1, will be the amount indicated on the Quotation, plus any service or merchant fees (where payment is made by credit card) and other amounts payable pursuant to the Fees & Surcharges Schedule or these Terms or Testing Services Surcharges Schedule (as the case may be).
- 4.2 The Company reserves the right to issue an amended invoice at any time in the case of genuine error or to reflect adjustments to the Diesel Fuel Levy and shall not be bound to any invoice or Quotation in such circumstances.
- 4.3 Additional fees and surcharges will apply as indicated on the Fees & Surcharges Schedule and Testing Services Surcharges Schedule, including, in the case of Products, for small loads, waiting time, disposal of returned concrete, out of hours deliveries, truck standby, accelerators, retarders or other treatments, slump modification, and washouts. The Customer acknowledges and agrees that it has been made aware of the applicable rates prior to any Order.
- 4.4 An additional Diesel Fuel Levy shall be applied to any Quotation or Order (as applicable) and shall be invoiced by the Company. The Diesel Fuel Levy may be further adjusted by the Company at any time up to the time of delivery to reflect applicable increases in diesel fuel or other input costs.
- 4.5 Any discount, set-off or rebate will only apply if confirmed in writing by the Company and may be subject to conditions imposed by the Company in its absolute discretion.
- 4.6 The Customer must pay the applicable price of any variations to any Orders and any applicable fees and surcharges specified in the Fees & Surcharges Schedule or Testing Services Surcharges Schedule, as invoiced by the Company.
- 4.7 The Company may, from time to time and in its sole discretion, issue surcharges or levies or otherwise adjust its rates and pricing in order to mitigate and/or recover increased operating costs arising from or related to, without limitation (a) foreign currency exchange variation; (b) increased cost of third-party content, labour and materials, (c) impact of duties, tariffs, and other government actions; and (d) any other circumstances that increase the Company's costs, including, without limitation, increase in fuel, transportation, freight, labour, material or component costs, and increased costs due to inflation.

5 Payment and Credit

- 5.1 The Company may, in its absolute discretion, accept an Order and allow credit for part or all of its value or may accept an Order and require pre-payment as a condition of delivery. The provision of credit and a credit account by the Company to the Customer is subject to strict compliance by the Customer with the terms of any Credit Agreement and may be revoked at any time in the Company's absolute discretion. **In all other cases**, payment for Products and Services must be made by the Customer in full no later than thirty (30) days from the date of the invoice provided by the Company to the Customer in respect of the Products the subject of the Order.
- 5.2 Where credit approval has not been granted, or is withdrawn or the Customer does not have a credit account, payment is required upfront before delivery of Products by the Company or (in the case of collection of quarry materials Products by the Customer or the Customer's nominated carrier) transport from the Company's collection site (by cash or cleared funds) or (in the case of Services) before testing work commences.

- 5.3 Where credit has been approved for the Customer, all invoices issued by the Company are due and payable strictly in accordance with the Credit Agreement, or where no due date is specified in the Credit Agreement, then thirty (30) days from the date of the invoice provided by the Company to the Customer in respect of the Products or Services the subject of the Order.

- 5.4 The Customer shall not under any circumstances, partly or wholly withhold any amount due and owing by way of set-off or retention. Any such action will be deemed a breach of the Credit Agreement.

- 5.5 An administration fee of \$95.00 (including GST) plus all associated bank or other charges may be applied to any cheque payment returned unpaid by the bank for whatever reason.

- 5.6 Without limiting the terms of any Credit Agreement, any use of contra payments towards amounts outstanding from the Customer shall be subject to the Company's prior written approval (which may include conditions) and shall at all times be in the Company's absolute discretion.

- 5.7 The Company may apply a service fee on payments made by credit card, to cover its administration and processing costs.

6 Default

- 6.1 In the event that the Customer fails to make any payment when due or is in breach of any other obligation or warranty under these Terms or any Credit Agreement, the Customer will be in default of these Terms and will be responsible for, and will indemnify the Company against any damages, costs (including but not limited to legal costs), losses and expenses incurred by the Company as a result of the breach.

- 6.2 In the case of moneys due and owing past the applicable date for payment, the Company may charge interest on all amounts outstanding at a rate of 1.25% per calendar month, calculated from the due date and accruing monthly thereafter until the date of payment in full.

- 6.3 If the Customer fails to pay any amount invoiced for Products or Services by the due date, the Company may in its absolute discretion:

- (a) reverse any rebates or discounts allowed;
- (b) revoke any credit, accommodation or concessions, including by requiring cash pre-payment for any further Products or Services ordered;
- (c) provide details of the payment default to a credit reporting agency;
- (d) commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs;
- (e) decline to supply Products or Services to the Customer or any related entity and terminate this and any other agreement with the Customer;
- (f) suspend deliveries of any Products or the provision of any Services; and
- (g) exercise any other rights available at law.

7 Special conditions and exclusions relating to concrete Products

- 7.1 The Customer acknowledges and agrees that it shall be solely responsible for and warrants to the Company that all specifications and other information or requirements applicable to the intended use of the concrete Products (**Specifications**) and which are provided to the Company for the selection, manufacture and supply of concrete pursuant to an Order, are accurate, correct and suitable in all respects for the Customer's intended use. The Customer also acknowledges that the addition of water to assist with pumping or for any other reason, may alter and have an adverse effect on the strength and other

characteristics of concrete Products. Accordingly, the Company shall not be liable for any water addition at or after the time of delivery, except as expressly approved in writing by the Company's Technical Manager under clause 7.6(j).

- 7.2** The Company shall be entitled to rely on the Specifications or any other information provided by the Customer in determining the nature, composition and characteristics of any concrete Products to be supplied.
- 7.3** Unless otherwise expressly agreed in writing, the Company, when giving the Quotation or supplying any Product will not be taken to have approved any Specification as being suitable for any particular purpose and will not be liable for any claims, expenses, loss, damage or delay resulting from any defects in or unsuitability of the Specification.
- 7.4** Subject to clause 7.6, concrete shall comply with AS 1379-2007 with a nominal slump not exceeding 80mm and maximum size aggregate of 20mm and shall otherwise comply with the characteristics stated on the delivery docket.
- 7.5** The Company may charge an additional amount for approved variations to the slump or aggregate at the applicable rate in the Fees & Surcharges Schedule.
- 7.6** The Company shall not be responsible or liable for, and is hereby indemnified by the Customer in respect of, any claims, actions, costs or liability whatsoever made by the Customer or any 3rd party arising from or in any way in connection with:
- (a) the use of any heating or cooling agents to control concrete temperature;
 - (b) compliance with applicable temperature limitations of AS 1379-2007 at the Delivery Location when concrete is placed under extreme ambient temperature conditions (typically below 10 degrees Celsius and above 32 degrees Celsius);
 - (c) the use of any retarders;
 - (d) the suitability or ability of any concrete Products to be pumped;
 - (e) any improper handling, placing, treatment or curing of the concrete Products;
 - (f) any practices, process, workmanship or methodology adopted by the Customer (or any 3rd party),
 - (g) the use of any 3rd party equipment;
 - (h) weather or environmental conditions;
 - (i) discharge, use of, compaction or application of concrete Products outside the batch time stated on the delivery docket, and in any event outside the period that is 90 minutes after batching.
 - (j) addition of any water or other substances to concrete Products by or requested by or on behalf of the Customer, except to the extent approved in writing by the Company's Technical Manager at the time of delivery;
 - (k) placement delays or cold joints;
 - (l) any other circumstances outside the Company's reasonable control or without the Company's express written approval; or
 - (m) any combination of any of the above factors.
- 7.7** The Customer acknowledges and agrees that the Company does not warrant or guarantee the consistency, accuracy, strength, quality, suitability, surface finish, performance characteristics or durability of any colour added to concrete Products.

8 Special conditions related to Services

- 8.1** The Company shall perform the Services with reasonable skill, care and diligence.

- 8.2** The Customer must promptly provide the Company with all documentation and directions necessary to enable the Company to provide the Services together with the submission of their samples, a completed and signed chain of custody form (free of discrepancies) with a defined scope of work and a complete and thorough written disclosure of the known or suspected presence of any hazardous substances that may impact upon the provision of the Services.
- 8.3** Unless otherwise agreed by the Company, the Customer shall promptly obtain all access, approvals, authorities, licences and permits necessary to enable the Company to provide the Services. This shall include the provision of safe and convenient parking and access to the required test and sampling locations (including the point of concrete discharge)
- 8.4** If the Customer becomes aware of any matter that will change the scope, character, quality, sequence or timing of the Services, then the Customer must immediately notify the Company.
- 8.5** The Customer must at all times cooperate with the Company without interference or obstruction to the performance of the Services.
- 8.6** The Company will use reasonable efforts to meet agreed timeframes for completion of testing, however under no circumstances will the Company be liable in any way for any failure to do so.
- 8.7** The Company reserves the right, in its absolute discretion, to refuse or reject samples that it deems unsuitable, including but not limited to samples considered:
- (a) unsuitable or non-compliant with the relevant test method requirements;
 - (b) be of unsuitable volume or quality or contamination;
 - (c) pose a health, safety, environmental or other risk;
 - (d) be a sample that will fail to meet holding times; or
 - (e) be unsuitable for the provision of the Services for any reason .
- 8.8** The Customer shall be liable and will pay all costs and damages incurred by the Company as a result of:
- (a) a failure by the Customer to disclose to the Company the presence of a sample containing any hazardous substance; or
 - (b) a failure by the Customer to comply with any law or applicable standards relating to the sample.
- 8.9** Where a Customer requests the Company to store or retain samples beyond 7 days, the Customer must notify the Company in writing. Where agreed by the Company, a fee will be payable in accordance with the Testing Services Surcharges Schedule, as invoiced by the Company.
- 8.10** Laboratory tests and associated services are charged in accordance with the Testing Services Surcharges Schedule.
- 8.11** Laboratory testing will be carried out in accordance with applicable standards and NATA test methodology.
- 8.12** The Company will provide a report (with test results as required by the relevant test method) upon completion of the Services.
- 8.13** Reports will be produced in accordance with the relevant NATA requirements.
- 8.14** The Company will issue an invoice to the Customer at the time(s) indicated in the Quotation or where not stated, on completion of the Services. Payment will be required in accordance with clause 5.
- 8.15** No 3rd party shall be entitled to rely on any interpretation or data contained in any report issued by the Company

without the Company's prior written consent (which may be withheld in its absolute discretion) and accordingly, without limiting any exclusion or limitation of liability contained in these Terms, the Company shall in no circumstances be liable to any 3rd party for any claim whatsoever arising out of or in connection with the Services.

9 Special conditions relating to quarry materials Products

- 9.1 The Customer warrants to the Company that all specifications, required order quantities, stated requirements and other information (**Specifications**) provided to the Company are accurate and correct and suitable in all respects for the Customer's intended use and the Company shall be entitled to rely on the Specifications in determining the nature, composition and quantities of the quarry materials Products to be supplied.
- 9.2 Unless otherwise agreed in writing, the Company, when giving the Quotation or supplying any quarry materials Products will not be taken to have approved or have any responsibility for any Specification being suitable for any particular purpose and will not be liable for any loss, costs or delay resulting from any defects in or unsuitability of the Specification.
- 9.3 Quarry materials Products are supplied in accordance with AS 2758.
- 9.4 Rates and prices for Orders will be based on either weight or volume, based on the loose uncompacted weight at the time of loading.
- 9.5 The Company will make quarry materials Products available for inspection and sampling subject to reasonable notice by the Customer.
- 9.6 In no circumstances shall the Company be liable to the Customer or any 3rd party for any:
- (a) addition of other materials or things to the delivered quarry materials Products;
 - (b) improper or unsuitable handling or use of the quarry materials Products;
 - (c) any errors, discrepancies, quantities or requirements in any Specifications;
 - (d) any variations in the quality or consistency of materials due to natural or environmental conditions;
 - (e) plant, vehicles, personnel or equipment used or operated by the Customer or any 3rd party;
 - (f) shortage of quarry materials Products due to miscalculation by the Customer or 3rd party;
 - (g) restrictions on access, traffic or other delay or disruption outside the Company's reasonable control.
- 9.7 Delivery of the quarry materials Product to the Discharge Location shall constitute deemed acceptance by the Customer that the applicable quarry materials Products comply with the Order and the Customer shall have no claim against the Company for the Product not being as ordered.
- 9.8 Quarry materials Products may be collected by the Customer or its nominated carriers where approved by the Company (subject to reasonable conditions as to the vehicle and operator). In such cases, clauses 9.9, 9.10 and 9.11 shall apply.
- 9.9 Where the Customer is responsible for collection (either by itself or through its nominated carrier), the Customer must ensure:
- (a) that any vehicle used to collect, transport and load the quarry materials Products is safe, maintained strictly in accordance with the manufacturer's requirements, is roadworthy and is suitable and fit for the purpose;

- (b) that it complies with all applicable laws and operating requirements (including those relating to safety, signage, safe use and operation of the vehicle, and safety in the area around where the vehicle is operated) and is registered and fully insured as required by law; and
- (c) that its driver and any operator are appropriately trained and skilled in the safe and professional operation of the vehicle.

9.10 The Company may, in its absolute discretion, refuse to allow collection where it reasonably considers any vehicle to be not fit for the purpose of collection and transportation.

9.11 The Customer shall at all times be responsible for all traffic management associated with collection or delivery by the Customer or its nominated carriers and shall at all times remain responsible for any loss, damage or injury caused in connection with its collection of quarry materials Products.

10 Risk and Title in Products

10.1 The risk (but not title) in respect of Products passes to the Customer immediately upon delivery or unloading at the Discharge Location.

10.2 Legal and beneficial ownership of the Products will remain with the Company and will not pass to the Customer until the Company has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which may become due to the Company from the Customer on any credit or other account with the Company or pursuant to these Terms.

10.3 Until ownership of the Products has passed to the Customer in accordance with clause 10.2, the Customer will keep the Products in question as fiduciary agent and bailee for and on behalf of the Company.

10.4 If the Customer:

- (a) fails to pay any amount (whether in part or whole) due and owing by the time required for payment; or
- (b) is the subject of an insolvency event (such as receivership, administration or liquidation),

the Company may, in addition to any other right under these Terms and without notice to the Customer, enter any premises where Products are stored or located (or believed by the Company to be stored or located) and take possession of those Products not paid for and any other Products to the value of the amount owing. The Company's permission to enter the Customer's premises for that purpose is irrevocable. The Company is not liable to the Customer in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by the Customer as a result of any action taken by the Company under this clause.

11 GST

11.1 Words used in this clause 6 that are defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as in that Act unless the context indicates otherwise.

11.2 Unless expressly stated otherwise, all amounts of consideration expressed or described in any Quotation, Order, invoice or agreement the subject of these Terms are GST exclusive. The Customer must pay an additional amount equal to any applicable GST. The additional amount must be paid when the other consideration is payable or at any earlier time that the Company is obliged to pay or allow credit for the GST.

11.3 Whenever an adjustment event occurs in relation to any taxable supply to which clause 6.2 applies:

- (a) the supplier must determine the amount of the GST component of the consideration payable; and
- (b) If the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable; and
- (c) the supplier will issue an Adjustment Note to the recipient.

11.4 If either party is entitled under these Terms to be reimbursed or indemnified by the other party for a cost or expense, the reimbursement or indemnity payment must not be for any GST component of the cost or expense to the extent that includes an amount for which the party being reimbursed or indemnified or its representative group member is entitled to GST credit.

11.5 If GST is payable on any taxable supply made by one party (Supplier) to another (Recipient) under an agreement the subject of the Terms, then the Recipient will not be required to pay any amount to the Supplier in respect of that taxable supply unless it has first received a tax invoice from the Supplier.

12 Security Interest

12.1 The Customer acknowledges and agrees that these Terms constitute a security agreement (as defined under the PPS Act) and create a security interest or charge of the Company in all materials, equipment and any property of the Customer (Collateral) as security for the performance by the Customer of its obligations under these Terms.

12.2 The Customer acknowledges that the Company may do anything it considers necessary in order to perfect the Company's security interest under the PPS Act.

12.3 The Customer hereby consents to the Company registering and recording the details of these Terms and the Collateral on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Company to effect such registration.

12.4 To the extent permitted by the law, the Customer waives any right to receive notice of any security interest(s) created by this instrument on the Personal Property Securities Register.

12.5 For the purposes of section 115 of the PPS Act, the Company need not comply with the following:

- (a) section 95;
- (b) section 96;
- (c) section 125 ;
- (d) section 129;
- (e) section 130;
- (f) subsection 132(4);
- (g) section 135;
- (h) section 142; and
- (i) section 143.

13 Dispute resolution

13.1 If a dispute or difference arises between the Company and the Customer in respect of any fact, act, matter or thing arising out of or in any way connected with these Terms and one party requires the dispute or difference to be resolved, then that party will promptly give the other party a written notice giving details of the dispute.

13.2 Within 14 days of a party receiving a notice, the parties, and/or their delegates must meet and attempt to resolve the dispute in good faith.

13.3 If the parties are unable to resolve the dispute under clause 13.2, either party may commence legal proceedings.

13.4 Invoiced amounts that are not disputed within thirty (30) days of the due date will be deemed to be correctly charged and accepted by the Customer and the Customer waives its entitlement to dispute them.

13.5 Notwithstanding any dispute, the Customer must continue to pay all amounts due and owing under the Terms, without set-off or deduction.

14 Disclaimer and Limitation of Liability

14.1 Except as expressly provided in these Terms and to the maximum extent permitted by law, no guarantee, warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, aesthetic appearance, conformance to any specification or Order, merchantability or fitness for purpose of any Products or Services provided pursuant to these Terms is given or assumed by the Company and all such guarantees, conditions, warranties and liabilities (including liability as to negligence) express or implied relating to such Products or Services are hereby excluded.

14.2 To the fullest extent permitted by law, the Company's liability under any condition or warranty which cannot legally be excluded is limited as set out below:

- (a) In the case of concrete Products, the lesser of:
 - (i). replacement of the concrete;
 - (ii). repair of the concrete (if applicable); or
 - (iii). the payment of the cost of replacing or repairing the concrete (as applicable).
- (b) In the case of quarry materials Products, the lesser of:
 - (i). the resupply of the quarry materials; or
 - (ii). the payment of the cost of resupply of the quarry materials.
- (c) In the case of Services, the lesser of:
 - (i). the resupply of the Services or part thereof; or
 - (ii). the payment of the cost of resupply of the Services or part thereof.

14.3 Notwithstanding clause 14.2, the Company shall have no liability to the Customer where the Customer fails to notify the Company in writing of the non-compliance or alleged non-compliance within 7 days of the date of delivery of the Product to the Discharge Location or in the case of Services, the date of performance of those Services.

14.4 To the fullest extent permitted by law, and subject to clause 14.2, the Company will not be liable to the Customer for any indirect or consequential loss suffered by the Customer in connection with the supply of the Products or performance of Services, including but not limited to any loss of use, loss of contract, loss of opportunity, loss of revenue, loss of business, loss of goodwill, capital costs, or loss of actual or anticipated savings.

15 Force Majeure

15.1 The Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's failure or delay in completing an Order caused or contributed to by an act of God, war, riot, insurrection, vandalism or sabotage, strike, lockout, ban, limitation of work or other industrial disturbance or a law, rule or regulation of any government or governmental agency, fire, flood, tempest, earthquake, civil disturbance, theft, crime, or the inability of the Company's suppliers to

supply necessary products, or any other matter or cause beyond the Company's reasonable control.

- 15.2** The Company may terminate these Terms at the expiration of 7 days' notice to the Customer if performance of an obligation is prevented by an event specified in clause 15.1, or a delay caused by the event exceeds thirty (30) days.

16 Privacy consent

- 16.1** The Company collects, uses, stores and discloses personal information in accordance with our Privacy Policy, which the Customer acknowledges it has had an opportunity to read and understand. The Customer can access the current policy from the Company Website or by contacting the Company's privacy officer at accounts@gunlake.com.au.
- 16.2** The Company may give information to 3rd parties about the Customer, its guarantors, directors or proprietors in accordance with our Privacy Policy, including for the following purposes:
- (a) to obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
 - (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors;
 - (c) for registration on the PPSR or other public records or registers;
 - (d) to obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency; and
 - (e) any other purposes directly related to the marketing or supply of Products.

17 General

- 17.1** This document represents the entire agreement between the parties and no agreement or understanding varying or extending these Terms will be binding on either party unless in writing and signed by both parties or except as expressly permitted by these Terms.
- 17.2** The Company may serve any notice under these Terms on the Customer by hand or by forwarding it by post to the address of the Customer last known to the Company, or where a fax number or an email address has been supplied by the Customer, by sending it to that number or address. Such notices will be deemed to be given:
- (a) where delivered by hand, on the day of delivery;
 - (b) where sent by post, two (2) Business Days after the day of posting; and
 - (c) where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained.
- 17.3** If any part of these Terms is found to be invalid, void, illegal or unenforceable, then to the extent permitted by law, it will be severed from the agreement and the remaining provisions will not be affected, prejudiced or impaired by such severance.
- 17.4** The Company may assign or licence or subcontract all or any part of its rights and obligations under these Terms in its absolute discretion, without notice to the Customer, or the Customer's prior consent. The Customer must not assign or subcontract any obligation under the Terms without the prior written consent of the Company, which consent may be withheld or subject to conditions in the Company's absolute discretion.
- 17.5** If the Customer intends to sell or otherwise dispose of any part of its business or make any change to its control or ownership (**Disposal**), the Customer must give prior notice to the Company and comply with all reasonable requirements or conditions of the Company, including but not limited to any changes to any Credit Agreement,

Order or guarantee in place at the time of the proposed Disposal.

- 17.6** No waiver, or failure or delay of the Company to exercise, any right, power or privilege available to it under or in connection with these Terms will operate as a waiver unless expressly stated in writing.
- 17.7** These Terms are governed by and will be construed in accordance with the laws in the State of New South Wales, Australia.
- 17.8** These Terms may be varied or modified by the Company at any time in its absolute discretion by publishing updates to these Terms on the Company Website. Customers acknowledge and agree that any revisions to these Terms shall apply on and from the date they are published on the Company Website.