TRADE ACCOUNTS / 01

Set up your trade account

One account covers concrete, reinforcement, Composite Floor and building supplies.

01 Who will hold the account?

Registered entity or trustee name

Trading name

ABN

ACN (if applicable)

Entity type

Street address

Postal address

Trading since

Nature of business

02 Ordering and invoicing

Ordering contact

Business phone

Fax (if used)

Ordering email

Accounts payable email

Usual delivery area or project

Purchase order requirements

03 Credit request

Credit limit requested (AUD)

Bank name

Branch

Account number

BSB

Approved limit (office use)

What will you be ordering?

☐ Concrete ☐ Reinforcement ☐ Composite Floor ☐ Building supplies

TRADE ACCOUNTS / 02

People and trade references

Provide details for each director or partner and three suppliers who can confirm your trading history.

04 Director or partner 1

Title	Full name	Mobile	Date of birth

Residential address	Director identification number

Driver licence number	Second ID (Medicare, passport or current utility notice)

05 Director or partner 2

Title	Full name	Mobile	Date of birth

Residential address	Director identification number

Driver licence number	Second ID (Medicare, passport or current utility notice)

06 Supplier credit references

Supplier 1 name	Address	Phone	Fax (if used)

Supplier 2 name	Address	Phone	Fax (if used)

Supplier 3 name	Address	Phone	Fax (if used)

Completing your application

Read the terms on pages 3–7, the privacy statement on page 8 and the guarantee on page 9.

Sign and initial where indicated. Contact sales@construxindustries.com.au to arrange secure return of the completed application and copies of identification.

Initials

Goods are supplied on the following Terms and Conditions, unless varied and authorised in writing by the Supplier. These Terms and Conditions replace and supersede all previous agreements between the Customer and the Supplier entered prior to the date of issue.

1. Definitions

1.1 In these Terms and Conditions:

(a) **'Commercial Credit Account'** means a trading account granted in writing by the Supplier to the Customer;

(b) **'Consequential Loss'** includes any direct or indirect loss, any loss of profit or opportunity, expectation loss, delay loss, loss of use, loss of business or any from of consequential, special, punitive or exemplary loss or damages, regardless of whether a party foresaw or could foresee the other party suffering a loss of that kind and howsoever it arises or is claimed (including as a result of negligence or by the operation of Law);

(c) **'Contract'** means the contract created in accordance with Clause 4.3;

(d) **'Contract Sum'** means for Goods where the Contract provides:
(i) a lump sum, the lump sum; and
(ii) agreed rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of Goods actually carried out in the Contract by the rate accepted by the Customer in the Quotation for that section or item;
(iii) a lump sum and rates, the aggregate of the sums referred to in paragraphs (i) and (ii), adjusted by any additions or deductions made pursuant to this Contract. If the Contract is silent, (ii) shall apply;

(e) **'Customer'** means the person or entity describes as the 'Applicant' on the first page of this application, and/or the person ordering or purchasing the Goods as specified in any Quotation or invoice, receipt, document or order and if there is more than one person, the term 'Customer' is a reference to each person jointly and severally.

(f) **'Delivery'** includes a delivery or supply of Goods in response to an Order of the Customer or which the Customer accepts whether or not the Supplier and the Customer have reached a concluded agreement about all of the terms and conditions of the delivery or supply including the Contract Sum for the Goods ordered.

(g) **'Delivered'**: means when the Goods are delivered to the Customer in accordance with clause 7.1(b) or 7.2(c);

(h) **'Excluded Items'** means (unless expressly stated in the Quotation to be provided):
(i) tire wire, bar chairs, threading and/or screwing, saw cutting, mechanical splices, welding of any nature, blacksmithing, press work, butt welding, assembly of Goods, supply and location of lifting hooks, slings and cradles; supply of bars exceeding lengths of 12 metres or exceeding diameter of 36mm; delivery of oversized loads or provision of vehicle escorts; brickwork reinforcing and holding down bolts; galvanizing; on-site scheduling; product containers; steel fixing; on-site accommodation; provision of traffic control; or such other items specified in the Quotation as being excluded;
(i) where the Quotation states that prefabricated elements, such as reinforcing elements or cages, engineered manufactured items and steel fixing are included, the Quotation includes the cost of welding of those items unless otherwise stated in the Quotation. The Quotation does not include the cost of or associated with lifting or lowering to position on site; site scaffolding; supply and welding of lifting points; or site welding.

(i) **'Force Majeure'** means if the Supplier is prevented (directly or indirectly) from supplying the Goods or any party thereof by reason of acts of God, strikes, lockouts, trade disputes, fire, floods, breakdowns, delay in the manufacture of Goods for any reason whatsoever, interruption of transport, government action, no-delivery of raw material or products, refusal or failure of the Suppliers own suppliers to deliver to the Supplier or from any other reason that is beyond the control of the Supplier;

(j) **'Goods'** means goods, products and materials supplied by the Supplier under the Contract;

(k) **'Invoice'** means an invoice for payment of Goods supplied or to be supplied by the Supplier to the Customer;

(l) **'Law'** includes the common law of Australia, rules of equity and the provisions of any relevant statute or statutory instrument including a bylaw, as may be amended from time to time.

(m) **'Loss'** means any Liability incurred or alleged to have been incurred by the Supplier, the Customer or a third party in respect of, arising from or connected with any supply of Goods by the Supplier or by the Supplier's failure to supply any Goods or of a breach of these terms and conditions, whether arising at Law or otherwise.

(n) **'Liability'** includes any demand or claim (including a demand or claim for direct or indirect Consequential Loss) in respect of any damage, cost, expense, harm, injury or death or any fine or penalty imposed by or under a Law or by any authority.

(o) **'Order'** means a request for a delivery of Goods issued by the Customer to the Supplier;

(p) **'PPS Act'** means the *Personal Property Securities Act 2009* (Cth);

(q) **'Quotation'** means an offer in writing by the Supplier to supply the Goods set out in that document called a "Quote" (which may or may not be attached to these Terms and Conditions);

(r) **'Quote Acceptance'** means communication by the Customer of acceptance of the terms of a Quotation (including these terms and conditions) by either:
(i) the Customer signing and returning to the Supplier these Terms and Conditions;
(ii) the Customer communicating that it accepts the terms of the Quotation, either in writing, orally or by conduct;
(iii) the Customer directing the Supplier to deliver the Goods after it receives the Quotation;

(s) **'Relevant Information'** includes all specifications relating to the Goods or Services, the application of the Goods or Services, Site Details, and other matters that may affect the Supplier's ability to supply the Goods in a manner that conforms to the Customer's requirements as to performance or compliance with a standard communicated to the Supplier by the Customer or with which the Customer ought reasonably to be aware that the Supplier will be bound by contract, Law, custom or usage to conform.

(t) **'Site Details'** includes all relevant details concerning gradients, substructures, surface conditions, and obstructions (including gates), width of access ways, footpath and pavement strengths at on or under the delivery site and any Laws that regulate or affect the time or manner of safe, timely and lawful delivery to the site.

(u) ·Supplier· means Construx Industries Pty Limited, its associated companies, related bodies corporate (as that term is defined in the Corporations Act 2001), successors and assigns or any person acting on behalf of and with the authority of the Supplier, and any person or entity claiming under or through the Supplier;

(v) **'Variation'** means a change to the Goods arising from:
(i) an increase, decrease, addition or omission of the Goods or Works from the Contract;
(ii) a change in method or process for, or the sequence of, the carrying out of the Goods including Delivery of the Goods;
(iii) an alteration to the specification for the Goods;
(iv) changes in levels, dimensions, or set out for Goods;
(v) the Supplier performing any of the services identified at clause 22.4;
(vi) printing in accordance with clause 18.4.

(w) **'Working Documents'** means architectural drawings, structural drawings, construction drawings, specifications and reinforcement schedules or other documents together with any variation or site instruction;

(x) **'Writing'** includes an electronic transmission;

1.2 A reference to an Act includes regulations and other instruments made under it, and consolidations, amendments, re-enactments or replacements of any of them from time to time.

2. General

2.1 These terms and conditions also govern and apply to your use of the website construxindustries.com.au and all related sites and mobile sites ('Site') and by accessing and using the Site, you are agreeing to these terms and conditions in addition to the terms of use that can be found on the Site.

2.2 The Customer is taken to have exclusively accepted and is immediately bound by these terms and conditions if the Customer requests or accepts a Quotation from the Supplier, places an Order with the Supplier or accepts delivery of the Goods or the Goods are supplied to the Customer by the Supplier, regardless of whether or not the Customer's credit account application was accepted and/or approved by the Supplier.

2.3 To the extent permitted by Law, it is a condition of the Quotation, sale, supply and delivery of the Goods by the Supplier to the Customer that the Customer accept that these terms and conditions apply regardless of the provisions of any other document or instruction of the Customer.

2.4 The Supplier may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.

2.5 These terms and conditions may only be ended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Supplier and the Customer.

3. Change in Control

3.1 The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of control or ownership or office holding of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.

3.2 In the event of a change, pursuant to clause 3.1 above, the Supplier may require that the Customer enter into a new Credit Account Application and may, at its sole discretion, require the Customer or any other reasonable person to sign a Guarantee and Indemnity.

4. Quotation and pricing

4.1 A Quotation remains open for acceptance by the Customer until the earlier of:
(a) 30 days from the date of the Quotation;
(b) the expiry date of the Quotation stated in the Quotation; or
(c) a notification by the Supplier to the Customer that the Quotation has been withdrawn.

4.2 The Customer may accept a Quotation by providing the Supplier with a Quotation Acceptance, either orally, in writing, or by conduct.

4.3 When the Quote Acceptance is provided, the Contract will be formed and comprised of (in descending order of precedence):
(a) any special terms agreed in writing;
(b) the terms of the Quotation;
(c) these Terms and Conditions;
(d) the Commercial Credit Account (if applicable); and
(e) the Working Documents.

4.4 The Contract constitutes an entire agreement between the Customer and the Supplier with respect to the Goods supplied under the Contract. All prior negotiations, proposals, representations and correspondence are superseded by this Contract which will in all circumstances prevail over any prior terms.

4.5 Notwithstanding clause 4.3 above, after the Contract is formed the Supplier is entitled, at its sole discretion, to terminate this Contract or amend the terms of the Quotation (including the Contract Sum), which the Customer may accept, failing which the Supplier may terminate this Contract if:
(a) supply of the Goods the subject of a Quotation does not commence within 30 days of a Quote Acceptance; or
(b) supply under the Contract is stopped or suspended for more than 30 days; or
(c) supply under the Contract has not been completed within twelve months of the date of the Quotation; or
(d) if, where the Contract Sum is not for a lump sum, the Customer requests Deliveries which are 20% more or less (in value or quantity) than the total estimated quantities of Goods provided by the Quotation:

4.6 In the event this Contract is terminated in accordance with clause 3.5 above:
(a) the Supplier shall issue the Customer with an Invoice for:
(i) the amount of all unpaid Invoices;
(ii) all amounts due in accordance with the terms of this Contract which would have been due but for the termination of this Contract, had an Invoice been issued on the day of the termination;
(iii) the cost of Goods manufactured, or in the course of being manufactured by the Supplier for the Contract; and
(iv) 5% of the unclaimed portion of the Contract Sum.
(b) the Customer shall pay the amount of the Invoice at subclause (a) without and free from any setoff, deduction, withholding, counterclaim, defence or any other right or claim against any person (except where such setoff, deduction, withholding, counterclaim, defence or right or claim cannot be excluded by law) within 7 days.

4.7 If a Force Majeure event arises:
(a) either party may at its absolute discretion terminate the Contract by written notice to the other party and if terminated, the Supplier will be entitled to the amounts provided at clause 4.6(a)(i) to (iii) above; and
(b) the Supplier may suspend the Supplier's obligations under this Contract, including to Deliver the Goods, without penalty.

4.8 Notwithstanding anything else contained herein, the Customer warrants that:
(a) the Customer will provide the Supplier with all Relevant Information to the Supplier when seeking a Quotation or placing an Order for Goods from the Supplier;
(b) any Relevant Information supplied by the Customer to the Supplier is accurate and complete;
(c) in giving any Quotation, accepting any Order or supplying or delivering Goods, the Supplier will be entitled for all purposes to rely upon the accuracy and completeness of any Relevant Information provided by the Customer.
(d) Subject to any Law to the contrary, unless the Supplier makes an express representation to the contrary in writing, the Customer will not allege or in any circumstances maintain that:
(i) the Supplier had, or should be taken to have, approved of or represented any specification (whether supplied by the Customer, by the Supplier or by a third party) as being suitable for any particular purpose; or
(ii) that the Supplier is liable for any Loss to the extent that the Loss results from or is attributable to any defects in, or unsuitability of, the specification.
(e) the Customer has formed its own opinion as to the correctness or otherwise of any information or advice provided by or any representation made by the Supplier in connection with any Goods quoted for, ordered from or supplied or delivered by the Supplier and does not rely on the Supplier in respect of such information, advice or representation or maintain or allege that it has so relied.

5. Escalation and price variation

5.1 The Contract Sum (including the agreed rates) shall remain fixed for the period (if any) stated in the Quotation. After that period, or if the Quotation provides for no fixed period, the Supplier may increase the Contract Sum for any remaining Deliveries by the greater of:
- (a) the Supplier's reasonable estimation of its additional costs incurred in supplying the Goods since the Contract was entered (including without limitation taxes, labour and the cost of carbon emissions); or
- (b) the increase in the Consumer Price Index as published by the Australian Bureau of Statistics between the date the Contract was entered and the date the Goods are Delivered.

5.2 The Supplier reserves the right to change the Contract Sum at any time and without prior notice:
- (a) if a Variation to the Goods is requested by the Customer; or
- (b) the event of increases to the Supplier's in the cost of labour or materials which are beyond the Supplier's control.

5.3 The Supplier shall advise the Customer of the increase or decrease to the Contract Sum arising from clause 5.1 within a reasonable time of the facts giving rise to the increase or decrease becoming apparent.

5.4 The Customer shall pay the Contract Sum as it is adjusted by this clause 5.

6. Supply

6.1 The Supplier will supply the Goods the subject of the Contract:
- (a) if all the Goods are to be delivered in one delivery, on the date stated in the Quotation; or
- (b) if the Goods are to be delivered over a number of deliveries, with a reasonable time of the date requested (either in writing or orally) by a Customer, provided:
  - (i) the Supplier receives the request (which shall include all necessary documentation such as plans, specifications and other information necessary to schedule and detail reinforcing schedules) no less than 10 business days prior to the requested date for delivery; and
  - (ii) the Supplier does not object in writing or verbally to delivering the Goods by the date requested by the Customer having regard to the Supplier's business requirements.

6.2 The Customer is not entitled to cancel or modify part or all of an Order once it is accepted by the Supplier, unless the Supplier consents in writing or verbally.

7. Delivery

7.1 If the Quotation provides that the Goods are to be provided on an 'ex works' basis:
- (a) the Customer must collect the goods from the Supplier's nominated premises at the time nominated by the Supplier to the Customer; and
- (b) the Goods are deemed Delivered at the premises of the Supplier when the Supplier notifies the Customer that the goods are ready for collection.

7.2 If the Quotation provides that the Goods are to be provided on a 'delivered' basis:
- (a) the Supplier will deliver the Goods to the address nominated in the Quotation;
- (b) the Customer shall:
  - (i) nominate the precise location on the site for delivery in writing to the Supplier prior to the delivery;
  - (ii) ensure that an area is available which is suitable for heavy vehicles (including vehicles fitted with cranes or lifting equipment), complies with all applicable workplace health and safety legislation, requirements and best practice; and
  - (iii) ensure that its representative is available at the time of delivery and acknowledge delivery by signing a delivery receipt.
- (c) the Goods will be deemed Delivered when:
  - (i) the Supplier issues the Customer with a notification in accordance with clause 7.1(b); or
  - (ii) if the Quotation provides the Customer is responsible for unloading (or the Quotation is silent as to which party is responsible for unloading), when the Supplier delivers the Goods on a truck to the nominated site or a site adjacent to the Customer's nominated site even if the Customer is not present at the address; or
  - (iii) if the Quotation provides the Supplier is responsible for unloading, when the Supplier has unloaded the Goods at or adjacent to the Customer's site to ground level, being a flat and clear area nominated by the Customer, even if the Customer is not present at the address; or
  - (iv) if the Goods are unloaded in accordance with clause 7.2(d)(i) below, at the time the Goods are unloaded from the Supplier's truck.
- (d) if the Customer is responsible for unloading in accordance with clause 7.2(c)(ii) above, but fails to unload the Supplier's truck upon arrival the Supplier may at its election:
  - (i) unload the Goods at a location determined by the Supplier and charge the Customer for the unloading; or
  - (ii) return the Goods to the Supplier's premises and charge the Customer for the return trip together with any subsequent attempts at delivery.

7.3 If the Customer fails to:
- (a) where the Supplier is responsible for delivery of the Goods in accordance with clause 7.2 above, accept delivery on the date nominated in the Customer Order and unload the delivery vehicle within 60 minutes of arrival; or
- (b) where the Customer is responsible for collection of the Goods in accordance with clause 7.1 above, collect the Goods at the time nominated at clause 7.1(a) above,

the Supplier may then charge the Customer for, and the Customer must pay:
- (i) The Supplier's storage fees at a reasonable rate nominated by the Supplier;
- (ii) Rehandling, redelivery, loading and unloading fees at a reasonable rate nominated by the Supplier; and
- (iii) The fee for waiting time for any time the delivery vehicle is not unloaded within 60 minutes of arrival.

7.4 The Supplier may, at its sole discretion, require the amounts due under this clause 7.3 and clause 7.2(d) to be paid prior to the Goods being Delivered.

7.5 Any time or date given by the Supplier to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

7.6 The Supplier will use reasonable endeavours to deliver the Goods to the Customer or make the Goods available for collection by the Customer (as the case may be) at the time nominated in the Customer. The Supplier will not be liable to the Customer for:
- (a) any failure or delay in delivery of part or all of the Goods in accordance with the Contract; or
- (b) any damage or loss to the Goods due to unloading or packaging; or
- (c) damage to property caused by entering premises to deliver Goods.

7.7 The Customer is responsible for the design and location of any required lifting and/or support items at the Customer's site.

7.8 The Supplier reserves the right to charge additionally for Off-loading Slings, Glutts, drums, lifting bins, bulk bags and pallets. These items are used for our delivery service and are not refundable on return. These items are single use items only.

7.9 The Customer shall take full responsibility for assessing any requirements for traffic management associated with a Delivery to the Customer and for putting in place all traffic management measures which the Customer ought reasonably to know are required in all the circumstances of the Delivery.

7.10 Unless the Customer otherwise requires, Delivery will be made to the kerbside nearest to the nominated site. If the Customer requires the Delivery vehicle to leave a public road to gain access to the discharge or unloading location, the Customer shall:
- (a) ensure that the vehicle has a safe, suitable and unrestricted route between the kerbside nearest to the nominated site and the discharge or unloading location; and
- (b) indemnity the Supplier against Loss arising from events occurring while gaining such access unless solely caused by the Supplier's negligent act or omission.

7.11 The Supplier may refuse to deliver if it is in the opinion that the Customer has failed to perform its obligations under clause 7.9 and 7.10 and will be indemnified by the Customer against any Loss arising from the refusal.

7.12 Subject to clause 7.2 and 7.3, the Customer shall before the Delivery of any Goods, check for any difference between the Goods as delivered and the Customer's Order placed with the Supplier.

7.13 If the Customer alleges that there is a difference between the Goods as delivered and the Goods Ordered, then the Customer must elect whether to accept or reject the Goods in whole or in part, and, thereafter:
- (a) if the Customer accepts all or some of the Goods, the Customer will be taken to have Ordered what is delivered; and
- (b) if the Customer rejects all or some of the Goods, the Customer shall record in writing on details sufficient to accurately identify the nature of such disagreement or difference before the delivery vehicle departs from the nominated site.

7.14 If the Customer is not present at the nominated site at the time of Delivery, or being so present, fails or refuses to record in writing details of any disagreement or difference in accordance with clause 7.13(b), and the Goods are discharged then, to the extent permitted by Law:
- (a) the Customer shall be deemed to have unreservedly accepted both the Delivery and the accuracy of the delivery details;
- (b) the Supplier shall have no Liability to the Customer for Loss in respect of any difference between the description and quantity of the Goods Delivered and the Customer's Order; and
- (c) the customer irrevocable waives all of its rights to reject the Goods.

8. Quantities

8.1 The mass of steel reinforcing comprised within the Goods supplied will be within the tolerances permitted by Australian Standards AS/NZS4671, AS3600, AS5100, AS2870, AS2327 and AS/NZS1100.

8.2 When calculating the mass of the steel reinforcing comprised within the Goods, the Supplier will make calculations on a per metre basis in accordance with AS/NZS4671 plus an allowance for manufacturing tolerances as detailed in paragraph 7.3 of AS4671.

8.3 Calculations with respect to the length of steel reinforcing will be made in accordance with AS/NZS1100 Part 501.

9. Variations

9.1 The Supplier will provide the Goods in accordance with the Contract.

9.2 The Goods do not include the Excluded Items.

9.3 The Customer may request the Supplier to carry out a Variation, including to provide any of the Excluded Items.

9.4 The Supplier may, at its sole election, may agree to perform the Variation.

9.5 If the Suppler elects to carry out a Variation it shall be entitled to:
- (a) an extension of time for Delivery of the Goods; and
- (b) the Customer shall pay to the Supplier, the cost of the Variation which shall be priced using the following order of precedence:
  - (i) prior agreement;
  - (ii) applicable rates or prices in the Contract; and
  - (iii) reasonable rates and prices together with the Supplier's overhead and profit in the fixed amount of 5% on that additional amount.

9.6 The Supplier may (in its sole and absolute discretion), upon a request by the Customer, agree to accept Goods incorrectly ordered by the Customer or Goods which are no longer required by the Customer. If the Supplier agrees to accepting the return of those Goods, the Supplier will pay the Customer, or deduct from any amount payable by the Customerto the Supplier, the price of those Goods accepted for return using the rates provided by the Contract less:
- (a) All freight and labour charges for delivering/collecting the Goods;
- (b) A collection fee of $200.00 per returned delivery; and
- (c) An administration and restocking fee of $180.00 per returned delivery.

10. Warranties and limitation of liability

10.1 The Customer warrants that it does not intend to use the Goods predominantly for personal, domestic or household purposes.

10.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the *Competition and Consumer Act 2010* (Cth) ('*CCA*')), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ('*Non-Excluded Guarantees*').

10.3 Neither party excludes or limits the application of any statute (including the CCA), where to do so would contravene that statute or cause any provision of this Contract to be void.

10.4 Nothing in this Contract modifies or excludes the conditions, warranties, and undertakings and other legal rights under the CCA, and other laws to the extent they cannot be excluded or modified.

10.5 Except as expressly set out in this Contract, and the CCA, the Supplier makes no warranties or other representations in respect of the Goods or the Contract under these terms and conditions including the quality or suitability of the Goods, and the Supplier's liability in respect thereof, is limited to the fullest extent permitted by law.

10.6 If the Customer is a "Consumer" as defined by the Competition and Consumer Act 2010 (Cth), the Goods come with guarantees that cannot be excluded under the CCA and if a 'consumer', the Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. A Consumer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

10.7 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.

10.8 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Goods.

10.9 If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by the Supplier at the Supplier's sole discretion;
- (b) limited to any warranty to which the Supplier is entitled, where the Supplier did not manufacture the Goods;
- (c) otherwise negated absolutely.

10.10 Subject to this clause 10 and the provisions of the CCA, returns will only be accepted provided that:
- (a) the Supplier agrees that the Goods are defective; and
- (b) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (c) the Goods are returned in as close a condition to that which they were delivered as is possible

10.11 Notwithstanding clauses 10.2 to 10.9 but subject to the CCA, 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:
(a) the Customer failing to properly maintain or store any Goods;
(b) the Customer using the Goods for any purpose other than that for which they were designed;
(c) the customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) the Customer failing to follow any instructions or guidelines provided by the Supplier; or
(e) fair wear and tear, any accident, or act of God.

10.12 Goods which are not manufactured by the Supplier are subject solely to the warranties (if any) specified by their manufacturers or the third-party suppliers to the Supplier, and the Customer acknowledges that, to the extent permitted by law, the Supplier gives no warranties beyond such manufacturers' or suppliers' warranties.

10.13 The Customer acknowledges that the Supplier makes no representations or warranties as to the fitness or suitability for any purpose of any of the Goods described in the Quotation or Contract. The Customer warrants that it has undertaken its own investigations (including obtaining specialist advice) in respect of the design, specification and selection of the Goods.

10.14 The Customer is solely responsible for the design of the Goods. The Supplier is not liable for the design, lifting or positioning of any pre-fabricated elements at the Customer's site, including but not limited to manually tied or welded components.

10.15 Subject to the Act and any other legislation, the Supplier is not liable to the Customer for any loss or damage , including for death or personal injury, which the Customer or any other person may suffer or incur which may arise directly or indirectly in connection with the Goods, except that the Supplier will be liable to the extent that it contributes to such loss including a breach of this Contract by the Supplier or by the fraud or negligence of the Supplier, its officers, agents, employees. The liability of the Supplier under this Agreement does not include liability for indirect or Consequential Loss.

11. Invoicing and payment

11.1 The Customer shall pay the Supplier the Contract Sum together with all other amounts which become due and payable pursuant to this Contract.

11.2 Where the Supplier has granted the Customer a Commercial Credit Account, the Customer must comply with the terms and conditions of that Commercial Credit Account.

11.3 If the Customer has a Commercial Credit Account with the Supplier then, unless otherwise agreed in writing:
(a) the Supplier may issue Invoices for Goods either:
(i) on dispatch of such Goods; or
(ii) when Goods (including parts of the Goods) are Delivered; or
(iii) when the Customer becomes obligated to pay an amount pursuant to clause 7.3; or
(iv) in respect of prefabrication of cages and reinforcing members, once fabrication is completed.
(b) the Customer must pay all Invoices in full, without and free from set-off, withholding, counterclaim, defence or any other right or claim (except where such set-off, withholding, counterclaim, defence or any other right or claim cannot be excluded by law), by 30 days from the last day of the month date in which the Invoice was issued.

11.4 If the Customer does not have a Commercial Credit Account with the Supplier, the Customer must pay the Supplier for the Goods in full at the time it issues an Order for Goods. The Supplier shall not be obliged to Deliver or manufacture the Goods until payment is received in full.

11.5 The Customer must pay all Invoices and all amounts under this Contract in full, without and free from setoff, deduction, withholding, counterclaim, defence or any other right or claim (except where such setoff, deduction, withholding, counterclaim, defence or right or claim cannot be excluded by law) and the Customer is not entitled to hold amounts otherwise due to the Supplier on account of retention. For the avoidance of any doubt, nothing in clause 20 prevents the Supplier from taking any action it considers appropriate to recover any amount owing under an Invoice and this Contract.

11.6 The date the Supplier may issue an Invoice pursuant to either clause 11.3 or 11.4 is the 'reference date' as that term is defined by the *Building and Construction Industry Security of Payment Act 1999* (NSW), *Building and Construction Industry Payments Act 2004* (QLD), *Building and Construction Industry Security of Payment Act 2002* (VIC), *Building and Construction Industry Security of Payment Act 2009* (SA), *Building and Construction Industry Security of Payment Act 2009* (TAS), and the *Building and Construction Industry (Security of Payment) Act 2009* (ACT).

11.7 Interest in the amount of 15% per annum, compounding monthly, shall be payable on all amounts not paid by the due date for payment.

12. Default and termination

12.1 If the Customer:
(a) refuses or fails to pay any amounts when due under the Contract or refuses or fails to pay any accounts that it has with the Supplier on time and in accordance with the payment terms or if in the Supplier's opinion, the Customer will be unable to make a payment when it falls due;
(b) defaults in performing any of its obligations under the Contract;
(c) informs the Supplier or creditors generally that it is insolvent or is financially unable to proceed with the Contract;
(d) has execution levied against it by a creditor;
(e) is an individual and:
(i) commits an act of bankruptcy, is made bankrupt, makes a proposal for a scheme of arrangement or composition;
(ii) has a bankruptcy petition levied against him or her or presents his or her own petition;
(iii) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made; or
(f) is a corporation and:
(i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
(ii) it enters a deed of company arrangement with creditors;
(iii) a controller, receiver or administrator is appointed;
(iv) an application is made to a court for its winding up and not stayed within 14 days;
(v) a winding up order is made in respect of it;
(vi) it resolves by special resolution to be wound up voluntarily;
(vii) a mortgagee of any of its property takes possession of that property;
(viii) the Customer has a change of its directors, ownership or change of more than 10% of its shareholding and the Supplier does not consent to this change at least five days before the change occurs,
the Customer is in breach of the Contract.

12.2 If the Customer breaches the Contract, then in addition to and without prejudice to any other rights it has by law, the Supplier may at its sole election:
(a) treat the Contract as repudiated;
(b) may refuse to supply the Goods to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause;
(c) is entitled to claim return of any Goods in the possession of the Customer where title has not passed to the Customer ; and
(d) demand immediate payment of all amounts owing by the Customer to the Supplier and the Customer must make immediate payment of those amounts.

12.3 The Customer is not entitled to terminate, suspend or cancel part or all of the Contract for any reason (including for convenience) except if the Supplier has failed to remedy its breach of the Contract within a reasonable period (being not less than 7 business days) after the Customer gives it written notice of such breach. If the Customer purports to wrongly terminate or rescind part or all of the Contract or refuses to take delivery of any Goods delivered in accordance with the Contract, the Supplier may recover from the Customer the total amount of the order placed on the Supplier, less any amounts already paid by the Customer

12.4 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fees, and bank dishonour fees).

12.5 Upon termination of the Contract with the Supplier, the Customer agrees that the Supplier, its employees, or agents are entitled to enter the Customer's premises at any time upon 24 hours written notice and may do all things necessary in order to take possession of any Goods where title has not passed. The Customer agrees to do all things necessary to obtain the consent of all relevant persons having an interest in the premises where the Goods are situated to facilitate the Supplier recovering the possession of the Goods, and the Customer indemnifies the Supplier against any expense, liability, claim or loss that may be incurred as a result of entry to the Customer's premises by the Supplier its employees or agents.

12.6 Upon termination of the Contract, the Customer shall deliver to the Supplier any Goods where title has not yet passed to the Customer and shall pay to the Supplier:
(a) all moneys due to the Supplier which remain unpaid at the date of termination; and
(b) all reasonable costs and expenses incurred by the Supplier in relation to the enforcement of its rights and powers contained in this agreement (including legal costs as between solicitor and client).

12.7 On breach or default of these terms and conditions or of any of the Customer's obligations, the Customer irrevocably permits the Supplier, or a person authorised by the Supplier, to enter any premises at any reasonable time to recover and retrieve the Goods held in the Customer's possession.

12.8 The Customer also indemnifies and holds the Supplier harmless for any and all losses, costs, damages, and expenses incurred or suffered directly or indirectly by the Supplier as a result of:
(a) the Supplier recovering the Goods held in the Customer's possession;
(b) the Supplier exercising or attempting to exercise its rights under this clause or exercising or attempting to exercise any other right under these terms and conditions as a result of the Customer's failure or neglect to observe and comply with its obligations under these terms and conditions;
(c) any breach or default of these terms and conditions or any other agreement the Customer has with the Supplier.

13. Tax

13.1 Unless otherwise expressly stated in writing, all amounts stated in a Quotation or payable under the Contract are exclusive of GST. If GST is payable, the amount of GST will be specified separately in the relevant documentation.

13.2 If GST is or becomes payable by a supplier in relation to a supply under the Contract, the recipient of that supply must pay to the Supplier an amount equal to the GST.
An amount payable under this Clause (b) must be paid:
(a) at the same time as the payment of the amount in respect of that supply is due; and
(b) in addition to the amount payable under the Contract.

13.3 The Customer is not obliged to pay any GST unless a valid tax invoice has been issued.

13.4 If the Customer fails to pay such GST when due, the Supplier may recover it from the Customer as a debt under the Contract.

13.5 Any party that becomes aware of the occurrence of any adjustment event in connection with the Contract must notify the other party as soon as possible. The parties must then take whatever steps are necessary and make whatever adjustments are required to ensure that any additional GST, or refund of GST, on that supply is paid no later than 20 business days after the parties first become aware of the adjustment event.

13.6 For the purposes of this Clause (b), terms used in this Clause (b) which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act.

14. Risk

14.1 Responsibility, risk of damage or loss of the Goods passes to the Customer on Delivery of the Goods and the Customer must at its own cost, insure and keep insured the Goods against such risks as a prudent owner of the Goods would insure at their full cost price, with a reputable insurance company, on or before Delivery.

14.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, then the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries

14.3 If a vehicle engaged in the delivery of Goods to the Customer's property is disabled or damaged due to the condition of the Customer's property, the Customer is liable for the cost of any salvage or repair required to the vehicle. The Customer indemnifies the Supplier and keeps the Supplier indemnified against any loss or damage suffered by the Supplier or as a consequence of the Supplier becoming liable to any third party directly or indirectly as a result of the Supplier's officers, agents or employees entering any property at the request of the Customer or unloading the Goods.

14.4 If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Supplier's sole risk.

15. Legal Title

15.1 The Supplier and the Customer agree that ownership od the Goods shall not pass to the Customer until:
(a) the Customer has paid the Supplier all amounts owing to the Supplier under the Contract and otherwise pursuant to these terms and conditions; and
(b) the Customer has met all of its other obligations to the Supplier.

15.2 All payments received from the Supplier may be applied by the Supplier in the manner the Supplier, in its absolute discretion, determines.

15.3 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

15.4 The Supplier and the Customer agreed that until ownership of the Goods passes to the Customer in accordance with 15.1:
(a) legal title and property in all Goods supplied under this Contract remains vested in the Supplier and does not pass to the Customer;
(b) the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request;
(c) the Customer must store the Goods separately and in such a manner and maintain any labelling and packaging of the Supplier, so that the Goods are clearly and readily identifiable as the property of the Supplier;
(d) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
(e) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;

(f) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
(g) the Customer irrevocably authorises the Supplier to enter any premises at any reasonable time where the Supplier believes the Goods are kept in order to recover possession of the Goods and/or inspect, reposes or remove the Goods;
(h) The Supplier may recover possession of any Goods in transit whether or not delivery has occurred;
(i) The Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier;
(j) The Supplier may commence proceedings to recover the Contract Sum notwithstanding that ownership of the Goods has not passed to the Customer.

16. Personal Property Securities Act 2009 ('PPSA')

16.1 Upon agreeing to these terms and conditions, the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.
16.2 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
16.3 The Customer undertakes to:
(a) at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to:
(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register (PPSR);
(ii) sign any documents and/or provide any further information required by the Supplier to be able to register the security interest granted by the Customer under the PPSA;
(iii) register any other document required to be registered by the PPSA; or
(iv) correct a defect in a financing statement or a financing change statement.
(b) accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Customer or the Customer's authorised representative;
(c) indemnify, and upon demand, reimburse the Supplier for all expenses incurred in registered a financing statement or financing change statement on the PPSR or releasing any Goods charged thereby;
(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.
(e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales. The Customer further agrees that where the Supplier has rights in addition to those under part 4 of the PPSA, those rights will continue to apply and hereby consents to the execution, registration and perfection of each and every security interest and the Customer agrees that any security interest created will have priority in respect of the secured property.
16.4 To the extent the law permits for the purposes of sections 115(1) and 115(7) of the PPSA:
(a) The Supplier need not comply with sections 95, 96, 118, 121(4), 125, 129, 130, 132(3) (d), 132(4) and 135 of the PPSA; and
(b) Sections 142 and 143 of the PPSA are excluded;
(c) for the purposes of section 115(7) of the PPSA, the supplier need not comply with sections 132 and 137(3).
16.5 To the extent the law, the Customer and each of the Guarantors waives its rights to receive any notice that is required by:
(a) any provision of the PPSA (including a notice of a verification statement; or
(b) any other law before the Supplier or a receiver exercises a right, power or remedy; or
(c) any time period that must otherwise lapse under any law before the Supplier or a receiver exercises a right power or remedy.
16.6 If a law which required a period to notice or a lapse of time cannot be exclude, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period that the law allows to be agreed (whichever is the longer). However, nothing in this clause prohibits the Supplier or any receiver from serving a notice under the PPSA or pursuant to any other law.
16.7 The Client agrees to unconditionally ratify any actions taken by the Supplier under clauses 16.3 to 16.6.
16.8 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
16.9 The Customer acknowledges that the Supplier has the right to register the Goods on the PPSR;
16.10 The Customer agrees to provide all relevant information to enable the Supplier to register the Goods on the PPSR and generally to maintain, obtain, register and enforce the security interests created pursuant to these terms and conditions.
16.11 The Customer hereby consents to the execution, registration and perfection of each and every security interest and the Customer agrees that any security interest created will have priority in respect of the secured property.
16.12 Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose any information of a kind referred to in section 275(1) of the PPSA to an interested person or any other person. The Customer waives any right it has to authorise disclosure of the above information.
16.13 In addition to any rights the Supplier may have under Chapter 4 of the PPSA, the Supplier may, at any time, demand the return of the Goods and shall be entitled without notice to the Customer and without liability to the Customer, to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Customer, and for this purpose the Customer irrevocably licenses the Supplier to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Supplier from and against all loss suffered or incurred by the Customer as a result of exercising its rights under this clause. If there is any inconsistency between the Supplier's rights under this clause and its rights under Chapter 4 of the PPSA, this clause prevails
16.14 All costs and expenses arising as a result of actions taken by either party pursuant to this clause 16 will be for the account of the Customer. Within 7 days of a written request, the Customer must pay to the Supplier any costs or expenses incurred or to be incurred in connection with this clause 16.
16.15 Pursuant to section 125(3) of the PPS Act, the Supplier may delay disposing of, or taking action to retain, the whole or part of the collateral that it seizes under section 123 of the PPS Act, for as long as it sees fit in its absolute discretion.
16.16 The Supplier does not need to give the Customer any notice required under the PPS Act (including, without limitation, a notice of a verification statement under section 157 of the PPS Act) unless the requirement for the notice cannot be excluded.

17. Security and Charge

17.1 In consideration of the Customer agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
17.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
17.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Customer's behalf.

18. Resale

18.1 The Customer agrees that it will not re-supply the Goods supplied to it by the Supplier without the Supplier's prior written consent, which the Supplier may withhold at its absolute discretion.

19. Shortages, defects and inaccuracies, failure of, or delay in supply

19.1 The Customer must check and closely examine all Goods within 24 hours of Delivering and in any event before the Customer (or its employees or agents) use the Goods.
19.2 The Customer must notify the Supplier of any defect, damage or non-conformance of the Goods within the earlier of:
(a) 48 hours the time they are Delivered; or
(b) the Customer dealing with the Goods.
19.3 Upon providing the notification required in clause 19.2, the Customer must allow the Supplier to inspect the Goods.
19.4 The Supplier will endeavour to rectify inaccuracies or short supply within 48 hours of notification, but will not be responsible for any loss or damage (including Consequential Loss) however caused arising out of or resulting from such inaccuracies, short supply or non conformances not within the Supplier's reasonable control.
19.5 If, due to any cause whatsoever, the Supplier is unable to supply any part of the Contract by the nominated delivery date or at all, it is entitled, at its opinion:
(a) to supply the Customer similar Goods which in the reasonable opinion of the Supplier are an appropriate substitute without prior reference to the Customer (in which the case the Customer may decline acceptance of the similar Goods without incurring any penalty or cost); or
(b) not to supply part or all of the Goods; or
(c) delay supply of part or all the Goods.

20. Dispute resolution

20.1 If a dispute or difference between the parties arises in connection with the subject matter of this Contract, then either party shall by post or by hand provide written notice of the nature and details of the dispute.
20.2 Within 14 days of receipt of a notice in accordance with clause 20.1 above, senior management representatives of each of the parties, with full authority to agree such resolution or resolution methods, shall confer to resolve the dispute or agree methods for resolving the dispute. All aspects of the conference, except for the fact of its occurrence, shall be privileged.
20.3 Nothing in this Clause 20 prevents a party seeking urgent interlocutory relief from a Court or requires that party to participate in informal resolution processes for longer than 30 days after a dispute has risen.

21. Confidentiality

21.1 The Supplier and the Customer agree that a Contract and any other information furnished by one party to the other pursuant to the Contract is and remains confidential between the parties and the parties must not disclose the same, or permit or cause the same to be disclosed, either directly or indirectly, to any third party unless:
(a) prior approval in writing has been obtained from the other party;
(b) disclosure is required by law; or
(c) the information is in the public domain prior to the disclosure by the party.
21.2 The expression "any third party" does not include the financial or legal advisors of a party or a related body corporate of a party.

22. Working Documents

22.1 The Supplier accepts no responsibility for the accuracy or correctness of Working Documents prepared by the Customer or a third party. The supplier is not liable for any comment or silence in respect of a review of Working Documents.
22.2 The Supplier is under no obligation to review or consider the Working Documents and is entitled to rely on the Working Documents, regardless if any errors in the Working Documents are subsequently identified by the Supplier. The supplier is not liable for any comment or silence in respect of a review of Working Documents.
22.3 Unless otherwise agreed, the Customer must deliver all Working Documents without charge to the Supplier prior to commencement of the Works.
22.4 Where the Customer submits electronic copies of Working Documents to the Supplier, then the Supplier reserves the right to charge the cost of printing those Working Documents.
22.5 All Working Documents will remain in the custody and control of the Supplier.
22.6 A Quotation does not include any fee for design, re-design, detailing, re-detailing, scheduling, re-scheduling of Working Documents to be prepared by the Supplier unless stated in the Quotation. The Customer must pay the Supplier's fees for services, if applicable, when such Documents are prepared.
22.7 The Supplier will provide only two copies of material processing supply schedules and associated installation location plans.
22.8 The Supplier reserves the right to schedule distribution of steel as detailed in the Working Documents or as otherwise agreed in writing.
22.9 Unless authorised in writing, neither the Customer nor any third party is authorised to reproduce, adapt or use in any manner whether part or whole any Working Documents prepared by the Supplier (whether prepared on a fee-paying basis or not). Any unauthorised reproduction, adaption or use may be, among other things, a breach of copyright and actionable by the Supplier.
22.10 The Customer indemnifies the Supplier against all claims and costs, liabilities and expenses incurred by the Supplier as a result of or related to:
(a) any inaccuracy, omission or error in the Working Documents prepared by the Customer or third party; or
(b) working Documents, or any other documents provided by the Customer to the Supplier for the purposes of or in the course of supply of Goods, breaching a third party's intellectual property rights. This Clause survives termination or expiry of the Contract.

23. Cancellation

23.1 The Supplier may cancel any Contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
23.2 In the event that the Customer cancels delivery of the Goods, the Customer shall be liable for any and all loss incurred whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
23.3 Cancellation of Orders made to the Customer's specifications will not be accepted once an order has been placed.

24. Notices

24.1 Documents under this Contract (including Quotations and Invoices) may be transmitted by facsimile, hand, post and email to the numbers and addresses identified in the Quotation. However, any notice required to be given by the Customer to the Supplier pursuant to clause 9 must be delivered personally or sent by post to the Financial Controller of the Supplier, at 189 Newton Road, Wetherill Park 2164 NSW.

25. Miscellaneous

25.1 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which the Supplier has its principal place of business, and are subject to the jurisdiction of the Parramatta courts in New South Wales.

25.2 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

25.3 Subject to clause 10, the Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Contract Sum).

25.4 The Customer shall not be entitled to set off against, or deduct from the Contract Sum, any sums owed or claimed to be owed to the Customer by Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

25.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

25.6 The Customer must not assign its benefits or obligations under the Contract without prior consent in writing of the Supplier and the Supplier must not unreasonably withhold its consent to an assignment. The Supplier may assign the benefits and obligations under the Contract.

25.7 A party waives a right under the Contract only by written notice that it waives the right.

25.8 No amendment of the Contract is effective unless it is agreed by both parties in writing. This clause does not apply to any change in Quotation or the Contract Sum permitted by this Contract.

25.9 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

25.10 For the avoidance of all doubt, the sale or disposal of the Customer's business does not terminate this Agreement or any associated Guarantee. This Agreement and any associated Guarantee will remain in full force in relation to any Goods supplied to the business prior to the date that the Customer notifies the Supplier in writing of the sale of the Customer's business. The Customer shall remain liable for all Orders delivered to the business (even if the sale of the business has been completed) up until the business day after the Supplier receives written notice of the sale of the business from the Customer or from the Customer's duly authorised representative.

25.11 The Customer agrees to the terms of the Privacy Act 1988 statement contained in this document.

25.12 If a provision of these terms and conditions is unenforceable or invalid then:

(a) the provision must be read down to the extent necessary to avoid that result; and

(b) if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of the Contract.

26. Special Condition for Concrete Sales

26.1 The Supplier is a reseller of concrete for various third party suppliers and manufacturers.

26.2 All concrete supplied by the Supplier is directly shipped from the manufacturer or third party supplier to the Customer's nominated delivery address.

26.3 The Customer acknowledges and accepts that the Supplier has no involvement in the manufacture of the concrete supplied and/or delivered to the Customer whatsoever.

26.4 The Customer acknowledges and accepts that, by requesting or accepting a Quotation from the Supplier, placing an Order with the Supplier or accepting delivery of concrete or where concrete is supplied to the Customer, the Customer is immediately bound by these terms and conditions as well as the terms and conditions of the manufacturer and/or third party supplier who supplies the concrete and/or who delivers the concrete to the Customer.

26.5 Upon request by the Customer to the Supplier, the Supplier shall within a reasonable time provide the Customer with a copy of the terms and conditions of the relevant manufacturer and/or third party supplier of the concrete.

26.6 Except as expressly stated in the CCA, the Supplier makes no warranties or other representations in respect of the concrete supplied including but not limited its manufacture, its fitness for purposes, the quality or suitability of the concrete, and the Supplier's liability in respect thereof, is limited to the fullest extent permitted by law.

26.7 The Customer releases the Supplier from and against any and all liability in relation to any dispute, claim or action the Customer has with respect to concrete supplied and/or delivered to the Customer directly by the manufacturer and/or third party supplier.

26.8 The Customer acknowledges and agrees that the Supplier will not be liable for any costs or expenses in connection with a dispute between the Customer and the manufacturer and/or third party supplier who supplied and/or delivered the concrete direct to the Customer.

26.9 The Supplier agrees to endeavour to assist the Customer, as needed on a non-monetary basis, in relation to a dispute which may arise between the Customer and the manufacturer and/or third party supplier who supplied and/or delivered the concrete direct to the Customer.

The Customer/Applicant hereby applies for the opening of an account and provides the above information in support thereof. I/We certify that the above information provided in this Application is true and correct and that I/we are authorised to make this application for credit. I/we have read and understood the TERMS AND CONDITIONS of Construx Industries Pty Limited which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I/we authorise the use of my/our personal information as detailed in the Privacy Act statement therein. I/we agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.
I am/We are authorised to sign this credit application form on behalf of the Applicant/Customer and the information given is true and correct to the best of my/our knowledge.

Signature		Witness Signature	
Name		Witness Name	
Position		Date	
Date			

Signature		Witness Signature	
Name		Witness Name	
Position		Date	
Date			

FOR COMPLETION BY THE SUPPLIER

The Applicant's/Customer's credit application is accepted. Signed for and on behalf of the Supplier.

Signature		Position	
Name		Date	

ACCOUNT APPROVED FOR CASH ON DELIVERY / 7 DAYS / 14 DAYS / 30 DAYS
(supplier to nominate)

1. This privacy statement encompasses consents, notifications and disclosures under or in relation to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*) (**Act**).
2. The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
3. For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
4. The Supplier may collect personal information about the Customer and/or Guarantor(s) for the Supplier's primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.
5. To enable the Supplier to assess the credit application or to review any existing credit, the Customer and Guarantors authorise and provide consent to the Supplier to obtain:
   (a) from a credit reporting agency, a credit report containing personal information about the Customer and Guarantors in relation to credit provided by the Supplier;
   (b) a report from a credit reporting agency containing personal information about the Customer and the Guarantors;
   (c) a report containing information about the Customer's and the Guarantors' commercial activities or commercial credit worthiness from a business which provides information about the commercial credit worthiness of a person or an entity in relation to credit provided by the Supplier.
6. The Customer agrees that the Supplier may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
   (a) to assess an application by the Customer; and/or
   (b) to notify other credit providers of a default by the Customer; and/or
   (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
   (d) to assess the credit worthiness of the Customer.
7. The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 (as amended from time to time).
8. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 21M(1) of the Privacy Act 1988).
9. The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other purposes as shall be agreed between the Customer and the Supplier or required by law from time to time):
   (a) the provision of Goods; and/or
   (b) the marketing of Goods by the Supplier, its agents or distributor; and/or
   (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
   (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer.
   (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
10. The Supplier may give information about the Customer to a credit reporting agency for the following purposes:
    (a) to obtain a consumer credit report about the Customer;
    (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
11. The information given to the credit reporting agency may include:
    (a) personal particulars of the Customer;
    (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
    (c) advice that the Supplier is a current credit provider to the Customer;
    (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
    (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
    (f) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
    (g) advice that cheques drawn by the Customer for one hundred dollars ($100) or more, have been dishonoured more than once;
    (h) that credit provided to the Customer by the Supplier has been paid or otherwise discharged.
12. Pursuant to the Privacy Act 1988, the Customer authorises the Supplier to give and obtain from credit providers named in this credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangement. The Customer acknowledges that the information can include any information about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act 1988.
13. By reason of the Customer's and/or Guarantor(s)' consent to the disclosure to overseas recipients hereunder, Australia Privacy Principal 8.1 will not apply to the Supplier's dealing with the Customer's and/or Guarantor(s)' Information.
14. A full copy of the Supplier's privacy policy and credit reporting policy can be obtained from the Supplier's website (details above) or by making a request in writing directed to the Supplier's privacy officer. The Supplier's privacy policy and credit reporting policy contain information about how to access and seek correction of Information, or how to complain about a breach of the Act, APP, code(s) and how the Supplier will deal with any such complaint.
15. The Customer and/or Guarantor(s) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to the Supplier within 14 days of receipt of this statement(s).

Deed of guarantee & indemnity

GUARANTOR AGREEMENT

To	Construx Industries Pty Limited ABN 24 702 765 679 and its related bodies corporate (Supplier)		
Name		Address	
Name		Address	

(Guarantor/s) in consideration of the Supplier, at the request of the Guarantor/s, entering into this agreement and supplying and continuing to supply Goods to:

Name of Applicant/Customer	

the Guarantor/s hereby unconditionally and irrevocably covenant and undertake and if more than one, jointly and severally, as follows.

Jurisdiction

1. This guarantee and indemnity will be construed according to and governed by the laws of New South Wales and the laws of the Commonwealth of Australia which are in force in New South Wales. The parties to this Guarantee and Indemnity submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant Federal Courts and Courts competent to hear appeals from those courts

Consideration

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

Guarantee and indemnity

3. The Guarantors agree to guarantee and indemnify the Supplier against all losses damages or expenses that the Supplier may suffer as a result, either directly or indirectly, of any failure by the Customer to make due payment of any money owing to the Supplier whether for goods sold or otherwise or to observe the terms of any agreement between the Customer and the Supplier, including costs on an indemnity basis of any attempt or attempts to recover from the Customer or any Guarantor and whether successful or not or whether frustrated by the Customer or Guarantor or by operation of law and including costs ordered by a court to be paid by the Supplier to the Customer or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier.
4. This guarantee and indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by the Supplier to the credit of any account of the Customer or the Guarantors, or deemed to be held on trust by the Customer for the Supplier, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 2 and 3 of this guarantee and indemnity.
5. Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
6. The Supplier will have the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Customer to pay and with or without notice to the Customer, as if the primary liability for any money owing was the Guarantors' own. Further, the Suppliers will have the right to proceed against the Guarantors notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
7. This guarantee and indemnity will continue in force until such time as the Supplier releases the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Customer.
8. This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of the Supplier against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
   (a) any other security taken by the Supplier from the Customer or from any other person;
   (b) any waiver or indulgence, whether as to time or otherwise, given to the Customer or to the Guarantors or any one or more of the Guarantors;
   (c) by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
   (d) any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

Right of subrogation

9. In the event of the Guarantors and/or the other Guarantors making any payment in respect to an obligation of the Customer whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Customer unless and until the Supplier has been paid in full.
10. In the event of the Customer going into liquidation, the Guarantors will be prohibited from proving in competition with the Customer unless and until the Supplier has been paid in full.

Insolvency of Customer

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

Costs

12. The Supplier is at liberty from time to time to charge the account of the Customer with all costs, charges and expenses, legal or otherwise that the Supplier incurs in connection with:
   (a) the account of the Customer;
   (b) this guarantee and indemnity;
   (c) any other security in respect of the indebtedness of the Customer to the Supplier;
   (d) the preparation, completion and stamping of this deed; or
   (e) the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of this deed;

   and the same will be part of the monies secured by this deed.
13. The Guarantors agree to pay the Supplier's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis.
14. The Guarantors appoint as their duly constituted attorney the Supplier's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

Variation

15. The Guarantors authorise the Supplier to give time or any other indulgence or consideration to the Customer in respect of compliance with its obligations to the Supplier, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.
16. The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by the Supplier making any variation or alteration in the terms of its agreement(s) with the Customer, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

Severance

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

Security/charge

18. The Guarantors charge in favour of the Supplier all of their estate and interest in any real property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 2 and 3.
19. The Guarantors charge in favour of the Supplier all of their estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 2 and 3.
20. This guarantee and indemnity secures the repayment of all monies owed by the Customer whatsoever, and this deed constitutes the entire guarantee.
21. Where the Guarantors have previously entered into an agreement with the Supplier by which the Guarantors have granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this deed and will secure all indebtedness and obligations of the Guarantors under this deed. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Personal Property Securities Act

22. For the avoidance of any doubt, the security interest(s) created by this instrument in favour of the Supplier constitutes security interests pursuant to the *Personal Property Securities Act 2009*.
23. The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Service of notices

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

Privacy Act

25. The Guarantors agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document.

Acknowledgement

26. By signing this Guarantee and Indemnity, the Guarantor/s acknowledge that they have been advised to obtain independent legal advice before executing this Guarantee and Indemnity.

Dated	

Signed, sealed and delivered by the guarantor

Signature		Witness Signature	
Name		Witness Name	
Position			

Signed, sealed and delivered by the guarantor

Signature		Witness Signature	
Name		Witness Name	
Position			