



# APPLICATION FOR COMMERCIAL CREDIT

To: **Hy-Tec Industries (Victoria) Pty Ltd** ABN 43 096 310 520 trading as Hy-Tec Concrete and Aggregates and Ezymix Melbourne and **Central Pre-Mix Concrete Pty Ltd** ABN 62 008 070 862 trading as its own right and as Ezymix VIC both of PO Box 642, Somerton VIC 3062 (each "the Supplier")

### The Customer named below agrees, declares and acknowledges:

- (a) if this application is accepted by the Supplier, the provisions of the Terms and Conditions of Application for Commercial Credit and the Terms and Conditions of Sale (as may be amended by the Supplier from time to time) will be binding on the Customer;
- (b) the Customer has reviewed the Terms and Conditions of Sale; and
- (c) the provision of credit pursuant to this application may, at the Supplier's discretion, be subject to and conditional on one or more persons executing the Guarantee, Indemnity and Charge.

## Applicant's Details

Date of application  ABN / ACN

Customer name

Registered trading name

Type of business  Date business commenced

Legal Structure (tick box) Sole trader  Partnership  Pty Ltd Company  Public Company  Trust

Business address

Postal address

Business telephone  Mobile

After hours telephone  Facsimile

Email  Builder's Licence No.

Estimated Credit Limit \$  Purchase Orders Yes  No

## Financial Details

Bank

BSB No  Account No.

Does the applicant own business premises? (tick box) Owned  Leased

If owned, are the premises subject to any mortgage or charge? (tick box) Yes  No

Is there any other charge or mortgage on the business assets? (tick box) Yes  No

Does any financial institution, company or person hold any security (including a personal guarantee) in relation to the applicant? (tick box) Yes  No

Has the applicant or anyone acting as a guarantor for the applicant:

- been bankrupt or used Part IX or Part X of the Bankruptcy Act? (tick box) Yes  No
- owned, controlled or operated a business that has been wound up, had receivers appointed, had a voluntary administrator appointed, or entered into a scheme for the benefit of creditors? (tick box) Yes  No
- ever had or been known by any other name? (tick box) Yes  No

If yes to any of the above, provide details

## Trade References

	Supplier	Account No.	Telephone No.
Reference 1			( )
Reference 2			( )
Reference 3			( )
Reference 4			( )

## Terms and Conditions of Application for Commercial Credit

### 1. Terms and Conditions

The Customer agrees the Customer will be bound by the provisions of this Credit Agreement and the T&Cs and acknowledges the Customer has received and reviewed a copy of the T&Cs.

### 2. Grant of Credit

2.1 The Supplier may grant, vary or withdraw credit at any time, without prior notice, for any reason, in the Supplier's absolute discretion.

2.2 The Supplier may require the Customer to provide Security in a form acceptable to the Supplier as a condition for a grant of credit, a further grant of credit or continuance of a grant of credit.

### 3. Payment Terms

The Customer agrees to make full payment of the Supplier's invoices within 30 days after the end of the month in which the Goods and/or Services are supplied to the Customer (or such alternative period agreed by the Supplier in writing).

### 4. Action

If the Customer does not strictly comply with the terms of this Credit Agreement or the T&Cs, the Supplier may take immediate action to recover any money owed by the Customer to the Supplier.

### 5. Expenses

5.1 The Customer must pay any credit card surcharge incurred by the Supplier from time to time if the Customer makes any payment to the Supplier using a credit card.

5.2 The Customer must pay the Supplier, on a full indemnity basis as a liquidated debt, the full amount of any bank fees or other expenses associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses incurred by the Supplier associated with any action by the Supplier to exercise any right or remedy under this Credit Agreement or the T&Cs.

### 6. Interest

The Supplier may charge monthly compound interest on any overdue amounts owed by the Customer at a rate of 5% per annum above the Reserve Bank of Australia's cash rate target.

### 7. Security Interest

7.1 To secure the punctual payment of all amounts owed by the Customer to the Supplier, the Customer grants to the Supplier:

(a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act); and

(b) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be a grantor of a security interest under the PPSA.

7.2 The Customer agrees and acknowledges the Supplier may (without limiting the Supplier's other rights under this Credit Agreement, at law or otherwise) lodge caveats over the Customer's property and take any other action to secure and enforce the Supplier's Security Interest.

7.3 The Security Interest will immediately become enforceable (whether or not the amounts owed by the Customer to the Supplier have become payable) if an Event of Default occurs, without the need for any demand or notice under a Document.

7.4 If the Supplier's security under clause 7.1 has become enforceable, the Supplier may appoint a Receiver to the Secured Property and fix the remuneration of the Receiver or exercise any power exercisable by a Receiver even if a Receiver has not been appointed.

7.5 The Customer agrees on demand, and irrevocably appoints the Supplier, each director and secretary of the Supplier and any Receiver (as independent and several appointments) as the Customer's agent and attorney, to execute any document (including, without limitation, any mortgage or transfer) or undertake any act, at the Customer's cost, that the Supplier considers necessary or desirable to:

(a) better secure the Supplier's Security Interest in a manner consistent with any Document; or

(b) assist in the completion, execution of, or exercise of any power under, any Document.

### 8. Personal Property Securities

8.1 Funds received by the Supplier or Receiver under or because of any Document may be applied first in payment of all costs and expenses of the Supplier and Receiver (including remuneration) incurred in exercising a power in connection with any Document and then monies owing to the Supplier.

8.2 The Customer:

(a) agrees with the Supplier that neither the Customer, nor the Supplier, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);

(b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;

(c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following provisions of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;

(d) acknowledges that the Supplier may, at the Customer's cost, register one or more financing statements in relation to the Supplier's Security Interest or any other Security under any Document;

(e) waives, if permitted under the PPSA, the Customer's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and

(f) will not, without prior written notice to the Supplier, change the Customer's name or initiate any change to any documentation registered under the PPSA.

### 9. Release and Indemnity

9.1 Neither the Supplier nor any person appointed by the Supplier under any Document will be liable for any loss that the Customer suffers as a direct or indirect result of:

(a) the exercise or attempted exercise of, or failure to exercise, any rights under any Document; or

(b) any release or dealing with any Security.

9.2 The Customer will indemnify the Supplier, each member of the Supplier's Personnel and each

Receiver or any other person appointed by the Supplier in relation to any losses, liabilities, expenses (including but not limited to legal expenses on a full indemnity basis) or taxes incurred in connection with:

(a) the exercise or attempted exercise of any powers, rights, discretions or remedies vested in the person under any Document or the Corporations Act;

(b) any proceedings, claims or demands in relation to any secured property; or

(c) any negligence, breach of this Credit Agreement or Event of Default by the Customer or any member of the Customer's Personnel.

### 10. Default

If an Event of Default occurs, the Supplier may (without limiting the Supplier's other rights under this Credit Agreement, at law or otherwise) demand immediate payment of any money owed by the Customer, retain any money paid by the Customer, cease any further supply of Goods and/or Services to the Customer and take possession of any Goods and/or Services for which the Customer has not paid.

### 11. Application of Money

If the Supplier or Receiver receives money under or because of any Document, and applies the money in payment of monies owing to the Supplier, the Supplier or Receiver may apply different parts of the money received to different parts of the monies owing in the absolute discretion of the Supplier or Receiver regardless of any appropriation by the Customer.

### 12. Purpose

The Customer warrants that any credit provided to the Customer by the Supplier is to be applied wholly or predominately for commercial and/or investment purposes.

### 13. Advice

The Customer acknowledges the Customer has had an opportunity to obtain independent legal and financial advice in relation to this Credit Agreement and the T&Cs.

### 14. Joint and Several

If the Customer consists of more than one person, each person will be jointly and severally bound by the terms of this Credit Agreement.

### 15. Warranty

The Customer warrants that all the information set out in the Customer's application for credit is true and correct and the Customer has disclosed to the Supplier all information relevant to the Customer's application for credit.

### 16. Notice

The Customer must immediately provide written notice to the Supplier if there is any direct or indirect change in the ownership or control of the Customer or any change to the Customer's details set out in the Customer's Application for Commercial Credit.

### 17. Transactions

The Customer will be liable for all transactions by the Customer's employees, contractors or agents or any person who uses the account with the Customer's authorisation or as a result of the Customer's negligence.

### 18. Privacy

18.1 The Supplier may, before, during or after the provision of credit to the Customer, give the following information about the Customer, to a credit reporting agency:

(a) identity particulars - name, sex, address (and previous two addresses), date of birth, name of employer, and driver's licence number;

(b) the Customer's application for credit - the fact that the Customer has applied for credit and the amount;

(c) the fact that the Supplier is a current credit provider to the Customer;

(d) payments which are overdue by more than 60 days, and for which debt collection action has started;

(e) advice that payments are no longer overdue in respect of any default;

(f) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with credit obligations); or

(g) dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once,

for the purpose of obtaining a consumer credit report, or allowing the credit reporting agency to create or maintain a credit information file containing information, about the Customer or for any related purpose.

18.2 The Supplier may obtain:

(a) information about the Customer from a business which provides information about the commercial creditworthiness of persons; and

(b) a consumer credit report containing information about the Customer from a credit reporting agency,

for the purpose of assessing the Customer's application for credit or a grant of any ongoing credit or for any related purpose.

18.3 The Supplier may, but is not obliged to, give a credit report containing information about the Customer to any person:

(a) who is currently a guarantor; or

(b) whom the Customer has indicated is considering becoming a guarantor, for the purpose of a person deciding whether to act as guarantor or keeping a guarantor informed about any guarantee or for any related purpose.

18.4 The Supplier may exchange information about the Customer with those credit providers and suppliers (including trade references):

(a) named in this application;

(b) named in a consumer credit report issued by a credit reporting agency; and

(c) of which the Supplier is, or becomes, aware,

for the purpose of assessing an application for credit, notifying other credit providers (including trade references) of a default, exchanging information with other credit providers (including trade references) as to the status of credit where the Customer is in default with other credit providers (including trade references), or assessing the Customer's creditworthiness or for any related purpose.

18.5 The information obtained or disclosed about the Customer in accordance with this Credit

Agreement may include a credit report and anything about the Customer's creditworthiness, credit standing or credit history or any related information.

**19. General**

- 19.1 The Customer will always strictly comply with the Supplier's claims for payment in accordance with any security of payments legislation.
- 19.2 This Credit Agreement binds the Customer both personally and as trustee of any trust of which the Customer is trustee.
- 19.3 The Supplier may set off any amounts owed by the Supplier to the Customer against any amounts owed by the Customer to the Supplier whether under this Credit Agreement or otherwise.
- 19.4 A certificate signed by a director or secretary of the Supplier stating that an amount of money is payable by the Customer to the Supplier will be prima facie evidence of the fact and the Customer will not object to the admissibility of such a certificate in any legal proceedings.
- 19.5 This Credit Agreement may only be amended with the Supplier's express written agreement.
- 19.6 Any waiver of a right by the Supplier must be express and in writing and will not operate as a waiver in relation to any subsequent matter.
- 19.7 The Supplier's rights arising out of this Credit Agreement do not exclude any other rights of the Supplier.
- 19.8 The actions of any person claiming to have the Customer's authority will bind the Customer to the extent permitted by law.
- 19.9 If any provision of this Credit Agreement is unenforceable, the provision will be severed and the remaining provisions will continue to apply.
- 19.10 The Supplier may assign any rights or benefits under this Credit Agreement to any third party.
- 19.11 The Customer may only assign any rights or benefits under this Credit Agreement with the Supplier's prior written consent.
- 19.12 If there is any inconsistency or ambiguity between the terms of this Credit Agreement and the terms of the T&Cs, the terms of this Credit Agreement will take precedence.
- 19.13 This Credit Agreement will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, the state in which the Goods and/or Services are delivered.

**20. Definitions**

In this Credit Agreement:

"Administration" means any of the following, or any analogous, events:

- (a) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator to the Customer or to the whole or any part of the Customer's assets, operations or business;
- (b) any person, or agent of a person, who holds any Security takes possession of any of the Customer's property (including but not limited to seizing the Customer's property within the meaning of section 123 of the PPSA);
- (c) a court or other authority enforces any judgment or order against the Customer for the payment of money or the recovery of any property;
- (d) the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business;
- (e) the Customer ceases, or threatens to cease, carrying on business;
- (f) the Customer is unable to pay the Customer's debts as the debts fall due; or
- (g) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors.

"Application for Commercial Credit" means the application for commercial credit of which this Credit Agreement forms part;

"Corporations Act" means the Corporations Act 2001 (Cth);

"Credit Agreement" means these Terms and Conditions of Application for Commercial Credit that forms part of the Application for Commercial Credit;

"Customer" means the applicant named in the Application for Commercial Credit of which this Credit Agreement forms part;

"Document" means the Application for Commercial Credit, this Credit Agreement, the T&Cs and any document contemplated by such documents;

"Event of Default" means any of the following, or any analogous, events:

- (a) the Customer fails to pay any amount due and payable under any Document when the amount is due and payable;
  - (b) the Customer fails to comply with any obligations under any Document;
  - (c) any representation, warranty or statement by the Customer in connection with any Document is untrue or misleading (whether by omission or otherwise); or
  - (d) the Customer becomes subject to Administration;
- "Goods" means any goods supplied by the Supplier to the Customer in accordance with the T&Cs;
- "Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;
- "PPSA" means Personal Property Securities Act 2009 (Cth);
- "Receiver" means a receiver or receiver and manager (or an additional receiver or receiver and manager);
- "Security" means:
- (a) a security interest that is subject to the PPSA;
  - (b) any other mortgage, pledge, lien or charge; or
  - (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property;
- "Security Interest" means the Supplier's security under clause 7.1;
- "Secured Property" means all present and after-acquired property of the Customer (whether or not the Customer can be the grantor of a security interest under the PPSA in relation to the property);
- "Services" means any services supplied by the Supplier to the Customer in accordance with the T&Cs;
- "Supplier" means the Supplier Entity that grants credit to the Customer;
- "Supplier Entity" means Hy-Tec Industries (Victoria) Pty Ltd (ABN 43 096 310 520) and/or Central Pre-Mix Concrete Pty Ltd (ABN 62 008 070 862); and
- "T&Cs" means the Supplier's terms and conditions of sale as may be amended by the Supplier from time to time.

**21. Interpretation**

In this Credit Agreement:

- (a) the headings will not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) any other grammatical form of a word or expression defined in this Credit Agreement has a corresponding meaning;
- (d) a reference to a document includes the document as novated, altered, supplemented or replaced;
- (e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- (g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
- (h) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally and any right given to two or more parties is given to each of them individually;
- (k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Credit Agreement; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

**Executed as an Agreement**

**Each person who executes this agreement:**

- (a) warrants that they have the authority to execute this Agreement for and on behalf of the Customer;
- (b) warrants that any credit provided to the Customer by the Supplier is to be applied wholly or predominately for commercial and/or investment purposes; and
- (c) agrees to be personally bound by the terms of clause 18 of the Terms and Conditions of Application for Commercial Credit as if the clause referred to them personally.

**Details and signatures of all:** (tick box)

Directors

Partners

Proprietors

**1. EXECUTED FOR AND ON BEHALF OF THE CUSTOMER:**

Full name

Home address

State  Postcode

Residence Owned  Rented

Date of Birth

Driver's Licence No.

Signature

Date

**2. EXECUTED FOR AND ON BEHALF OF THE CUSTOMER:**

Full name

Home address

State  Postcode

Residence Owned  Rented

Date of Birth

Driver's Licence No.

Signature

Date

### 3. EXECUTED FOR AND ON BEHALF OF THE CUSTOMER:

Full name	<input type="text"/>
Home address	<input type="text"/>
	State <input type="text"/> Postcode <input type="text"/>
Residence	Owned <input type="checkbox"/> Rented <input type="checkbox"/>
Date of Birth	<input type="text" value="DD/MM/YYYY"/>
Driver's Licence No.	<input type="text"/>
Signature	<input type="text"/>
Date	<input type="text" value="DD/MM/YY"/>

### 4. EXECUTED FOR AND ON BEHALF OF THE CUSTOMER:

Full name	<input type="text"/>
Home address	<input type="text"/>
	State <input type="text"/> Postcode <input type="text"/>
Residence	Owned <input type="checkbox"/> Rented <input type="checkbox"/>
Date of Birth	<input type="text" value="DD/MM/YYYY"/>
Driver's Licence No.	<input type="text"/>
Signature	<input type="text"/>
Date	<input type="text" value="DD/MM/YY"/>

## DEED OF GUARANTEE, INDEMNITY AND CHARGE

In consideration of the Supplier agreeing to supply goods and/or services and/or provide credit to the Customer, each Guarantor enters into this Guarantee in favour of the Supplier in the following terms:

- 1. Request**

Each Guarantor requests the Supplier to supply goods to the Customer in accordance with the Credit Agreement and the T&Cs.
  - 2. Guaranteed Money**

Each Guarantor guarantees to the Supplier the due and punctual payment by the Customer of the Guaranteed Money and the Guaranteed Money will be payable by the Guarantor to the Supplier immediately on demand by the Supplier.
  - 3. Performance**

Each Guarantor unconditionally and irrevocably guarantees the Customer's due and punctual performance of all of the Customer's Obligations.
  - 4. Release and Indemnity**

4.1 Neither the Supplier nor any person appointed by the Supplier under any Document will be liable for any loss that any Guarantor suffers as a direct or indirect result of:  
(a) the exercise or attempted exercise of, or failure to exercise, any rights under any Document; or  
(b) any release or dealing with any Security.

4.2 Each Guarantor will indemnify the Supplier, the Supplier's Personnel and each Receiver or any other person appointed by the Supplier in relation to any losses, liabilities, expenses (including but not limited to legal expenses on a full indemnity basis) or taxes incurred in connection with:  
(a) the exercise or attempted exercise of any powers, rights, discretions or remedies vested in the person under any Document or the Corporations Act; or  
(b) any proceedings, claims or demands in relation to any secured property.

4.3 Each Guarantor indemnifies the Supplier in relation to any direct and indirect losses, damages or expenses which the Supplier suffers as a result of:  
(a) the Customer's failure to perform, or delay in performing, any of the Customer's Obligations; and  
(b) the Guarantor's failure to perform, or delay in performing, any of the Guarantor's obligations under this Guarantee.
  - 5. Expenses**

Each Guarantor must pay the Supplier, on a full indemnity basis as a liquidated debt, the full amount of any bank fees or other expenses associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses associated with any action by the Supplier to exercise any right or remedy under this Guarantee.
  - 6. Continuing Guarantee**

6.1 This Guarantee is a continuing guarantee in respect of all money due to the Supplier at any time and will not be wholly or partially satisfied or discharged by the payment of any money to the Supplier or any other event.

6.2 This Guarantee will not be affected by:  
(a) any variation to the terms of the Credit Agreement or the T&Cs whether with or without the knowledge or consent of any Guarantor;  
(b) any event of insolvency affecting a person or the death of a person;  
(c) any change in the constitution, membership, or partnership of a person;  
(d) the partial performance of the Customer's Obligations;  
(e) any of the Customer's Obligations being invalid or unenforceable at any time;  
(f) the Supplier refusing any credit to the Customer;  
(g) the Supplier granting any time or other indulgence or concession to the Customer; or  
(h) the release of any Guarantor (if there is more than one Guarantor).

6.3 No Guarantor will be released from this Guarantee unless the Guarantor provides a written request for a release to the Supplier and the Supplier provides a written agreement to the release which the Supplier may provide or withhold in the Supplier's absolute discretion.

6.4 The liability of each Guarantor under this Guarantee extends to and is not affected by any circumstance, act or omission which, but for this clause, might otherwise affect the Guarantor at law or in equity including:  
(a) any failure or omission by the Supplier to complete, register, perfect or take advantage of or enforce the Supplier's Security Interest or any other Security granted or given by the Customer or any guarantor of the Guaranteed Money or the Customer's Obligations, at the date of the execution of this Guarantee or at any time;  
(b) the obligations of the Customer in respect of the Guaranteed Money or the Customer's Obligations or the obligations of any other guarantor of the Guaranteed Money or
- Customer's Obligations under this Guarantee or any other agreement relating to the Guaranteed Money or the Customer's Obligations or this Guarantee (including any other guarantee or Security) being or becoming illegal, void, voidable, unenforceable or disclaimed by a liquidator or trustee for creditors or in bankruptcy; or  
(c) any laches, acquiescence, delay, act, omission or mistake on the part of, or suffered by, the Supplier or any other person, in relation to this Guarantee or any other guarantee, Security or agreement."
- 7. Enforcement**

The Supplier may enforce this Guarantee without first having to enforce any of the Supplier's rights against the Customer or having resort to any other guarantee or Security in relation to the Customer's Obligations.
  - 8. Principal Obligation**

This Guarantee is a principal obligation and is not ancillary or collateral to any other right or obligation.
  - 9. Independent**

This Guarantee is independent of any other guarantee or Security in relation to the Customer's Obligations.
  - 10. Security Interest**

10.1 To secure the punctual payment of all amounts owed by the Customer and/or the Guarantor to the Supplier, each Guarantor grants to the Supplier:  
(a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Guarantor in relation to which the Guarantor can be a grantor of a security interest under the PPSA, whether or not the Guarantor has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act); and  
(b) a fixed charge over all present and after-acquired property of the Guarantor in relation to which the Guarantor cannot be a grantor of a security interest under the PPSA.

10.2 Each Guarantor agrees and acknowledges the Supplier may (without limiting the Supplier's other rights under this Guarantee, at law or otherwise) lodge caveats over the Guarantor's property and take any other action to secure and enforce the Supplier's Security Interest.

10.3 The Security Interest will immediately become enforceable (whether or not the Guaranteed Money has become payable) if an Event of Default occurs, without the need for any demand or notice under a Document.

10.4 If the Supplier's security under clause 10.1 has become enforceable, the Supplier may appoint a Receiver to the Secured Property and fix the remuneration of the Receiver or exercise any power exercisable by a Receiver even if a Receiver has not been appointed.

10.5 Each Guarantor agrees on demand, and irrevocably appoints the Supplier, each director and secretary of the Supplier and any Receiver (as independent and several appointments) as the Guarantor's agent and attorney, to execute any document (including, without limitation, any mortgage or transfer) or undertake any act, at the Guarantor's cost, that the Supplier considers necessary or desirable:  
(a) better secure the Supplier's Security Interest in a manner consistent with any Document; or  
(b) assist in the completion, execution of, or exercise of any power under, any Document.
  - 11. Personal Property Securities**

11.1 Funds received by the Supplier or Receiver under or because of any Document may be applied first in payment of all costs and expenses of the Supplier and Receiver (including remuneration) incurred in exercising a power in connection with any Document and then monies owing to the Supplier.

11.2 Each Guarantor:  
(a) agrees with the Supplier that neither the Guarantor, nor the Supplier, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);  
(b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;  
(c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following provisions of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;  
(d) acknowledges that the Supplier may, at the Guarantor's cost, register one or more

- financing statements in relation to the Supplier's Security Interest or any other Security under any Document;
- (e) waives, if permitted under the PPSA, the Guarantor's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and
- (f) will not, without prior written notice to the Supplier, change the Guarantor's name or initiate any change to any documentation registered under the PPSA.
- 12. Application of Money**  
When the Supplier or Receiver receives money under or because of any Document, and applies the money in payment of monies owing to the Supplier, the Supplier or Receiver may apply different parts of the money received to different parts of the monies owing in the absolute discretion of the Supplier or Receiver regardless of any appropriation by the Customer or the Guarantor.
- 13. Administration**  
Until this Guarantee is released by the Supplier, the Guarantor will not prove in any liquidation, bankruptcy or similar procedure in relation to the Customer in competition with the Supplier.
- 14. Voluntary**  
Each Guarantor acknowledges that the Guarantor has read and understands this Guarantee, enters into this Guarantee voluntarily and not as a result of any representation of the Supplier or duress of any person.
- 15. Legal Advice**  
Each Guarantor acknowledges that the Guarantor has had an opportunity to obtain independent legal and financial advice in relation to this Guarantee.
- 16. Joint and Several**  
If there is more than one Guarantor, each Guarantor will be jointly and severally bound by the terms of this Guarantee.
- 17. Information**  
Each Guarantor warrants that all the information set out in this Guarantee is true and correct and the Guarantor has disclosed to the Supplier all information relevant to this Guarantee.
- 18. Notice**  
Each Guarantor must immediately provide written notice to the Supplier if there is any change in the ownership or control of the Guarantor or to the Guarantor's details set out in this Guarantee.
- 19. Administration**  
If any payment by the Guarantor to the Supplier is avoided as a result of, or the Supplier settles any claim in relation to, any statutory provision arising as a result of any Administration, the payment will be taken not to have been made and the Supplier will be entitled to recover the amount of the payment from the Guarantor.
- 20. Privacy**  
20.1 The Supplier may, before, during or after the provision of credit to the Customer, give the following information about each Guarantor to a credit reporting agency:  
(a) identity particulars - name, sex, address (and previous two addresses), date of birth, name of employer, and driver's licence number;  
(b) the Customer's application for credit - the fact that the Customer has applied for credit and the amount;  
(c) the fact that the Supplier is a current credit provider to the Customer;  
(d) payments which are overdue by more than 60 days, and for which debt collection action has started;  
(e) advice that payments are no longer overdue in respect of any default;  
(f) information that, in the opinion of the Supplier, the Guarantor has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with credit obligations); or  
(g) dishonoured cheques - cheques drawn by the Guarantor for \$100 or more which have been dishonoured more than once,  
for the purpose of obtaining a consumer credit report, and/or allowing the credit reporting agency to create or maintain a credit information file containing information, about the Guarantor or for any related purpose.  
20.2 The Supplier may obtain:  
(a) information about the Guarantor from a business which provides information about the commercial creditworthiness of persons; and  
(b) a consumer credit report containing information about the Guarantor from a credit reporting agency,  
for the purpose of assessing whether to accept the Guarantor as a guarantor for credit applied for by, or provided to, the Customer or for any related purpose.  
20.3 The Supplier may, but is not obliged to, give a credit report containing information about the Guarantor to any person:  
(a) who is currently a guarantor; or  
(b) whom the Customer or the Guarantor have indicated is considering becoming a guarantor,  
for the purpose of a person deciding whether to act as guarantor and/or keeping a guarantor informed about any guarantee or for any related purpose.  
20.4 The Supplier may exchange information about the Guarantor with those credit providers and suppliers (including trade references):  
(a) named in the Application for Commercial Credit;  
(b) named in a consumer credit report issued by a credit reporting agency; and  
(c) of which the Supplier is, or becomes, aware,  
for the purpose of assessing an application for credit, notifying other credit providers (including trade references) of a default, exchanging information with other credit providers (including trade references) as to the status of credit where the Customer or the Guarantor are in default with other credit providers (including trade references) or assessing the Guarantor's creditworthiness or for any related purpose.  
20.5 The information obtained or disclosed about the Guarantor in accordance with this Guarantee may include a credit report and anything about the Guarantor's creditworthiness, credit standing and credit history or any related information.
- 21. General**  
21.1 This Guarantee binds the Guarantor both personally and as trustee of any trust of which the Guarantor is trustee.  
21.2 The Supplier may set off any amounts owed by the Supplier to the Guarantor against any amounts owed by the Guarantor to the Supplier whether under this Guarantee or otherwise.  
21.3 A certificate signed by a director or secretary of the Supplier stating that an amount of money is payable by the Customer or Guarantor to the Supplier will be prima facie evidence of the fact and the Guarantor will not object to the admissibility of such a certificate in any legal proceedings.  
21.4 This Guarantee may only be amended with the Supplier's express written agreement.  
21.5 Any waiver of a right by the Supplier must be express and in writing and will not operate as a waiver in relation to any subsequent matter.  
21.6 The Supplier's rights arising out of this Guarantee do not exclude any other rights of the Supplier.
- 21.7 The actions of any person claiming to have the Guarantor's authority will bind the Guarantor to the extent permitted by law.  
21.8 If any provision of this Guarantee is unenforceable, the provision will be severed and the remaining provisions will continue to apply.  
21.9 The Supplier may assign any rights or benefits under agreement under this Guarantee to any third party.  
21.10 The Guarantor may only assign any rights or benefits under any agreement under this Guarantee with the Supplier's prior written consent.  
21.11 Time is of the essence in respect of the Guarantor's obligations in this Guarantee.  
21.12 This Guarantee will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, the state in which the goods and/or services are delivered to the Customer pursuant to the T&Cs.
- 22. Definitions**  
In this Guarantee:  
"Administration" means the following, or any analogous, events:  
(a) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator to the Customer or Guarantor or to the whole or any part of the Customer's or Guarantor's assets, operations or business;  
(b) any person, or agent of a person, who holds any Security takes possession of any of the Customer's or Guarantor's property (including but not limited to seizing the Customer's or Guarantor's property within the meaning of section 123 of the PPSA);  
(c) a court or other authority enforces any judgment or order against the Customer or Guarantor for the payment of money or the recovery of any property;  
(d) the Customer or Guarantor disposes of the whole or any part of the Customer's or Guarantor's assets, operations or business other than in the ordinary course of business;  
(e) the Customer or Guarantor ceases, or threatens to cease, carrying on business;  
(f) the Customer or Guarantor is unable to pay the Customer's or Guarantor's debts as the debts fall due; or  
(g) any step is taken for the Customer or Guarantor to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's or Guarantor's creditors or any class of the Customer's or Guarantor's creditors.  
"Application for Commercial Credit" means the application for commercial credit of which this Guarantee forms part;  
"Corporations Act" means the Corporations Act 2001 (Cth);  
"Credit Agreement" means the Terms and Conditions of Application for Commercial Credit that form part of the Application for Commercial Credit;  
"Customer" means the Customer named in the Application for Commercial Credit of which this Guarantee forms part;  
"Customer's Obligations" means the Customer's obligations to the Supplier under the Credit Agreement, the T&Cs or otherwise (including but not limited to the obligation to pay the Guaranteed Money);  
"Document" means the Application for Commercial Credit, the Credit Agreement, this Guarantee, the T&Cs and any document contemplated by such documents;  
"Event of Default" means any of the following, or any analogous, events:  
(a) the Guarantor fails to pay any amount due and payable under any Document when the amount is due and payable;  
(b) the Guarantor fails to comply with any obligations under any Document;  
(c) any representation, warranty or statement by the Guarantor in connection with any Document is untrue or misleading (whether by omission or otherwise); or  
(d) the Guarantor becomes subject to Administration;  
"Guarantee" means this deed of guarantee, indemnity and charge;  
"Guaranteed Money" means all money which is, or may be in future, owed by the Customer to the Supplier for any reason;  
"Guarantor" means each person who executes this Guarantee;  
"PPSA" means Personal Property Securities Act 2009 (Cth);  
"Receiver" means a receiver or receiver and manager (or an additional receiver or receiver and manager);  
"Security" means:  
(a) a security interest that is subject to the PPSA;  
(b) any other mortgage, pledge, lien or charge; or  
(c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property;  
"Security Interest" means the Supplier's security under clause 10.1;  
"Secured Property" means all present and after-acquired property of the Guarantor (whether or not the Guarantor can be the grantor of a security interest under the PPSA in relation to the property);  
"Supplier" means the Supplier Entity that grants credit and accepts orders to supply goods and/or services to the Customer;  
"Supplier Entity" means Hy-Tec Industries (Victoria) Pty Ltd (ABN 43 096 310 520) and/or Central Pre-Mix Concrete Pty Ltd (ABN 62 008 070 862); and  
"T&Cs" means the Supplier's terms and conditions of sale as may be amended by the Supplier from time to time.
- 23. Interpretation**  
In this Guarantee:  
(a) the headings will not affect interpretation;  
(b) the singular includes the plural and vice versa;  
(c) any other grammatical form of a word or expression defined in this Guarantee has a corresponding meaning;  
(d) a reference to a document includes the document as novated, altered, supplemented or replaced;  
(e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;  
(f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;  
(g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;  
(h) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;  
(i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;  
(j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally and any right given to two or more parties is given to each of them individually;  
(k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;  
(l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Guarantee; and  
(m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

**1. SIGNED, SEALED AND DELIVERED BY GUARANTOR:**

Guarantor full name	
Any previous or other name	
Guarantor address	
State	Postcode
Date of Birth	DD / MM / YYYY
Driver's Licence No.	
Guarantor Signature	

**WITNESSED BY:**

Witness full name	
Witness address	
State	Postcode
Witness Signature	
Date	DD / MM / YY

**3. SIGNED, SEALED AND DELIVERED BY GUARANTOR:**

Guarantor full name	
Any previous or other name	
Guarantor address	
State	Postcode
Date of Birth	DD / MM / YYYY
Driver's Licence No.	
Guarantor Signature	

**WITNESSED BY:**

Witness full name	
Witness address	
State	Postcode
Witness Signature	
Date	DD / MM / YY

**2. SIGNED, SEALED AND DELIVERED BY GUARANTOR:**

Guarantor full name	
Any previous or other name	
Guarantor address	
State	Postcode
Date of Birth	DD / MM / YYYY
Driver's Licence No.	
Guarantor Signature	

**WITNESSED BY:**

Witness full name	
Witness address	
State	Postcode
Witness Signature	
Date	DD / MM / YY

**4. SIGNED, SEALED AND DELIVERED BY GUARANTOR:**

Guarantor full name	
Any previous or other name	
Guarantor address	
State	Postcode
Date of Birth	DD / MM / YYYY
Driver's Licence No.	
Guarantor Signature	

**WITNESSED BY:**

Witness full name	
Witness address	
State	Postcode
Witness Signature	
Date	DD / MM / YY

# TERMS AND CONDITIONS OF SALE

## 1. Application

These T&Cs, and no terms and conditions of the Customer, will apply to any order for and any supply of Goods and/or Services by the Supplier to the Customer.

## 2. Order for Goods / Services

- 2.1 Any quotation by the Supplier does not constitute an offer to supply.
- 2.2 Unless otherwise stated by the Supplier, any quotation by the Supplier will remain valid for 30 days from the date of the quotation provided that the Supplier may withdraw or vary a quotation at any time prior to the Supplier's acceptance of an Order.
- 2.3 Any Order by the Customer to the Supplier and/or any acceptance of any Goods and/or Services by the Customer will constitute agreement to these T&Cs by the Customer.
- 2.4 No Order by the Customer will be binding on the Supplier unless the Supplier accepts the Order.
- 2.5 If the Supplier accepts an Order, the parties will have created a binding Contract and the Supplier will supply the Goods and/or Services to the Customer, and the Customer will pay the Price to the Supplier in accordance with the terms of the Contract (which will include these T&Cs), but the Contract will be subject to:
  - (a) the availability of the materials necessary to supply the Goods; and
  - (b) the Customer completing the Supplier's application for commercial credit and the Supplier agreeing to grant credit to the Customer (if the Customer is seeking credit terms).
- 2.6 The Customer is not entitled to cancel any Order or Contract and must pay to the Supplier any costs associated with the Customer purporting to cancel any Order or Contract.
- 2.7 The Customer must provide the Supplier with all information, instructions, reports, drawings, specifications and properties of Goods and/or Services, and all facts and things relevant to the Goods and/or Services and performance of the Supplier's obligations, at the time the Customer requests any quotation from the Supplier and prior to providing any Order to the Supplier.
- 2.8 If at any time the Supplier considers that any information, document or other thing provided by the Customer to the Supplier is not sufficient to enable the Supplier to supply the Goods and/or Services to the Customer in accordance with the Contract, the Customer must, at the Customer's cost, provide such further information, documents or assistance as the Supplier considers reasonably necessary.
- 2.9 The Customer must ensure the specifications and properties of Goods and/or Services stated in any Order by the Customer will be fit for the intended purpose of the Goods and/or Services.
- 2.10 The Supplier will be entitled to rely on the accuracy of any plans, specifications or other information provided by the Customer.
- 2.11 If there are any errors in any plans, specifications or other information provided by the Customer to the Supplier, the Supplier will, in addition to the Supplier's other rights under these T&Cs or at law, be entitled to vary the Price.
- 2.12 The Customer will be responsible for the quantity of any Goods and/or Services in any Order and the Supplier will not have any liability to the Customer if there is any excess or shortfall of the Goods and/or Services for the intended purpose.
- 2.13 The Supplier may cancel any Contract at any time prior to delivery of the Goods and/or Services with no liability other than to repay any amount of the Price paid in advance of the cancellation.

## 3. Price

- 3.1 Unless otherwise agreed by the Supplier in writing, the Price will be the Supplier's list price on the date of despatch of the Goods and/or Services and is subject to variation (whether before or after the acceptance of an Order or before or after the formation of a Contract or during the term of a Contract).
- 3.2 Unless otherwise agreed by the Supplier in writing, the Supplier may invoice the Customer for Goods and/or Services on the date the Supplier supplies the Goods and/or Services.
- 3.3 Unless otherwise stated by the Supplier in writing, the Price is exclusive of any delivery charges and exclusive of GST.
- 3.4 The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier for any reason.
- 3.5 The Supplier may charge, in addition to the Price, any other fees, charges and surcharges that the Supplier notifies to the Customer from time to time.
- 3.6 The Price will be increased by the amount of any Carbon Costs which are applicable from time to time.

## 4. Delivery of Goods

- 4.1 If the Supplier agrees to deliver Goods, the Supplier:
  - (a) will charge delivery charges, demurrage, waiting time and other charges in the Supplier's price list or otherwise nominated by the Supplier from time to time;
  - (b) will endeavour to deliver the Goods to the Delivery Address on the Delivery Date; and
  - (c) may charge further delivery charges if the Customer is unable to receive delivery of the Goods at the Delivery Address or on the Delivery Date or in accordance with any other delivery arrangements.
- 4.2 The Supplier will only deliver Goods during the Supplier's usual business hours unless the Supplier agrees otherwise in writing.
- 4.3 The Supplier will not be liable for any delay in the delivery of Goods to the Delivery Address.
- 4.4 The Supplier may deliver Goods in separate installments.
- 4.5 The Customer will ensure a member of the Customer's Personnel will be at the Delivery Address on the Delivery Date to sign the delivery docket on the Customer's behalf.
- 4.6 The Supplier may deliver Goods to the Delivery Address regardless of whether there is anyone at the Delivery Address at the time of delivery.
- 4.7 The Customer agrees:
  - (a) the Supplier's responsibility for delivery of Goods will cease at the kerbside or public roadway frontage of the Delivery Address;
  - (b) the Customer must provide safe access for delivery of Goods including but not limited to providing safety measures such as traffic control; and
  - (c) the Supplier may refuse to deliver Goods, and return the Goods at the Customer's cost, if the Supplier or a member of the Supplier's Personnel considers it would be unsafe to deliver the Goods.
- 4.8 The signature of a member of the Customer's Personnel on the delivery docket will represent the Customer's acknowledgement that the Goods comply with the Contract and these T&Cs.
- 4.9 A certificate signed by a director or secretary of the Supplier in relation to delivery of the Goods will be prima facie evidence of the fact and the Customer will not object to the admissibility of such a certificate in any legal proceedings.
- 4.10 The Customer must inspect any Goods immediately on collection or delivery of the Goods.

## 5. Risk

- 5.1 If the Supplier agrees to deliver Goods, the Customer will be deemed to have accepted the Goods, and the risk in the Goods will pass to the Customer, immediately when the Goods are delivered to the Delivery Address regardless of whether there is anyone at the Delivery Address at the time of delivery.
- 5.2 If the Supplier agrees to supply the Goods on an ex-bin or ex-works basis, or the Customer otherwise agrees to collect the Goods, the Customer will be deemed to have accepted the Goods, and the risk in the Goods will pass to the Customer, immediately when the Goods are placed on any vehicle or means of conveyance.

## 6. Title

- 6.1 The Customer will not receive title to Goods until the Customer makes full payment of the Price and any other amounts payable to the Supplier.
- 6.2 Until title in the Goods passes to the Customer in accordance with these T&Cs, the Customer will:
  - (a) be only a bailee of the Goods;
  - (b) ensure the Goods are kept separate and identifiable from other goods;
  - (c) not grant any Security over the Goods to any third party;
  - (d) return any Goods to the Supplier immediately on request;
  - (e) authorise the Supplier or any agent of the Supplier to enter any land and premises owned, occupied or controlled by the Customer where the Goods are located and take possession of the Goods; and
  - (f) hold the proceeds from any sale or disposal of the Goods on trust for the Supplier, and the Supplier may repossess, retain, deal with and/or sell the Goods as the Supplier determines in the Supplier's absolute discretion if the Customer does not pay the Price and any other amounts

- 6.3 payable to the Supplier by the due date for payment or the Customer is the subject of Administration. The Supplier may, for the purposes of exercising the Supplier's rights under clause 6.2, enter any premises owned, occupied or controlled by the Customer and remove the Goods including but not limited to by detaching or unfixing the Goods from any goods or land to which the Goods are attached or fixed.

## 7. Credit and Personal Property Securities

- 7.1 The Customer must make full payment of the Price and any other amounts payable to the Supplier before the Supplier supplies Goods and/or Services to the Customer unless the Supplier has granted credit terms to the Customer in which case the Customer must make full payment of the Price and any other amounts payable to the Supplier within 30 days after the end of the month in which the Supplier supplied the Goods and/or Services to the Customer (or such alternative period agreed by the Supplier in writing).
- 7.2 If the Supplier grants credit terms to the Customer, then to secure the punctual payment of all amounts owed by the Customer to the Supplier, the Customer grants to the Supplier:
  - (a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act); and
  - (b) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be a grantor of a security interest under the PPSA.
- 7.3 The Customer agrees and acknowledges the Supplier may (without limiting the Supplier's other rights under these T&Cs, at law or otherwise) lodge caveats over the Customer's property and take any other action to secure and enforce the Supplier's Security Interest.
- 7.4 The Customer must reimburse the Supplier for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses incurred by the Supplier associated with any action by the Supplier to recover money from the Customer.
- 7.5 The Customer:
  - (a) agrees with the Supplier that neither the Customer, nor the Supplier, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);
  - (b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;
  - (c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following provisions of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;
  - (d) acknowledges that the Supplier may, at the Customer's cost, register one or more financing statements in relation to the Supplier's Security Interest or any other Security;
  - (e) waives, if permitted under the PPSA, the Customer's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and
  - (f) will not, without prior written notice to the Supplier, change the Customer's name or initiate any change to any documentation registered under the PPSA.
- 7.6 The Security Interest will immediately become enforceable (whether or not the amounts owed by the Customer to the Supplier have become payable) if an Event of Default occurs, without the need for any demand or notice under a document, and the Supplier may appoint a Receiver to property the subject of the Security Interest (and fix the Receiver's remuneration) or exercise any power exercisable by a Receiver even if a Receiver has not been appointed.

## 8. Force Majeure

The Supplier will not be liable to the Customer for any failure to perform, or delay in performing, the Supplier's obligations under these T&Cs if the failure or delay is due to any cause beyond the Supplier's reasonable control and if any such failure or delay continues for a period of 14 days the Supplier may terminate any affected Contract.

## 9. Confidential Information and Intellectual Property

- 9.1 The Customer will not use, or disclose, any Confidential Information disclosed to the Customer.
- 9.2 All Intellectual Property Rights in all designs, drawings, technical information and documents created by the Supplier in relation to the Goods and/or Services will remain with the Supplier and will not be assigned to the Customer and no supply of Goods and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods and/or Services or such designs, drawings, technical information or documents.
- 9.3 If the Supplier supplies any designs, drawings, technical information or documents to the Customer as part of the Goods and/or Services, the Supplier grants the Customer a non-exclusive, non-transferable, right to use the designs, drawings, technical information and documents strictly and only for the purposes of the Customer's use of the Goods and/or Services.
- 9.4 The Customer warrants that the Supplier's use of any designs, instructions or documents provided by the Customer to the Supplier will not infringe the Intellectual Property Rights of any other party.

## 10. Approvals

The Customer must, at the Customer's expense, obtain all Approvals necessary for and incidental to the supply of the Goods and/or Services.

## 11. Security

The Supplier will not be required to provide a bank guarantee or any other form of Security and the Customer will not be entitled to retain any retention money from the Price for any reason.

## 12. Warranties

- 12.1 The Supplier does not warrant the Goods and/or Services are fit for any purpose whether or not made known to the Supplier or any member of the Supplier's Personnel.
- 12.2 The Supplier excludes all express and implied conditions and warranties in relation to the Goods and/or Services except those conditions or warranties that cannot be excluded by law and the Supplier's liability under any such conditions or warranties is limited to, at the Supplier's option, arranging to replace or repair the Goods and/or the outcome of the Services or resupplying the Goods and/or Services.
- 12.3 Nothing in these T&Cs are intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or any Fair Trading Act except to the extent permitted by such Acts.

## 13. Liability

- 13.1 The Supplier's liability for any Liability or Claim in relation to these T&Cs, any Contract, and any supply of Goods and/or Services (whether under statute, contract, tort, negligence or otherwise) will be limited to the amount of the Price paid by the Customer to the Supplier.
- 13.2 The Supplier will not be liable to the Customer for any Liability or Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.

## 14. Release and Indemnity

The Customer indemnifies the Supplier and each member of the Supplier's Personnel from and against any Liability or Claim arising directly or indirectly in relation to:

- (a) the accuracy of all information provided by the Customer to the Supplier in relation to the Services, the Delivery Address or any other matters;
- (b) the Customer's breach of these T&Cs or any Contract;
- (c) the negligence or wilful misconduct of the Customer or any member of the Customer's Personnel;
- (d) the Supplier or any member of the Supplier's Personnel delivering the Goods in accordance with the Customer's instructions;
- (e) the Supplier or any member of the Supplier's Personnel entering the Delivery Address;
- (f) damage to the property of the Customer or any third party during any delivery of Goods;
- (g) any spillage, breakage or contamination of Goods during any transport or delivery;
- (h) the Goods and/or Services not being fit for any particular purpose;
- (i) any tests in relation to Goods and/or Services;
- (j) the Customer or any member of the Customer's Personnel directly or indirectly causing any delay in the supply of any Goods and/or Services;

- (k) the Supplier having to resupply the Goods and/or Services, or undertake any rework, as a result of the actions or omissions of the Customer or any third party;
- (l) the Customer or any member of the Customer's Personnel refusing to accept any delivery; and
- (m) the Customer or any member of the Customer's Personnel purporting to cancel any Order or Contract and
- (n) any proceedings, claims and demands in relation to any secured property.

#### 15. Termination

- The Supplier may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to the Supplier if:
- (a) the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach within 7 days of receiving a notice from the Supplier requiring the Customer to do so;
  - (b) the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy;
  - (c) there is any change in the Control of the Customer; or
  - (d) an Administration occurs in relation to the Customer.

#### 16. Definitions

In these T&Cs:

"Administration" means any of the following, or any analogous, events:

- (a) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator to the Customer or to the whole or any part of the Customer's assets, operations or business;
- (b) any person, or agent of a person, who holds any Security takes possession of any of the Customer's property (including but not limited to seizing the Customer's property within the meaning of section 123 of the PPSA);
- (c) a court or other authority enforces any judgment or order against the Customer for the payment of money or the recovery of any property;
- (d) the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business;
- (e) the Customer ceases, or threatens to cease, carrying on business;
- (f) the Customer is unable to pay the Customer's debts as the debts fall due; or
- (g) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors.

"Approvals" means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by any Authority to permit the full and proper performance of the Supplier's obligations under these T&Cs;

"Authority" means any government or governmental, semi-governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, statutory corporation, instrumentality or entity;

"Carbon Costs" means the costs of the Supplier or a related body corporate acquiring any emissions permits or carbon offsets required under any emissions trading legislation or paying any carbon tax in relation to supply of the Goods and/or Services to the Customer;

"Claim" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

"Confidential Information" means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;

"Contract" means a contract formed as a result of the acceptance of an Order by the Supplier;

"Control" has the meaning set out in the Corporations Act;

"Corporations Act" means the Corporations Act 2001 (Cth);

"Customer" means the customer set out in any quotation, offer or other document provided by the Supplier (or, in the absence of such information, the customer who placed the Order);

"Delivery Address" means the address for the delivery of the Goods and/or Services in a Contract;

"Delivery Date" means the date for the delivery of the Goods and/or Services in a Contract;

"Event of Default" means any of the following, or any analogous, events:

- (a) the Customer fails to pay any amount due and payable when the amount is due and payable;
- (b) the Customer fails to comply with any obligations under any document;
- (c) any representation, warranty or statement by the Customer in connection with any document is untrue or misleading (whether by omission or otherwise); or

(d) the Customer becomes subject to Administration;

"Goods" means the goods in a Contract;

"Intellectual Property Rights" means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;

"Liability" means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

"Order" means any written or verbal order by the Customer to the Supplier for Goods and/or Services;

"Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;

"PPSA" means Personal Property Securities Act 2009 (Cth);

"Price" means the price of the Goods and/or Services as nominated by the Supplier from time to time;

"Security" means:

- (a) a security interest that is subject to the PPSA;
- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property;

"Security Interest" means the Supplier's security under clause 7.2;

"Services" means the services in a Contract and any services associated with the Goods;

"Supplier" means the Supplier Entity that accepts the Order to supply Goods and/or Services to the Customer;

"Supplier Entity" means Hy-Tec Industries (Victoria) Pty Ltd (ABN 43 096 310 520) and/or Central Pre-Mix Concrete Pty Ltd (ABN 62 008 070 862); and

"T&Cs" means the terms of these Terms and Conditions and the terms of the Special Conditions (and if there is any inconsistency between the terms of these Terms and Conditions and the terms of the Special Conditions, then the terms of the Special Conditions will take precedence).

#### 17. Miscellaneous

##### 17.1 The parties agree:

- (a) no Contract will create any partnership, joint venture, agency or relationship of employment between the parties;
- (b) these T&Cs or any Contract may only be amended with the Supplier's express written agreement;
- (c) any waiver by the Supplier must be express and in writing;
- (d) the Supplier's rights under these T&Cs or any Contract do not exclude any other rights of the Supplier;
- (e) no Contract will be a sale by sample;
- (f) in the event of any dispute, the Supplier's records will be conclusive evidence;
- (g) the actions of any person claiming to have the Customer's authority will bind the Customer to the extent permitted by law;
- (h) if any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply;
- (i) the Customer must immediately provide written notice to the Supplier if there is any change in the Control of the Customer;
- (j) the Supplier may assign any rights or benefits under any Contract or these T&Cs or any Contract to any third party;
- (k) the Customer may only assign any rights or benefits under any Contract or these T&Cs or any Contract with the Supplier's prior written consent; and
- (l) these T&Cs and any Contract will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, the state in which the Goods and/or Services are delivered.

##### 17.2 In these T&Cs:

- (a) the headings will not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) any other grammatical form of a word or expression defined in these T&Cs has a corresponding meaning;
- (d) a reference to a document includes the document as novated, altered, supplemented or replaced;
- (e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- (g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
- (h) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally and any right given to two or more parties is given to each of them individually;
- (k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these T&Cs; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

## SPECIAL CONDITIONS - CONCRETE AND QUARRY PRODUCTS

### 1. Supply of Concrete

1.1 Unless otherwise agreed in writing, if the Supplier agrees to supply concrete to the Customer, the Supplier:

- (a) may use any raw materials to manufacture and supply the concrete;
- (b) will supply slumps of a maximum of 80mm for 20mm nominal size dense aggregate; and
- (c) will supply concrete in accordance with Australian Standard AS1379-1997.

1.2 If the Supplier agrees in writing to test concrete for the Customer:

- (a) the Supplier will arrange for the concrete to be tested at the Delivery Address after the delivery of the concrete;
- (b) the Customer will provide the Supplier's Personnel with access to the Delivery Address for the purposes of testing the concrete;
- (c) the Customer will provide copies of all test results to the Supplier; and
- (d) the Supplier will not be liable for any tests performed by any third party.

1.3 The Supplier will not be liable for, and the Customer will indemnify the Supplier in relation to, any Liability or Claim as a result of:

- (a) the Supplier adding additives or other materials to concrete at the Customer's request;
- (b) the Customer or any other person handling, placing, curing or otherwise dealing with the concrete;
- (c) the Customer or any other person, including but not limited to any member of the Supplier's Personnel, adding water or any other substance to concrete whether before, during or after the delivery of the concrete;
- (d) the actual time discharge time (being the time between the arrival of the Supplier's delivery vehicle at the Delivery Address and the completion of the discharge of the Goods) exceeding the Supplier's standard or stated discharge time; and
- (e) the effect of weather conditions on concrete including but not limited to heat, rain, wind or hail.

### 2. Supply of Exposed or Coloured Concrete

2.1 The Customer acknowledges:

- (a) the raw materials used to manufacture exposed concrete and coloured concrete are natural products and subject to variations;

- (b) exposed concrete and coloured concrete may also contain iron stone which could cause rust stains in finished products;
- (c) the colour, texture, appearance and quality of exposed concrete and coloured concrete in any brochure, display or other promotional material are indicative only;
- (d) the colour, texture or appearance of exposed concrete and coloured concrete might not match the selections in any order; and
- (e) the Supplier does not represent, warrant or guarantee that the colour, texture, appearance or quality of exposed concrete or coloured concrete will match the selections in any Order or Contract.

2.2 The Customer acknowledges:

- (a) the Supplier's exposed concrete have been designed with a high volume of aggregate;
- (b) the Supplier does not recommend placing exposed concrete using a concrete pump;
- (c) the Customer should obtain advice from the Customer's contractor as to how best to place and finish concrete;
- (d) the Customer's contractor's advice and actions may affect the quality of exposed concrete and the depth or consistency of exposure; and
- (e) the Customer will be responsible for the onsite preparations or placement techniques (including the adding of water or sugar or other additives) or finishing techniques (including the hosing or polishing of concrete) used by contractors.

2.3 The Customer agrees that if a contractor uses water to wash off the top surface of exposed concrete or coloured concrete, the contractor must ensure the contractor captures the water as the water could be high in cementitious material and the Supplier has no responsibility for such water entering drainage systems or waterways.

### 3. Supply of Quarry Products

If the Supplier agrees to supply quarry products to the Customer:

- (a) the Supplier will supply the quarry products by weight and in accordance with Australian Standard AS2758; and
- (b) the Customer may test the quarry products which are the subject of an Order at the Supplier's plant provided that the Customer provides at least 7 days written notice to the Supplier and provides copies of all test results to the Supplier.