



**NEILSEN'S QUALITY GRAVELS PTY LTD**

**ABN 19 010 620 916**

**NEILSEN'S CONCRETE PTY LTD**

**ABN 28 055 131 283**

POSTAL ADDRESS: PO BOX 5319, BRENDALE QLD 4500

Phone: 3205 5599 (Gravels)

Phone: 1300 266 273 (Concrete)

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Terms used in this Credit Account Application (including Parts A, B, C, D and E) are defined in Part E of this document. The interpretation provisions in Part E apply to this document.

## PART A – CREDIT APPLICATION – COMMERCIAL CREDIT ACCOUNT

### SECTION 1 – CUSTOMER DETAILS (Enter all details relevant to your business).

Business Name <small>(Company Name/Partnership/Sole Trader)</small>		ACN:
		Established:    /    /
Trust Name <small>(if a Trust)</small>		
Trading as <small>(Registered Business Name)</small>		ABN
Company <input type="checkbox"/>	Sole Proprietor <input type="checkbox"/>	Partnership <input type="checkbox"/>
Trustee <input type="checkbox"/>	Government/Statutory Authority <input type="checkbox"/>	
Nature of Business		
Street Address <small>(not a PO Box)</small>		
	State	Postcode
Postal Address <small>(if different)</small>		
	State	Postcode
Contact Person <small>(for invoices &amp; statements)</small>		
Phone Number	Fax Number <small>(for invoices)</small>	
Mobile Number	Email Address <small>(for invoices)</small>	

### SECTION 2 – DIRECTOR'S/OWNER'S PERSONAL INFORMATION (Insert names of directors (if a company), names of partners in the partnership (if a partnership) or details of sole trader).

Name:	Name:
Home Address:	Home Address:
Phone:	Phone:
Mobile:	Mobile:
Email:	Email:

**SECTION 2 – DIRECTOR'S/OWNER'S PERSONAL INFORMATION (Cont)**

Driver's Licence No:  
*(Must include photocopy of valid licence)*

Driver's Licence No:  
*(Must include photocopy of valid licence)*

Gold Card/Builder's/Plumber's Licence:

Gold Card/Builder's/Plumber's Licence:

Date of Birth:

Date of Birth:

\* If more than 2 directors or partners, please provide further details on the Customer's letterhead.

**SECTION 3 – ACCOUNT DETAILS**

Credit limit required: \$

Anticipated total monthly purchase volume from the Supplier:

Concrete:

Gravel/Sand/Soil:

Is a purchase order required? Yes / No

**SECTION 4 – TRADE/CREDIT REFERENCES (Minimum of 3 references required). Please note that the following are NOT Trade References: Boral, Excel, Onesteel, Hansons, Bunnings, Humes, Holcim, Lyndons, Cherside Building Supplies, Austral Bricks, Kennards or Tradelink. (Mobile numbers and utilities are not acceptable).**

**Company 1 Name:**

**Company 2 Name:**

Phone:

Phone:

Fax:

Fax:

Email:

Email:

Contact Name:

Contact Name:

**Company 3 Name:**

**Company 4 Name:**

Phone:

Phone:

Fax:

Fax:

Email:

Email:

Contact Name:

Contact Name:

**SECTION 5 – CURRENT OTHER SUPPLIERS**

Concrete Supplier:

Gravel/Sand/Soil Supplier:

Credit limit:

Credit Limit

Annual sales amount:

Annual sales amount:

## SECTION 6– ACKNOWLEDGEMENTS

The submission of this Commercial Credit Account Application by the Customer does not automatically result in the granting of a Commercial Credit Account by the Supplier. The Supplier does not provide consumer credit and this Commercial Credit Account Application will be assessed on the basis that it is an application for commercial credit.

The Customer acknowledges that the Conditions of Sale will apply to each and every supply of Goods and any related services made between the Supplier and the Applicant at all times. If the Supplier agrees to provide credit to the Customer the Supplier will provide confirmation of this credit approval and the credit limit amount by email to the Customer to the email address specified in Section 1 of this Part A. Until such confirmation is received by the Customer from the Supplier, the Customer will not have an approved Commercial Credit Account and payment for the Goods purchased by the Customer must be made by the Customer prior to delivery in accordance with clause 4.1 of the Conditions of Sale.

## SECTION 7 – EXECUTION BY CUSTOMER

### Who must sign this Credit Account Application on behalf of the Customer:

For Companies: Where there is only one director for the company then that person must sign; where there are two or more directors for the company then 2 Directors or a Director + Company Secretary must sign.

Sole Traders operating under their own name or under a business name: The individual.

Partnerships: All Partners of the Partnership.

By signing this Part A of the Commercial Credit Application, the Customer acknowledges and agrees to Part C (Privacy Act – Statement and Authority), Part D (General Terms and Conditions of Sale) and Part E (Definitions and Interpretations) of this Commercial Credit Application.

### Signatory

Print Name (in block letters)	
Position	
Signature	
Date	

### Witness

Print Name (in block letters)	
Address	
Signature	
Date	

### Signatory

Print Name (in block letters)	
Position	
Signature	
Date	

### Witness

Print Name (in block letters)	
Address	
Signature	
Date	

### Signatory

Print Name (in block letters)	
Position	
Signature	
Date	

### Witness

Print Name (in block letters)	
Address	
Signature	
Date	

### Signatory

Print Name (in block letters)	
Position	
Signature	
Date	

### Witness

Print Name (in block letters)	
Address	
Signature	
Date	

## PART B – PERSONAL GUARANTEE AND INDEMNITY

**IMPORTANT:** As part of your application for credit, this Personal Guarantee and Indemnity must be completed and signed by all directors (if the Customer is a company) and Partners (if the Customer is a Partnership) in the presence of an independent witness (not spouses/partners or family members).

### Details

#### Customer

Name	
Address (insert street address not a PO Box)	

#### Guarantor 1

Name	
Address (insert street address not a PO Box)	

#### Guarantor 2

Name	
Address (insert street address not a PO Box)	

#### Guarantor 3

Name	
Address (insert street address not a PO Box)	

#### Guarantor 4

Name	
Address (insert street address not a PO Box)	

### Terms of the Personal Guarantee and Indemnity

#### 1 Guarantee

In consideration of the Supplier agreeing to supply or continuing to supply the Goods and related services to the Customer, the Guarantor unconditionally and irrevocably guarantees payment to the Supplier of the Guaranteed Money. If the Customer does not pay the Guaranteed Money on time and in accordance with any agreement that imposes the obligation to pay it, then the Guarantor agrees to pay the Guaranteed Money to the Supplier on demand from the Supplier (whether or not the Supplier has made demand on the Customer). A demand may be made at any time and from time to time.

#### 2 Indemnity

- (a) The Guarantor unconditionally and irrevocably indemnifies the Supplier against any loss the Supplier suffers because:
- the liability of the Guarantor to pay the Guaranteed Money is unenforceable in whole or in part as a result of lack of capacity, power or authority or improper exercise of power or authority;
  - the Customer is or becomes Insolvent; or
  - the Guaranteed Money is not or has never been recoverable from the Guarantor under clause 1, or from the Customer because of any circumstance, including, if any transaction relating to the Guaranteed Money is void, voidable, or unenforceable, and whether the Supplier knew or should have known anything about that transaction.
- (b) The Guarantor, as principal debtor agrees to pay the Supplier on demand, a sum equal to the amount of any loss described in clause 2(a).

#### 3 Continuing guarantee

This guarantee and indemnity is a continuing security and extends to all of the Guaranteed Money and other money payable under this guarantee and indemnity. The Guarantor waives any right it has of first requiring the Supplier to commence proceedings or enforce any other right against the Customer or any other person before claiming from the Guarantor under this guarantee and indemnity.

#### 4 Preservation of rights

- (a) The liabilities under this guarantee and indemnity of the Guarantor as a guarantor, principal debtor and indemnifier, and the Supplier's rights under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity.
- (b) The liability of the Guarantor under this guarantee and indemnity is not time, then the Supplier can still exercise it later.
- (c) The Supplier rights and remedies under this guarantee and indemnity are in addition to other rights and remedies given by law independently

of this guarantee and indemnity.

(d) affected if:

- any other person who was intended to enter into this guarantee and indemnity, or otherwise become a co-surety or co-indemnifier for payment of the Guaranteed Money or other money payable under this guarantee and indemnity has not done so or has not done so effectively; or
- a person who is a co-surety or co-indemnifier for payment of the Guaranteed Money or other money payable under this guarantee and indemnity is discharged under an agreement or under statute or a principle of law or equity.

#### 5 Suspension of Guarantor's rights

As long as the Guaranteed Money or other money payable under this guarantee and indemnity remains unpaid, the Guarantor may not without the Supplier's consent:

- in reduction of its liability under this guarantee and indemnity, raise a defence, set-off or counterclaim available to itself, the Customer or a co-surety or co-indemnifier against the Supplier or claim a set-off or counterclaim against the Supplier; or
- make a claim or enforce a right against the Customer or any other Guarantor or against their estate or property; or
- prove in competition with the Supplier if the Customer or any other Guarantor is Insolvent whether in respect of an amount paid by the Guarantor under this guarantee and indemnity, in respect of another amount applied by the Supplier in reduction of the Guarantor's liability under this guarantee and indemnity, or otherwise; or
- claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a Security Interest or guarantee or a share in it now or subsequently held for the Guaranteed Money or other money payable under this guarantee and indemnity.

#### 6 Applicable law

This guarantee and indemnity is governed by the laws of Queensland. The Guarantor and the Supplier submit to the non-exclusive jurisdiction of the courts of that place.

#### 7 How the Supplier may exercise rights

- (a) The Supplier may enforce this guarantee and indemnity before the Supplier enforces other rights or remedies:
- against any other person; or
  - under another document.
- (b) If the Supplier does not exercise a right or remedy fully or at a given time, the Supplier is not obliged to, or the Supplier

agrees to make a refund) the Supplier may treat the payment as if it had not

**8 Guarantor's obligations and the Supplier's rights are unaffected**

- (a) Rights given to the Supplier under this guarantee and indemnity and the Guarantor's liabilities under it are not affected by any law that might otherwise affect them.
- (b) This guarantee and indemnity does not merge with or adversely affect, and is not adversely affected by, any of the following:
  - (iv) another right or remedy to which the Supplier is entitled; or
  - (v) a judgment or order which the Supplier obtains against the Guarantor in respect of any of the Guaranteed Money.

The Supplier can still exercise its rights under this guarantee and indemnity as well as under the judgment, order, other right or remedy.

**9 Reinstatement of rights**

Under law, a trustee in bankruptcy, liquidator or Controller may ask the Supplier to refund a payment the Supplier has received in connection with been made. The Supplier is then entitled to its rights against the Guarantor under this guarantee and indemnity as if the payment had never been made. If the Supplier asks, the Guarantor agrees to do everything necessary to restore to the Supplier any rights the Supplier held from the Guarantor immediately before the payment. This applies despite anything in this guarantee and indemnity.

**10 Privacy consent**

Each Guarantor has read and agrees to the Privacy Act Statement and Authority – Individuals & Guarantors in Part C of this Commercial Credit Account Application.

**EXECUTION OF PERSONAL GUARANTEE AND INDEMNITY – EXECUTED AS A DEED**

<b>IMPORTANT</b>	
<p><b>BEFORE THE GUARANTOR SIGNS</b></p> <ul style="list-style-type: none"> <li>Read the Guarantee and Indemnity and the Conditions of Sale.</li> <li>If the Guarantor does not understand this document, the Guarantor should obtain independent legal and financial advice.</li> <li>The Guarantor should make its own enquiries about the credit worthiness and financial position of the Customer.</li> </ul>	<p><b>THINGS THE GUARANTOR MUST KNOW</b></p> <ul style="list-style-type: none"> <li>Understanding that, by signing the guarantee and indemnity in this document, the Guarantor may become personally responsible instead of, or as well as, the Customer to pay the amounts which the Customer owes and the Supplier's expenses in enforcing the guarantee and indemnity.</li> <li>If the Customer does not pay, the Guarantor must pay.</li> </ul>

**Guarantor**

Name	
Signature	

**Witness**

Name	
Address	
Signature	
Date	

**Guarantor**

Name	
Signature	

**Witness**

Name	
Address	
Signature	
Date	

**Guarantor**

Name	
Signature	

**Witness**

Name	
Address	
Signature	
Date	

**Guarantor**

Name	
Signature	

**Witness**

Name	
Address	
Signature	
Date	

## PART C – PRIVACY ACT STATEMENT AND AUTHORITY – INDIVIDUALS & GUARANTORS

**This Privacy Act statement and authority applies to all Customers who are natural persons and each Guarantor.**

As an organisation providing credit facilities, the Supplier is subject to certain legislative and regulatory requirements that necessitate it collecting and using personal information, including credit information and credit eligibility information (as defined in the Privacy Act 1988 (Cth)) (Personal Information).

The Supplier will collect and handle Personal Information about the Customer and the Guarantors in accordance with the Privacy Act 1988 (Cth) (Privacy Act) and its Privacy Policy, including its Credit Reporting Policy (Privacy Policy).

The Supplier may collect, use and disclose Personal Information of the Customer and the Guarantor as stated below. The Supplier may be delayed in or prevented from processing the Commercial Credit Account Application, carrying out associated tasks or otherwise meeting any obligations to the Customer if the Supplier cannot collect this Personal Information or if it is incomplete or inaccurate.

The Supplier's Privacy Policy contains information:

- (a) about how the Customer or the Guarantor may access, and seek correction of, the Personal Information the Supplier holds about the Customer or the Guarantor; and
- (b) about how the Customer or the Guarantor may complain about a failure by the Supplier to comply with its obligations under the Privacy Act or a registered Credit Reporting code that may bind the Supplier, and how the Supplier will deal with a complaint by the Customer or the Guarantor.

By signing the Commercial Credit Account Application as a sole trader, partner, director or Guarantor, you expressly consent that the Supplier may, to the extent permitted by law:

- (a) collect Personal Information from Veda (Veda Advantage Limited):
  - (i) for the purpose of assessing the credit worthiness of the Customer for a Commercial Credit Account or for the purpose of collecting payments that are overdue by the Customer under a Commercial Credit Account if the Commercial Credit Account Application is approved; or

- (ii) for the purpose of assessing whether the Supplier accepts the Guarantor as a guarantor in relation to the credit provided by the Supplier to the Customer or for the credit applied for by the Customer.
- (b) use Personal Information:
  - (i) for the purpose of assessing the credit worthiness of the Customer for a Commercial Credit Account or for the purpose of collecting payments that are overdue under a Commercial Credit Account if the Commercial Credit Account Application is approved; or
  - (ii) for the purpose of assessing whether the Supplier accepts the Guarantor as a guarantor in relation to the credit provided by the Supplier to the Customer or for the credit applied for by the Customer;
- (c) disclose Personal Information to another credit provider with an Australian link for the purpose of notifying:
  - (i) that the Customer has applied for credit and the amount of the credit;
  - (ii) cheques drawn by the Customer for payment of an approved Commercial Credit Account have been dishonoured more than once;
  - (iii) that the Supplier is a credit provider to the Customer;
  - (iv) the Customer's or a Guarantor's payments have become overdue for more than 60 days and that collection action has been commenced;
  - (v) payments are no longer overdue to the Supplier;
  - (vi) in special circumstances in the opinion of the Supplier, the Customer or the Guarantor have committed a serious credit infringement;
  - (vii) that the credit provided to the Customer has been discharged;
- (d) disclose credit eligibility information to a person for the purpose of that person considering whether to act as a Guarantor, or who has provided security, in relation to the credit applied for under a Commercial Credit Account; and
- (e) disclose Personal Information to a person who is a Guarantor in relation to, or has provided security for, any credit granted under a Commercial Credit Account.

## PART D – GENERAL TERMS AND CONDITIONS OF SALE

**These Conditions of Sale will apply to the supply of Goods and related services by the Supplier to the Customer from time to time.**

### 1 Quotations, order and Contracts

- 1.1 All quotations are made and all orders for Goods are accepted by the Supplier on and subject to these Conditions of Sale and any special terms and conditions which are agreed to by the Supplier in writing.
- 1.2 The Supplier may withdraw, revoke or vary a written quotation at any time prior to the Customer submitting an order which accepts the in written quotation. The Supplier reserves the right to accept or decline, whole or in part, any order for Goods placed by a Customer.
- 1.3 The Customer acknowledges that it has checked all quotations and is satisfied that the quotations include all the Goods which the Customer requires and on which the Customer has requested to the Supplier to quote and that the Supplier will have no liability in respect to any omissions or errors in quotations in respect of the Goods on which the Customer has requested the Supplier to quote.

### 2 Price

- 2.1 The price of the Goods will be the Supplier's current price at the time of delivery of the Goods subject to any contrary agreement (if any) between the Supplier and the Customer regarding the price of the Goods.
- 2.2 The price of the Goods specified by the Supplier in any quotation will remain valid for a period of 30 days for an order made by the Customer in accordance with the quotation, unless otherwise specified.
- 2.3 Unless otherwise indicated, all prices for Goods are net, exclusive of applicable Taxes charges and GST. Where Goods are subject to GST, the Customer must pay GST at the same time as payment for the Goods is made.

### 3 Delivery

- 3.1 The Customer will ensure that the Customer (if an individual) or an authorised representative is available at the Delivery Site to sign the Delivery Docket. A Delivery Docket can be signed electronically, including on a hand-held or portable electronic device. If the Customer or its authorised representative does not sign or is not available to sign the Delivery Docket, the Customer authorises the driver to complete the delivery in accordance with clause 5.2 and to complete the applicable Delivery Docket. The Customer will be bound by the actions of any person who has, or appears, represents or purports to have, the authority of the Customer in respect of a delivery.

Neither the Supplier nor any its employees, agents and representatives are obligated to make any enquiries as to the authority of any such person.

- 3.2 A Delivery Docket signed or completed in accordance with these Conditions of Sale constitutes the Customer's agreement that:

- a) the delivery complies with the Customer's request and that the details in respect of the delivery including, without limitation, the type and quantity of Goods delivered and the place and time of delivery set out in the Delivery Docket and any supporting information maintained by the supplier, including electronically, in connection with the supply (such as without limitation, time and GPS Data logs) are correct and;
- b) The Customer is liable to pay any additional fees or surcharges described on the delivery Docket pursuant to these conditions of sale.

- 3.3 The price quoted for delivery for the Goods is based on:

- (a) Delivery between the hours of 6.00 a.m. to 5.00 p.m. on Business Days to the Delivery Site. A surcharge will apply for concrete batched, quarry materials delivered and/or other Goods delivered outside these hours;
- (b) The Supplier's ruling minimum load for the Goods (for concrete this is a four (4) cubic metre minimum) and in the event of deliveries being required of less than the minimum load an additional cartage charge will be payable in accordance with the Supplier's ruling rates;
- (c) Delivery being made by the shortest access route available to the Delivery Site, and in the event of roads being closed and preventing delivery by the shortest access route, the Supplier will have the right to charge for any additional Costs incurred by it in making delivery to the Delivery Site; and
- (d) Delivering the Goods at the kerb alignment on the Delivery Site within the time specified within the Supplier's charges. An additional charge will be payable for waiting time in Excess of the standard unloading time of thirty (30) minutes.

- 3.4 The Customer will be responsible for providing adequate, safe and timely access to the Delivery Site and the Customer will indemnify the Supplier for all loss, damage or liability incurred by the Supplier as a result of failure to provide such access.
- 3.5 The Supplier reserves the right to charge the Customer any Costs which it incurs as a result of any delay by the Customer in unloading the Goods or where unloading of the Goods cannot be effected, including, if applicable, a return delivery fee at the prevailing freight rates.
- 3.6 For concrete, an additional surcharge will apply when concrete is returned from the Delivery Site to the concrete plant in the event of the Customer being unable to accept the full batch of concrete as ordered.
- 3.7 Where the Supplier or its transport contractor enters the Customer's premises or the premises of a third party nominated by the Customer for the purpose of delivery of the goods, the customer to the fullest extent permitted by law;
- Releases the supplier, its employees, agents and contractors from any claim the customer may at any time have had against the supplier but for this release, in respect of damage occasioned to the Customer's premises or injury to persons arising out of the delivery by the Supplier or its transport contractor of Goods to such premises; and
  - indemnifies the Supplier against any loss, damage or liability suffered or incurred by the Supplier in respect of damage occasioned to the Customer's or the third party's premises or injury to persons arising out of the delivery by the Supplier or its transport contractor of Goods to such premises, except for and to the extent that such loss damage or liability suffered or incurred by the Supplier arises out of the negligence or wilful misconduct of the Supplier or its transport contractor.
- 4 Payment**
- 4.1 Unless the Supplier grants credit to the Customer pursuant to a Commercial Credit Account and subject to the Supplier's right to withdraw credit, payment for the Goods purchased from the Supplier must be made by the Customer in Australian dollars in immediately available funds prior to delivery of the Goods.
- 4.2 Where the Customer has a Commercial Credit Account with the Supplier, the Supplier will issue an invoice for payment (Supplier's Invoice) for all Goods supplied by the Supplier for the calendar month. The Customer must ensure that payment for the Goods is made by the Customer to the Supplier by no later than 30 days after the date of the Supplier's Invoice or such other date for payment as the Supplier and the Customer agree in writing.
- 4.3 If there are any additional charges or surcharges incurred on delivery as provided by clause 3 (Additional Charges) the Customer is liable to pay these amounts. If the Customer has a Commercial Credit Account these Additional Charges will be added to the Supplier's invoice for payment. If the Customer does not hold a Commercial Credit Account and has paid for the Goods prior to the delivery of the Goods the Customer must pay the Additional Charges in immediately available funds. If the Customer paid for the Goods prior to the delivery of the Goods by credit card, the Customer authorises payment of these Additional Charges by the Supplier crediting these Additional Charges to the Customer's nominated credit card.
- 4.4 The Supplier reserves the right at any time to determine that a Customer ceases to hold a Commercial Credit Account by notifying the Customer in writing and immediately upon notification the Customer will cease to hold a Commercial Credit Account.
- 4.5 The Supplier reserves the right to charge interest on any amount overdue for payment from the date it becomes due for payment until the date payment is received by the Supplier. The interest rate that is to apply is the overdraft rate charged by the Supplier's principal bankers. All amounts received by the Supplier will be credited first against the accrued interest.
- 4.6 A statement signed by the Supplier's authorised representative certifying the amount of any Additional Costs or other claim by the Supplier will in the absence of manifest error be conclusive and binding of the amount due for payment.
- 4.7 All payments are to be made at Johnstone Road, Brendale or PO Box 5319 Brendale Qld 4500 and a failure to pay or the dishonouring of a cheque tendered by the Customer will constitute a breach of these Conditions of Sale.
- 4.8 Payments made by credit card may be subject to a surcharge.
- 5 Risk**
- 5.1 Risk in the Goods passes to the Customer when the Supplier or its transport contractor's delivery vehicle arrives at the Delivery Site. The Customer must insure the Goods against loss or damage from that time.
- 5.2 The unloading of the Goods at the Delivery Site is the Customer's responsibility at its own cost and risk but the supplier may, without liability to the customer, unload the Goods at the Delivery Site if the customer requests the Supplier to do so or is absent from the delivery site at the time the supplier or its transport contractor wishes to unload. The customer releases and discharges the Supplier and its transport contractor from and against any claim, cause of action or liability arising out of unloading the goods at the delivery site.
- 6 Force Majeure**
- If the Supplier is prevented either directly or indirectly from performing any of its obligations under these Conditions of Sale, including without limitation, making a delivery of the Goods or any part of the Goods by reason of Force Majeure it will be entitled, at its option, by notice to the Customer, either to;
- extend the time for delivery of the Goods for a reasonable period; or
  - subject to refunding the Customer for any payment already made to the Supplier in respect of those.
- 7 Default by Customer**
- 7.1 If:
- there is any default or failure by the Customer in making due and punctual payment to the Supplier of any money owing by the Customer; or it is Insolvent; or
  - there is a breach by the Customer of any of these Conditions of sale
  - all money payable by the Customer to the Supplier will at the Supplier's election become immediately due and payable; and the Supplier may without prejudice to any other rights it may have, do any or all of the following:
    - suspend deliveries of further Goods to the Customer;
    - terminate the contract to supply Goods in relation to Goods that have not been delivered;
    - without limiting clause 4.4, withdraw any Commercial Credit Account which may have been extended to the Customer and require immediate payment of all money owing to the Supplier by the Customer;
    - seize, take possession of and sell or retain any Goods to which title has not passed to the Customer.
- 7.2 All Costs incurred by the Supplier relating to any action taken by the Supplier to recover money due from the Customer (including, without limitation, legal or other debt collection costs) will be payable by the Customer on demand.
- 8 Retention of title**
- 8.1 The Customer agrees that the Supplier retains legal and equitable title in any Goods supplied to the Customer until the Supplier receives payment in full for or in connection with the supply of the relevant Goods. Until payment in full has been received, the provisions of this clause 8 will apply.
- 8.2 Despite title in the Goods remaining with the Supplier until payment has been received in full, the Customer may sell the Goods or use the Goods in a manufacturing or construction process in the ordinary course of the Customer's business. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for the Supplier and the Customer is under a duty to account to the Supplier for the proceeds. The creation of, or any failure of, any trust will not in any way limit the obligation of the Customer to pay an amount to the Supplier for the Goods supplied.
- 8.3 Until Goods are sold or used in a manufacturing or construction process, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly identified as the property of the Supplier and keep full and complete records, firstly of the physical location of the Goods and, secondly, the ownership of the Goods by the Supplier.
- 8.4 This reservation of title and ownership is effective whether or not the Goods become part of a product or mass through manufacturing, processing or becoming commingled and the Supplier's security interest continues in that product or mass to the extent permitted by law.
- 9 Application of the PPSA**
- 9.1 The Customer acknowledges and agrees that the Supplier may apply to register a financing statement in respect of any security interest in the Goods at any time before or after delivery of the Goods. The Purchaser waives its rights under s 157 of the PPSA to receive notice of any verification of the registration.
- 9.2 The Supplier can apply amounts it receives from the Customer towards amounts owing to it in such order as the Supplier chooses.

9.3 If the Customer defaults in the performance of any obligation owed to the Supplier under these Conditions of Sale or any other agreement for the Supplier to supply Goods to the Customer, the Supplier may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions of Sale or the PPSA. To the maximum extent permitted by law, the Customer and the Supplier agree that the following provisions of the PPSA do not apply to the enforcement by the Supplier of its security interest in the Goods: section 95, 96, 121(4), 125, 130, 132(3) (d), 132(4), 142 and 143.

9.4 The Purchaser must promptly do anything required by the Supplier to ensure that the Supplier's security interest is a perfected security interest and has priority over all other security interests in the Goods.

## 10 Supply of concrete

10.1 If the Goods supplied comprise concrete, this clause 10 will apply.

10.2 Unless otherwise specified concrete supplied will be in accordance with the following Australian Standards:

AS 1379 The specification and supply of concrete  
AS 1012 Methods of testing concrete

10.3 Testing of concrete supplied will not automatically be carried out, but the Customer may request an assessment in accordance and under the terms of contract and arranged at the Customer's expense. Test samples will be taken only at the agitators discharge chute. The results of such test will only be recognised by the Supplier if carried out in accordance with the standards nominated and by an N.A.T.A. registered testing authority.

10.4 The concrete supplied is designated on the face of the Delivery Docket

- (a) the quantity of concrete required;
- (b) the standard compressive strength grade;
- (c) a standard slump at the point of acceptance; and
- (d) the maximum nominal size of aggregate.

10.5 The Supplier will not be liable in any manner whatsoever in respect of strength or any other defect which may develop in any concrete supplied if:

- a) water is added to concrete before or after discharge from the delivering agitator without the approval of the Supplier's representative;
- b) an admixture is used at the Customer's request;
- c) Discharge from the agitator occurs more than ninety (90) minutes after leaving the mixing plant
- d) In the event of delay of delivery or Non-Delivery arising from any cause beyond control of the supplier including but not limited to unforeseen traffic conditions, plant breakdown, Truck & agitator breakdown, industrial stoppages, bans and shortages of materials; or
- e) Due to mishandling, placement, curing and improper job practices.
- f) a request for the reduction of water from Neilsens kerb mix design will have an affect on compaction and negate the guarantee of 28 days strength.

10.6 For the decorative concrete the following additional terms apply:

- (a) the aggregate and other raw materials used to make decorative concrete are products by nature and therefore are subject to variation in colour, size and shape;
- (b) minerals in the aggregate of coloured concrete can cause staining. An approved sealer will reduce the likelihood of this condition occurring. The Supplier recommends an approved same day sealer be applied to coloured concrete;
- (c) Cement Concrete & Aggregates Australia (CCAA) have recommended practice for placing decorative concrete The Customer should refer to CCAA's recommended practices for placement;

(d) Exposed Aggregate mixes are designed to be placed directly "off the chute" from Concrete Agitators. The customer should consult with the supplier if the customer requires to place these mixes by a concrete pump.

(e) On site water addition takes the concrete slump beyond specification and colour variation and aggregate separation may occur and;

(f) The supply of decorative concrete takes additional lead time to obtain. This should be considered in the timing of the order process for the customer

(g) Neilsens shall not accept liability for the placement and insitu compaction performance of any proprietary WALL SYSTEM concrete

## 11 Liability and Indemnity

11.1 In the event of any Goods supplied by the Supplier in accordance with these Conditions of Sale failing to meet the agreed standards, the liability of the Supplier (if any) will be limited to the replacement of such defective Goods. All other guarantees, warranties, undertakings, or representations express or implied and whether arising by statute or otherwise are expressly excluded (except to the extent only that such exclusion is prohibited by law).

11.2 The Supplier will not in any circumstances in any dispute be liable for any indirect or consequential loss or damage of any nature whatsoever

11.3 Each Indemnity given by the Customer in favour the supplier pursuant to these terms and conditions is also given in favour of each of the Supplier's officers, employees, agents and contractors and may be enforced by the supplier as agent for any indemnified person.

## 12 Miscellaneous

12.1 These Conditions of Sale set out the entire agreement between the parties in relation to their subject matter.

12.2 The laws applicable to the agreement between the Supplier and the Customer are the laws of Queensland and the Customer submits to the jurisdiction of the courts of Queensland.

12.3 Nothing in these Conditions of Sale will constitute the Supplier as a subcontractor of the Customers

12.4 A party waives a right under these Conditions of Sale only if it does so in writing. Clause 12.5 applies to any waiver in writing. A party does not waive a right because it fails to exercise the right, delays exercising the right or only exercises part of the right. The exercise of a right does not prevent any further exercise of that right or of any other right. A waiver of any breach of a term of these Conditions of Sale does not operate as a waiver of another breach of the same term or any other term.

12.5 A provision of these Conditions of Sale or a Delivery Docket, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound. If there is a waiver or variation in writing it must be confirmed by the Supplier in writing by a person authorised by the Supplier's management to make such variation or provide the waiver in writing and no other employee of the Supplier including a delivery driver under contract to the Supplier nor any other person will have any authority to waive or vary these Conditions of Sale or a Delivery Docket.

12.6 If a provision in these Conditions of Sale is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to that extent, and in that jurisdiction, be treated as deleted from these Conditions of Sale. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.

12.7 The Supplier may assign or otherwise deal with the benefit of any contract made pursuant to these Conditions of Sale without the consent of the Customer. The Customer may not assign or otherwise deal with the benefit of any contract made pursuant to these Conditions of Sale.



## PART E – DEFINITIONS AND INTERPRETATION

### 1 Definitions

In this document (including each of Parts A, B, C, D and E)

**Business Day** means Monday to Friday (inclusive) excluding public holidays at the place of delivery.

**Commercial Credit Account** means an approved account for supply of Goods to the Customer on terms of payment within 30 days.

**Commercial Credit Account Application** means this application for 30 days commercial credit made by the Customer to the Supplier.

**Conditions of Sale** means the terms and conditions of Part D of this document.

**Controller** has the meaning it has in the Corporations Act.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Costs** include charges and expenses including in connection with advisers.

**Customer** means the customer named in Part A, being an incorporated or unincorporated business, partnership, individual or Government entity, who acquires Goods from the Supplier.

**Delivery Docket** means, in respect of a delivery of goods a delivery docket/tax invoice in a paper or Electronic form prepared by the supplier that includes relevant information in respect of the delivery.

**Delivery Site** means the delivery address specified on the Delivery Docket as the location agreed by the Customer and the Supplier for the delivery of the Goods. Unless otherwise agreed and specified, the Delivery Site will be the kerb alignment of the nearest main road or thoroughfare, such as a street or boulevard, available to the public for use for travel or transportation specified as the delivery address.

**Force Majeure** means an act of God, war, fire, strike, lockout, trade or industrial disputes, government interference, lack of production capacity or raw materials, transport delays, accidents, breakdown of plant or machinery, non delivery or shortage of supplies or any other cause beyond the Supplier control.

**Goods** mean all goods, products and materials sold or otherwise supplied by the Supplier to the Customer from time to time. The Goods are "other goods" for the purposes of the PPSA.

**GST** means the tax payable on Taxable Supplies within the meaning of the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

**Guarantee and Indemnity** means any guarantee and indemnity provided by a Guarantor in Part B.

**Guaranteed Money** means all amounts that are payable, are owing but not currently payable, are contingently owing, or remain unpaid, by the Customer to the Supplier, including without limitation, Costs.

**Guarantor** means the person or persons named in the Details of Part B as the Guarantor. If there are more than one, Guarantor means each of them separately and every two or more of them jointly.

**Insolvent** means for the Customer (as applicable) being an insolvent under administration or insolvent or having a Controller appointed (each as defined in the Corporations Act), in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from any creditors under any statute or dissolved (other than to carry out a reconstruction while solvent), if an individual, a bankruptcy notice is filed in respect of the Customer or otherwise admits in writing or is declared by a court that it is unable to pay its debts as and when they fall due.

**PPSA** means the Personal Property Services Act 2009 (Cth) and any regulations under it.

**Related Corporation** has the meaning given to the term "related body corporate" in section 50 of the Corporations Act 2001.

**Supplier** means Neilsen's Quality Gravels Pty Ltd ABN 19 010 620 916 and Neilsen's Concrete Pty Ltd ABN 28 055 131 283 and any Related Corporations jointly and each of them severally.

**Taxes** means taxes, levies, imposts, charges and duties imposed by any authority (including stamp and transaction duties) (together with any related interest, penalties, fines and expenses in connection with them), except if imposed on the overall net income of the Supplier.

### 2 Interpretation

In this document:

- (a) the singular includes the plural and vice versa;
- (b) headings are for convenience only and do not alter the interpretation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid or that act, matter or thing will be done on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not);
- (e) terms defined in the PPSA have the same meaning when used in this document unless otherwise indicated;
- (f) a reference to:
  - (i) this document includes any variation, novation or replacement of it;
  - (ii) the Customer includes a reference to its authorised representatives, employees, agents and subcontractors and the Customer's executors, administrators, successors, substitutes, (including, without limitation, persons taking by novation) and assigns;
  - (iii) the Supplier includes a reference to that person's executors, administrators, successors, substitutes, (including, without limitation, persons taking by novation) and assigns; and
  - (iv) law means common law, principles of equity, and laws made by parliament, and a reference to laws made by parliament or any legislation includes regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).

## Mailing Instructions

For your application to be processed, please ensure you have completed and signed both Part A (Credit Application Form) and Part B (Personal Guarantee and Indemnity). Please return all original signed and witnessed documents to:

**Neilsen's Quality Gravels Pty Ltd and Neilsen's Concrete Pty Ltd**

Mail Address: PO Box 5319, BRENDALE QLD 4500

A copy may be sent to:

Email: [melissa@neilsens.com.au](mailto:melissa@neilsens.com.au); or Fax: (07) 3205 7521

## INTERNAL USE ONLY – CREDIT MANAGER TO COMPLETE

Credit checks complete: Yes / No. Details:

Trade references complete: Yes / No. Details:

Sales Manager allocated:

Credit Manager's recommendation:

Credit limit approved:

Approved by: