

# Midway

## APPLICATION FORM

### Section 1 – Business Structure

Please select a business type by cross hatching the box "☒" & then complete all details.

<b>Business type:</b>	<b>Sole Trader</b> ☐	<b>Partnership</b> ☐	<b>Company</b> ☐	<b>Trust</b> ☐
Customer:		ACN/ABN:		
Trust / Partnership (if any):		ABN:		
Trading Name:				
Postal Address:				
Business Address:				
Email Address:				
Phone:		Building Licence No.:		
Nature of Business:		Year commenced:		

### Section 2 – Business Owners and Directors

Insert details of each director, sole trader or partner (if business is a partnership).

Director / partner			
Name:		Position:	
Address:		Phone:	
Name:		Position:	
Address:		Phone:	
Name:		Position:	
Address:		Phone:	

### Section 3 – Trade References

Insert at least [3] trade references.

Name	Company	Email

### Section 4 – Identification

The details of each director, sole trader or partner (if a partnership) requested below must be completed.

Director / Sole trader / partner			
Name:			
Address:			
Drivers licence no.:		Expiry date:	
Director / partner			
Name:			
Address:			
Drivers licence no.:		Expiry date:	

<b>Director / partner</b>			
Name:			
Address:			
Drivers licence no.:		Expiry date:	

**Section 5 – Asset Details**

Enter your assets.

<b>Motor Vehicles</b>			
1. Registration:		Estimated Value:	\$
2. Registration:		Estimated Value:	\$
<b>Property</b>			
Land:		Estimated Value:	\$
House:		Estimated Value:	\$
Factory:		Estimated Value:	\$
Other:		Estimated Value:	\$
<b>Tools / Other:</b>			
1.		Estimated Value:	\$
2.		Estimated Value:	\$
3.		Estimated Value:	\$
4.		Estimated Value:	\$
<b>Total Value:</b>			\$

Enter your liabilities.

<b>LIABILITIES</b>		<b>LIABILITIES</b>	
Description	Amount \$	Description	Amount \$
Bank Loan			
Trade Creditors			
<b>TOTAL</b>		<b>TOTAL</b>	

**Section 6 – Credit Request**

Estimated monthly credit limit – (the amount here is not your approved Credit Limit, we will approve any Credit Limit in writing).

\$
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**Customer and Guarantor(s) execution section**

**Customer acceptance**

Before you execute this document, we recommend that you seek independent legal and financial advice. By executing this document, you acknowledge to us that:

- you have read, understand and agree with the contents of this document, including our General Supply Terms (see clause 12.10 General Supply Terms);
- you are authorised to execute this document and where you are a corporation, this document is executed in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by either:
  - its sole director & sole company secretary; or
  - at least two directors; or
  - a director & a company secretary (who are not the same person);
- you grant Security to us over the Goods we supply to you and over your Real Property held now or in the future (among other things, we may at any time lodge a caveat over any of your Real Property); and
- the information provided by you and each Guarantor (if any) in this document is materially accurate and not misleading.

WARNING: Concrete or grout may cause skin injury. Avoid contact with the eyes and wash exposed skin areas thoroughly with water. If any cement mixture gets into eyes rinse immediately with water and get prompt medical treatment. Wear suitable protective clothing and gloves.

**Executed by each Customer as an agreement:**

SIGNATURE: _____	SIGNATURE: _____
NAME (PRINT): _____	NAME (PRINT): _____
DATE:	DATE:
<input type="checkbox"/> Sole Director & Sole Company Secretary	
<input type="checkbox"/> Director	<input type="checkbox"/> Director <input type="checkbox"/> Company Secretary
<input type="checkbox"/> Individual	<input type="checkbox"/> Individual
<b>(Tick the applicable box)</b>	<b>(Tick the applicable box)</b>

**Guarantor(s)**

Each person listed in Section 4 of this document must be listed here. We may also request that your shareholders, beneficial owners, related entities or other persons, be listed here also. Each person listed here provides us with the Guarantee and Security.

Name:	Address:	Email:
		ABN (if any) :
Name:	Address:	Email:
		ABN (if any) :
Name:	Address:	Email:
		ABN (if any) :

**Guarantor Acceptance**

In consideration of us supplying Goods to the Customer under this document, and among other things, each Guarantor that executes below irrevocably and unconditionally guarantees to us payment by the Customer of all moneys at any time actually or contingently owing to us by the Customer, indemnifies us and grants Security to us.


We recommend that each Guarantor seeks independent legal and financial advice before signing this document. By executing this document, each Guarantor acknowledges:


- that it is legally responsible for the Customer's obligations including on the occurrence of a Default Event;

- it has read, understood and agrees with this document, including that it has read clause 6 (Guarantee) and clause 7 (Security Interest) of the Trading Terms section of this document and our General Supply Terms (see clause 12.10 General Supply Terms);
- it agrees to give the Guarantee and Security for benefit it will receive from us and in consideration of us, among other things, entering into this document with the Customer and supplying Goods to the Customer under this document;
- it is authorised to execute this document and, where it is a corporation, this document is executed in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by either:
  - its sole director & sole company secretary; or
  - at least two directors; or
  - a director & a company secretary (who are not the same person);
- it grants Security to us over any of its Real Property held now or in the future (among other things, we may at any time lodge a caveat over any of its Real Property);
- where it is an individual, this document is executed by it in front of an independent witness;
- our General Supply Terms are incorporated into and form part of this document; and
- the information provided to us by it in this document is materially accurate and not misleading.


**Executed by each Guarantor as an agreement:**


**If an individual Guarantor:**

SIGNATURE: _____ 	
NAME (PRINT): _____	
DATE:	
<input type="checkbox"/>	Individual
<b>(Tick the applicable box)</b>	

SIGNATURE: _____ 	
NAME (PRINT): _____	
DATE:	
<input type="checkbox"/>	Witness*
<b>(Tick the applicable box)</b>	

**If an individual Guarantor:**

SIGNATURE: _____ 	
NAME (PRINT): _____	
DATE:	
<input type="checkbox"/>	Individual
<b>(Tick the applicable box)</b>	

SIGNATURE: _____ 	
NAME (PRINT): _____	
DATE:	
<input type="checkbox"/>	Witness*
<b>(Tick the applicable box)</b>	

\*Where this document is witnessed electronically, the witness confirms by this statement that the requirements for witnessing by audio-visual link under section 12 of the *Electronic Transactions (Victoria) Act 2000* have been met.

**If a corporate Guarantor:**

SIGNATURE: _____ 		SIGNATURE: _____ 	
NAME (PRINT): _____		NAME (PRINT): _____	
DATE:		DATE:	
<input type="checkbox"/>	Sole Director & Sole Company Secretary	<input type="checkbox"/>	Director
<input type="checkbox"/>	Director	<input type="checkbox"/>	Company Secretary
<b>(Tick the applicable box)</b>		<b>(Tick the applicable box)</b>	

# Midway

## CONCRETE SURCHARGES – As at 1 November 2022

<b>Normal Working Hours</b>	Monday to Saturday 6:00am – 4:00pm.
<b>Sunday/Public Holiday Surcharges</b>	Sunday and Public Holidays incur an additional charge of \$35.00 per m <sup>3</sup> plus GST on all orders in addition to any additional surcharges outlined.
<b>After Hours Plant Opening Fee</b> \$3,630 per 4 hours Driver admin fee: \$242	If our concrete plant ( <b>Plant</b> ) is required to open or remain open outside “Normal Working Hours”, a charge of \$3,300 plus GST for the first 4 hours will apply, and \$825 plus GST per hour thereafter.  This charge is in addition to any other after hours charges.  The driver admin fee is paid per load in addition to Plant opening fee when outside of “Normal Working Hours” at \$220 per load + GST.  Please check with us for a project quotation.
<b>Standby</b> \$77 per half hour per truck or part thereof	Where our truck is retained at your request outside “Normal Working Hours” for a period greater than 30 minutes before loading, an additional charge will be incurred at the rate of \$70 plus GST per half hour per truck or part thereof.
<b>Waiting Time</b> \$2.75 per min during Normal Working Hours Otherwise \$4.95 per min	After arrival at the site, <b>20 min</b> is allowed for discharging at the site for loads 3.2m <sup>3</sup> or less and <b>30 min</b> is allowed for discharging at the site for loads 3.2m <sup>3</sup> or above. Where our truck is detained by a customer on the site beyond 25 minutes, the following charges apply:  \$2.50 plus GST per minute during Normal Working Hours; \$4.50 plus GST per minute outside of Normal Working Hours.
<b>Short Load (less than 4m<sup>3</sup> Minimum Load)</b>	Unless we approve, all loads under 4m <sup>3</sup> will be subject to a 15% surcharge (plus GST) and a minimum fee equivalent to 1m <sup>3</sup> will apply.
<b>Extra Cartage</b> \$2.20 per m <sup>3</sup> per km	Unless otherwise agreed, deliveries in excess of 20 kilometres from our Plant will incur an Extra Cartage charge of \$2.00 plus GST per m <sup>3</sup> per Km for the excess kilometres.
<b>Disposal Fee</b> \$165 per m <sup>3</sup> during Normal Working Hours Otherwise \$254.10 per m <sup>3</sup>	Where surplus concrete is returned by the truck at your request, a Disposal Fee of \$150 per m <sup>3</sup> plus GST applies, after hours Disposal Fee of \$231 per m <sup>3</sup> plus GST applies.
<b>Washout Fee</b> \$33 per load	Where you request the addition of any colour, chemicals, fibres or other speciality additives to a load, a washout fee of \$30 plus GST per load applies.
<b>Cancellation Fee</b> \$1,430 per order	A Cancellation Fee of \$1300 plus GST per order applies when an order that is greater than 10m <sup>3</sup> is cancelled after 3pm on the day prior.
<b>Customer Supplied Product Handling Fees</b> \$16.50 per bag	The receipt, storage, handling and manual addition of any additives or bagged products supplied by us or Customer Supplied Products are charged at \$15 plus GST per bag.
<b>Accelerator Charges</b>	Low dose \$9 per m <sup>3</sup> , Medium dose \$14 per m <sup>3</sup> , High dose \$17 per m <sup>3</sup> (all GST inclusive).
<b>Concrete Testing Charges</b>  \$380 Standard Compression Test	The following charges are based on Testing performed during “Normal Working Hours”:  Includes: sampling, casting, testing and reporting 1 extra cylinder (if Technician already on-site).

\$125 per Extra Cylinder	Includes: sampling, testing and reporting of extra slump test (if Technician already on-site).
\$120 per Extra Slump Test	Includes: sampling, testing and reporting (if Technician already on-site).
\$120 per Air & Yield Test	Includes: sampling, casting minimum of 3 standard prisms and NATA Certified Report.
\$630 Drying Shrinkage Test	Includes: 1 slump test, casting minimum of 3 standard cylinders and NATA Certified Report.
\$760 After Hours Testing Charge	Normal Working Hours Charges plus 100%. Refer to times set out at "Normal Working Hours" above.
Other Testing Requirements	Price available on request.
<b>Cooling or Heating Agent</b>	If the supply of concrete on your request requires the addition of a cooling or heating agent, we may add this cost plus a margin for our overheads and time (as determined by us, acting reasonably).
<b>Delivery Dockets</b> \$27.50 per copy	We will leave a copy of the delivery docket at the Job Area with each delivery. The docket may also be handed to you or your representative, it is the responsibility of the customer to retain and process those dockets as per their own accounting requirements.  Duplicate copies of delivery dockets will be provided at cost of \$25 (plus GST) per docket. Any payment to us must not be delayed due to any missing delivery docket.
<b>Purchase Orders</b>	Where a purchase order is required to ensure payment, you must provide a paper or electronic copy to us prior to delivery.
<b>Updates</b>	We may update this Concrete Surcharge section by varying it. This may include that we vary existing or add new fees and charges. Where this occurs, we will use our reasonable endeavours to notify you. This may include a notice from us via email or an update displayed on our website. Before placing any new order with us, please ensure to check with us, including via our website, if there have been any changes to our Concrete Surcharges.
<b>Acceptance</b>	By placing an order after receiving our quotation, you are deemed to accept the terms and conditions referred to in that quotation.
<b>Payments</b>	Our payment terms are 30 days from the end of month of our Invoice for account customers, as per clause 4.4 of the Trading Terms.

**X**

Customer Initial

# Trading Terms

## 1 Supply of Goods

- 1.1 We may supply Goods to you from time to time. The Trading Terms section of this document applies to any supply of Goods made by us to you on credit. This is the case even if none of your details or information are described in the application section of this document, when you sign this document. (Unless you have an existing Credit Limit with us, if we supply Goods to you on a cash basis, our General Supply Terms will apply to that supply).
- 1.2 We may agree to supply Goods to you on a credit basis and within a Credit Limit approved by us from time to time.
- 1.3 We must approve your Credit Limit. Any Credit Limit approved by us may be modified or suspended without notice by us if:
  - a) a Default Event occurs;
  - b) your Credit Limit is exceeded without our written approval;
  - c) we consider it is reasonably necessary to protect our legitimate interests; or
  - d) we reasonably consider that it is unsafe to deliver the goods to you at the Job Area.
- 1.4 Unless we approve in writing, you must not exceed the Credit Limit. If your Credit Limit is exceeded without our approval, you must immediately pay to us the amount that exceeds your Credit Limit.
- 1.5 We may not supply Goods to you if:
  - a) our supply of those Goods will mean your Credit Limit is exceeded; or
  - b) any amount that is due and payable to us by you remains outstanding.

## 2 Retention of title

### 2.1 Title to Goods

- a) Property and ownership, both legal and beneficial, in any Goods (and their Proceeds) supplied by us to you will not pass to you and will remain with us until you have paid the Price for those Goods in full and all other amounts owing by you to us, regardless of the Delivery status of any Goods.
- b) Risk in Goods supplied by us to you passes at the time of Delivery.
- c) Delivery means the time that:
  - (i) you (or a representative of yours) collect the Goods from us; or
  - (ii) we deliver the Goods to a location agreed by us and you,

as determined by us, acting reasonably.

- d) You may sell or otherwise dispose of the Goods in the ordinary course of your ordinary business to bona fide customers and unrelated third parties on commercial terms, and provided that no Default Event subsists. We are, however, entitled to the Proceeds of those Goods until you pay us in full for those Goods.

### 2.2 Right of entry

You grant us, and our representatives, a right to enter any land or premises to inspect, seize or otherwise enforce our rights in respect of any Goods supplied to you under these Trading Terms. You indemnify us and keep us indemnified for any claims for loss or damage as a result of exercising those rights, except to the extent that the loss or damage is suffered as a result of our, or our representative's, fraud, wilful misconduct or gross negligence. If we seize or retake possession of any Goods, we may deal with them as we think fit (acting reasonably) to recover what is owed to us.

### 2.3 Security Interest in Goods

- a) You acknowledge and agree that our retention of title in the Goods constitutes a Security Interest in the Goods granted by you to us.
- b) Our Security Interest in all Goods supplied by us to you which you have not paid us for is security for all monies payable by you to us.
- c) Our Security Interest in the Goods (and any Proceeds thereof) is a "Purchase Money Security Interest" ("PMSI") under the PPSA to the extent that it secures payment of the Price of the Goods.
- d) Our Security Interest extends to all Proceeds and any accession in the Goods to the fullest extent permitted by the PPSA.
- e) Subject to any applicable law, we may apply any money received from you first to satisfy any portion of debt that is unsecured, second to satisfy any portion of debt that is secured but not by a PMSI and third to satisfy any portion of debt that is secured by a PMSI, or in any other manner we see fit (acting reasonably).
- f) You will hold any Proceeds of sale of the Goods on trust for our absolute benefit and to the exclusion of all others.
- g) Until the Goods are sold, or otherwise disposed of, you agree to keep the Goods separately stored and readily identifiable.
- h) You must not grant or seek to grant any Security Interest in the Goods adverse to any interest of ours.

- i) Our Security Interest in the Goods “Attaches” (as defined in the PPSA) at the earliest possible time permitted under the PPSA.

### 3 Orders & Delivery

- 3.1 You may place an order with us by using our order form, or such other form we approve (acting reasonably). We may accept or reject your order. In the event of any inconsistency between the order and these Trading Terms, these Trading Terms will prevail.
- 3.2 If our ability to fulfil an order is affected by a circumstance or event beyond our control we may (acting reasonably):
  - a) extend the date for Delivery;
  - b) with your approval, alter the specifications for the Goods to allow the substitution of equivalent Goods; or
  - c) cancel the order.
- 3.3 Any times estimated or quoted for Delivery are reasonable estimates and may be subject to change. We will do our best to keep you reasonably informed as to any changes to times quoted for Delivery.
- 3.4 We do not accept liability for any loss or damage suffered or incurred by you if any Goods are not Delivered on time or are otherwise affected by any circumstances contemplated in clause 3.2.
- 3.5 Other than as contemplated in clause 3.2, any delays in Delivery (acting reasonably) will not constitute grounds for cancellation of the subject order or any other order by you, unless you and we otherwise mutually agree.
- 3.6 We will use reasonable endeavours to Deliver the Goods at the kerb alignment of the Job Area. The delivery vehicle may enter the Job Area to facilitate unloading, including any concrete pour, of the Goods at your risk and responsibility, and, where so, you must ensure that the delivery vehicle has safe and unimpeded access to enter the Job Area and to a safe and suitable space to unload, including any concrete pour, the Goods.
- 3.7 At the time of Delivery we will provide you with a delivery docket which sets out the specifications of the Goods. You must ensure the delivery docket complies with the specifications of your order (including any characteristics of the concrete and the quantity). Upon your signing of the delivery docket or your instruction to unload the Goods, you will be taken to have approved the specifications on the delivery docket.
- 3.8 You indemnify us and keep us indemnified from and against any loss or damage suffered by:

- a) us;
- b) you; or
- c) any third party,

in connection with our delivery of the Goods to you at the Job Area, except to the extent the loss or damage is suffered as a result of our fraud, wilful misconduct or gross negligence.

### 4 Payments & charges

- 4.1 The Price is the amount stated on the Invoice unless the Goods are supplied pursuant to a fixed Quotation which applies to a specified period agreed in writing by you and us.
- 4.2 Prices listed on a Quotation are valid for 14 days from the date of the Quotation, or if no date is stated from the date we issue the Quotation.
- 4.3 All Prices are in Australian dollars and unless otherwise specified are exclusive of GST.
- 4.4 If we have approved a Credit Limit for you, you agree to make all payments to us within 30 days of the end of month of the Invoice. If you do not have an approved Credit Limit, you must make all payments to us prior to Delivery of the Goods unless our Invoice specifies other payment terms.
- 4.5 In the event you seek to effect payment through the use of a credit card facility which is accepted by us, and for whatever reason you later instruct your credit provider to stop payment, any charges which may be imposed by your credit card provider are payable by you.
- 4.6 In relation to some Goods that we supply, further applicable fees, terms and surcharges in relation to the Goods are set out in the Concrete Surcharges section of this document.
- 4.7 Without affecting our other rights, if you fail to comply with your payment obligations we may do any one or combination of the following:
  - a) charge interest on the overdue amount at an interest rate which is two percentage points (2%) greater than the interest rate fixed from time to time by the Attorney-General of the State of Victoria under the *Penalty Interest Rate Act 1983* (Vic) calculated from the date payment was due to the date of full and final payment (and added to each monthly account), following which any payment received by us may be credited by us and applied in any way we see fit (acting reasonably and to protect our legitimate interests), including first against such interest;
  - b) charge for all costs and expenses incurred by us in connection with recovery of the outstanding monies including collection costs, legal expenses and any other related



costs;

- c) require you to pay cash on Delivery for any further orders placed by you for Goods that we agree to supply;
- d) refuse to accept orders from and stop Deliveries to you;
- e) require the immediate payment of all monies owed by you to us;
- f) claim the return of any Goods in your possession where title has not passed to you;
- g) suspend, cancel or reduce any Credit Limit we have provided to you.

## 5 Warranties & liability

5.1 Nothing in this agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited and that includes the consumer guarantees that may apply by application of the Australian Consumer Law (**ACL**), to the goods and services that you acquire from us.

5.2 Other than the non-excludable warranties, conditions, rights or guarantees implied or imposed by relevant legislation, including the ACL, you agree and acknowledge that we exclude all liability arising from any implied or imposed express representations, terms, conditions or warranties that would otherwise apply to the Goods provided by us.

5.3 We are not liable for any defects in the Goods to the extent:

- a) the defect arises because you failed to follow our verbal or written instructions and/or specifications for the storage, commissioning, installation, use or maintenance of the Goods or general industry practice;
- b) the defect arises due to any act or omission by you, your sub-contractors or any other third party in the handling, treatment, placing or curing of the concrete, including the addition of any water, additives or other material to the concrete without our express instruction;
- c) the defect arises as a result of us following any instruction, drawing, design or specification supplied by you to us;
- d) you alter or change the Goods without our written consent;
- e) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions;
- f) the Goods differ from their description or

any specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements, including AS1379;

- g) any amount due and payable by you in connection with the Goods remains outstanding.

5.4 You acknowledge that:

a) there are inherent risks and factors which may affect the strength of concrete. This includes the time within which it is poured and how the concrete is cured once in position. For example, concrete pour rate and weather elements (including rain and climate temperature);

b) concrete is made up of natural materials and, therefore, we cannot control: variations in the colour of both concrete and aggregate; aggregate shapes & sizes; concrete cure colour variations including arising from cure rates, cure conditions and pure rates; and general characteristics of aggregates, in respect of each order that we supply;

c) concrete colour, aggregate colour and aggregate shapes and sizes, may be different to the exact product that you select compared with what is supplied by us to you.

5.5 Without limiting or excluding any of your rights under the ACL, we are unable to provide a guarantee as to the strength or suitability of the concrete we supply to you, save and except that concrete supplied by us will be of a strength and standard not less than that prescribed by the relevant specification under AS1379.

5.6 If you believe the Goods provided by us are defective, you must provide us with:

- a) notice within a reasonable time after your receipt of the Goods; and
- b) all information reasonably requested by us, including proof of purchase and maintenance records (if applicable).

5.7 If the Goods provided by us are defective and we are liable for the defect, then we may at our option:

- a) replace the rejected Goods or supply equivalent goods;
- b) repair the rejected Goods;
- c) reimburse you for the cost of replacing the rejected Goods or of acquiring equivalent goods;
- d) reimburse you for the cost of repairing the rejected Goods;

- e) if you have not paid the Price for the rejected Goods, release you from any obligation to pay the Price for the rejected Goods; or
- f) if you have already paid the Price for the rejected Goods, refund to you the Price for the rejected Goods, subject to you first restoring unencumbered title to the rejected Goods back to us.
- 5.8 If you are located in metropolitan Melbourne, Victoria, then we may, before complying with clause 5.7, send out a representative to inspect the Goods with a view to repairing the Goods, for which safe working access to the Goods must be provided by you.
- 5.9 Subject to the other terms of this clause 5:
- a) in respect of a supply of Goods to you, our maximum aggregate liability to you is limited to the remedies in clause 5.7;
- b) we exclude any liability to you, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss or damage arising under or in connection with this document or any other documents or promotional materials provided by us.
- 6 Guarantee**
- 6.1 Each Guarantor acknowledges that to the extent that we supply Goods on credit to the Customer and enter into this document, we do so:
- a) at the request of the Customer and each Guarantor, for benefit the Customer and each Guarantor will receive; and
- b) on the basis of each Guarantor entering into this document with us.
- 6.2 Each Guarantor unconditionally and irrevocably guarantees to us the due and punctual:
- c) payment of all the amounts payable to us by the Customer; and
- d) performance of all of the Customer's obligations under this document.
- 6.3 On the occurrence of a Default Event, each Guarantor must immediately upon demand pay to us all amounts payable to us by the Customer as if each Guarantor was principally obliged to pay us those amounts.
- 6.4 Each Guarantor unconditionally and irrevocably indemnifies us against all losses, damages and costs which we may at any time suffer or incur because:
- a) any obligation of the Customer expressed in this document is void, voidable or wholly or partially unenforceable or if our rights are unable to be enforced for any period of time including if and to the extent enforcement would contravene sections 415D, 434J or 451E of the Corporations Act;
- b) we have to disgorge any money paid to us by the Customer or another Guarantor, under this document;
- c) the Customer fails to perform any obligation under this document; or
- d) the Guarantor fails to perform any obligation under this document,
- except to the extent that any of those things are suffered or incurred as a result of our fraud, wilful misconduct or gross negligence.
- 6.5 This indemnity is a continuing obligation, separate and independent from the Guarantor's other obligations under any other agreement. It continues after those other obligations end.
- 6.6 Each Guarantor must pay money owing under this document without any deduction or set-off, and waives any right to rely on any defence available to the Customer.
- 6.7 The obligations and liabilities of each Guarantor and our rights under this document continue and are not affected by:
- a) our granting of any time or indulgence to the Customer or another person;
- b) our compounding or compromising with or wholly or partially releasing the Customer or another person;
- c) laches, acquiescence, delay, acts, omissions or mistakes by us;
- d) our taking, varying, wholly or partially discharging or otherwise dealing with or losing or impairing any security for the Customer's obligations under this document or any such security being or becoming void, voidable or unenforceable or if our rights are unable to be enforced for any period of time including if and to the extent enforcement would contravene sections 415D, 434J or 451E of the Corporations Act;
- e) any person who is intended to assume liability as a Guarantor under this document not doing so effectively, failing to execute this document or being discharged;
- f) the Customer's death, mental illness or bankruptcy, or the death, mental illness or bankruptcy of any individual Guarantor;
- g) if the Customer or a Guarantor is a corporation and is or becomes Insolvent or deregistered;

- h) the alteration of the composition of the Customer;
  - i) an agreement being constituted with the Customer or another Guarantor without reference to or consent by a Guarantor; or
  - j) anything else which might otherwise have such effect at law or in equity.
- 6.8 Each Guarantor's liability is not limited or otherwise affected by having entered into this document as trustee of a trust. Whether or not it was disclosed to us, if the Guarantor has entered into this document as trustee of a trust it is bound in its own right and as trustee of the trust and the Guarantor must exercise its right of indemnity against the trust assets to enable payment of money due under this document.
- 6.9 Each Guarantor acknowledges that we may claim against it under this document before we enforce any of our rights against the Customer or another person, or under another document such as a guarantee and indemnity, mortgage, charge or other security.
- 6.10 The guarantee and indemnity in this clause 6 does not merge with or adversely affect any other guarantee and indemnity, or mortgage, charge or other security, or right or remedy to which we are entitled at any time, or a judgment or order which we obtain against any Guarantor in respect of an amount payable under this document. We may still exercise our rights under the guarantee and indemnity as well as under the judgment, order, other guarantee or security.
- 6.11 So long as an amount payable under this document remains unpaid, in order to protect our legitimate interests the Guarantor may not without our consent, exercise any legal rights to claim to be entitled to the benefit of another guarantee or mortgage, charge or other security given in connection with an amount payable under this document, claim an amount from the Customer or another Guarantor under a right of indemnity, or claim an amount in the Customer's or another Guarantor's Insolvency.
- 6.12 The Guarantor consents to and authorises us to:
- a) obtain information about its commercial credit worthiness from its bank and any other credit provider or credit reporting agency for the purposes of assessing the application for credit, or in connection with this Guarantee;
  - b) use, disclose or exchange with other credit providers information about its personal or commercial credit arrangements in order to assess the application for credit (including whether to accept any person signing or otherwise as Guarantor), monitor

credit worthiness and collect overdue accounts; and

- c) disclose the contents of a credit report by a credit agency reporting to our solicitors or mercantile agents.

## 7 Security Interest

### 7.1 Grant of Security

Where we otherwise supply Goods to you on credit from time to time, you and each Guarantor grant to us a continuing charge over all Other Property and any Proceeds, as security for the performance of your and each Guarantor's obligations under this document. You and each Guarantor consent to us lodging a caveat in respect of any and all Other Property at any time.

### 7.2 Registration on the PPSR

You acknowledge and agree that this document is a security agreement for the purposes of the PPSA and we may register Security Interests over Personal Property at any time on the PPSR, for the purposes of clause 2.3, and that you will:

- a) provide all necessary information and execute all documents reasonably necessary to enable us to register and perfect our Security Interests under the PPSA; and
- b) promptly inform us in writing of any change of your name or of any other change of details that affect the PPSR.

### 7.3 PPSA waivers and notices

Clauses 7.4 and 7.5 apply to the extent that our Security is granted over your or a Guarantor's commercial property (as defined in the PPSA).

### 7.4 Verification statements and notices

- a) You and each Guarantor waive your rights to receive a copy of any verification statement after the registration of a financing statement or financing change statement in respect of any Security created by this document.
- b) We do not need to give you or any Guarantor any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

### 7.5 Enforcement of Security Interests

If Chapter 4 of the PPSA would otherwise apply to the enforcement of any Security, you and each Guarantor agree that the following provisions of the PPSA do not apply:

- a) section 95 (notice of removal of accession to the extent that it requires us to give

- notice to you);
- b) section 120 (enforcement of liquid assets);
- c) section 121(4) (enforcement of liquid assets – notice to you);
- d) section 125 (obligation to dispose of or retain collateral);
- e) section 128 (secured party may dispose of collateral);
- f) section 129 (disposal by purchase);
- g) section 130 (notice of disposal to the extent that it requires us to give a notice to you);
- h) sections 132(3)(d) and (4) (contents of statement of account after disposal) and (statement of account if no disposal);
- i) section 135 (notice of retention);
- j) section 142 (redemption of collateral); and
- k) section 143 (reinstatement of security agreement).

## 8 Default

- 8.1 A “Default Event” is the occurrence of:
- a) a default by you in the due or punctual payment of any amount which is payable to us under this document that remains outstanding for more than 2 Business Days;
  - b) a default in the due or punctual observance or performance by you of any provision of this document that is not remedied (if capable of remedy) within 14 days of us requesting its remedy, and we determine, acting reasonably, that the default will or is likely to have a material adverse impact on:
    - (i) your or a Guarantor’s ability to make any payment that is or will become due to us under this document;
    - (ii) our legal or reputational risk; or
    - (iii) our ability to recover against the Security;
  - c) you or a Guarantor become Insolvent;
  - d) you, in contravention of these Trading Terms, dispute the terms of any title retention or granting of a Security Interest to us in connection with any Goods supplied by us; or
  - e) it becomes impossible or unlawful for you to, or you cease to, carry on your business.

- 8.2 Upon the occurrence of a Default Event all amounts owed, owing or payable by you to us become immediately due and payable to us and, without affecting any other rights and remedies we may have, we may do any one or more of the following:

- a) terminate this document;
- b) refuse, cease or suspend the supply of any Goods to you;
- c) claim the return of any Goods in your possession where title has not passed to you;
- d) exercise our rights under clause 1.3.

- 8.3 You indemnify and keep us indemnified (and must pay to us on demand) against all loss, damages and costs of whatsoever nature associated with a Default Event (including any costs referred to in clause 4.7b)) and/or exercise of our rights under this document, including any enforcement costs suffered or incurred by us in the exercise of our rights under any Security, acting reasonably and in order to protect our legitimate interests. The indemnity in this clause does not apply to the extent that the loss, damage or cost arises from our fraud, wilful misconduct or gross negligence.

- 8.4 Should there be any surplus after all amounts owing to us by you have been paid, we will remit that surplus to you.

## 9 Termination

- 9.1 We may terminate this document in accordance with clause 8.2a), or otherwise this document may be terminated by 30 days’ written notice by either party.

- 9.2 On termination:

- a) all orders will terminate unless you pay us in advance for the Goods subject of the order; and
- b) you must pay all amounts owed, owing or payable to us on the date that they become due and payable (including all reasonable expenses incurred by us in connection with the order as at the date of termination),

and all parties retain all existing rights including any rights arising under this document or from any prior default under this document.

- 9.3 Any Guarantee and Security given to us continues to apply until all outstanding indebtedness is paid to us in full.

## 10 Variation & notices

- 10.1 A notice, consent, approval or other communication (each a **Notice**) under this document must be in writing and:

- a) delivered to the other party’s address;
- b) sent by pre-paid mail to that person’s address; or
- c) transmitted by email to that person’s email address.

- 10.2 A Notice given to a person in accordance with

this clause 10 is treated as having been given and received:

- a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
- b) if sent by pre-paid mail, on the 5<sup>th</sup> Business Day after posting; or
- c) if transmitted by email to a person's email address, on production of a transmission report from the transmitting machine indicating a successful transmission of the email.

10.3 We may vary the Trading Terms section of this document at any time by giving you at least 45 days written notice. We may also vary the Concrete Surcharges in accordance with the 'Updates' row of that section. If you disagree with our variations, you may choose to terminate this document in accordance with clause 9.

## 11 Confidential information

11.1 The parties agree not to disclose to any person any Confidential Information of the other party, except as permitted by clause 11.3. This clause 11 survives any termination of this document.

11.2 No party may disclose any information of a kind referred to in section 275(1) of the PPSA, except as described in clause 11.3.

11.3 Any party may disclose Confidential Information of another:

- a) to representatives who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this document. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 11; and
- b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.4 Clause 11.3 does not require us to disclose any information of the kind referred to in section 275(1) of the PPSA. You and each Guarantor agree that you will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) with our prior written consent (not to be unreasonably withheld).

## 12 General

### 12.1 Electronic transactions

You and each Guarantor consent to:

- a) receiving any notice under this document;
- b) executing and entering into this document,

by electronic means, including for the purposes of the *Electronic Transactions Act 1999* (Cth) and all State & Territory equivalents.

### 12.2 Execution

a) You and each Guarantor that executes this document is bound by it immediately whether or not any other Guarantor has executed it.

b) This document is enforceable by us against any person that executes it. We do not have to execute it.

c) The document may be executed in any number of counterparts and all counterparts taken together will constitute the one document.

d) This document may be executed and entered into with the use of electronic signatures and may be electronically exchanged. Electronic signatures include digital signatures and physically written signatures that are digitally scanned and applied.

e) This document may be in an electronic format and some or all of the parties may sign it using an electronic signature. Where so, this document will be considered to be made "in writing" by a "document" which is "signed" by the relevant party.

f) If you or a Guarantor is a corporation, the relevant party that signs this document using an electronic signature and the person who provides evidence of the signing represent and warrant to us that the signing satisfies section 127(1) of the Corporations Act. However, that representation and warranty is not given if we are told that the requirements of that section are not satisfied.

g) An executed and digitally scanned copy of this document that is exchanged:

- (i) by email;
- (ii) using any electronic platform; or
- (iii) other electronic means (including in portable document format),

will constitute evidence of due execution and exchange of this document. Any document so exchanged will serve as a legal and binding document with the same force and effect as a physical original.

h) Nothing in this clause prevents this document being physically executed and exchanged, and if we request (acting reasonably) you or a Guarantor to do so, you or that Guarantor must do so.

### 12.3 Consideration

You and each Guarantor acknowledge to us that you have entered into this agreement with us for valuable consideration that we have provided to you and each Guarantor.

#### 12.4 Waiver

A failure by us at any time to require performance by you of any provision of this document shall not affect in any way our rights to require such performance at any time, nor shall the waiver by us of a breach of any provision of this document be deemed a waiver of the provision itself or any other provision of this document.

#### 12.5 GST

Where we make a Taxable Supply to you under or in connection with this document and the consideration otherwise payable for the Taxable Supply does not include GST, we are entitled, in addition to any other consideration recoverable in respect of the Taxable Supply, to add GST on the Taxable Supply and recover that amount from you.

#### 12.6 Assignment

You must not assign, transfer, charge or otherwise seek to deal in any of your respective rights or obligations under this document without our prior written consent, which will not be unreasonably withheld. We may assign our rights under this document including any invoice, provided that you are not unfairly affected by the assignment. You acknowledge that we may in future acquire additional subsidiaries, which may supply Goods to you on credit, and you agree that the terms of this document will apply to the purchase of those Goods.

#### 12.7 Control

You agree to notify us within 2 Business Days of any change affecting your legal entity, structure, management or control.

#### 12.8 Privacy

- a) We will comply with the *Privacy Act 1988* (Cth) (to the extent applicable) in respect of any Personal Information we obtain access to in connection with this document and supply by us of any Goods.
- b) Except as otherwise required by law, we may hold or destroy any documents or material in connection with you for a period of up to 7 years after the termination or expiry of this document.

#### 12.9 Severance

Any provision of, or the application of any provision of this document which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition. Any

provision of, or the application of any provision of this document, which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this document in that or any other jurisdiction.

#### 12.10 General Supply Terms

Our General Supply Terms are located on our website at <https://www.midwayconcrete.com.au/terms-conditions>. Our General Supply Terms form part of and are incorporated into these Trading Terms. To the extent that these General Supply Terms and conditions located on our website are inconsistent with the Trading Terms in this document, the Trading Terms shall prevail to the extent of the inconsistency.

#### 12.11 Prior agreements

These Trading Terms supersede any previous agreements entered into between the parties which relate to the subject matter of this document.

#### 12.12 Governing law

This document is governed by the laws in force in Victoria, Australia. We, you and each Guarantor irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria and the Federal courts of Australia and any courts having jurisdiction to hear appeals from those courts.

### 13 Definitions and Interpretation

In these Trading Terms, unless the contrary intention appears capitalised terms have a special meaning:

**"ACL"** means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth).

**"AS1379"** means Australian Standard No. 1379: Specification and Supply of Concrete, as in force at the date of Delivery.

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria, Australia.

**"Concrete Surcharges"** means the concrete surcharges table listed before these Trading Terms in this document, as updated from time to time via our website.

**"Confidential Information"** means information relating to us, you, this document and any information disclosed by a party to another party that is confidential in nature, but does not include information that:

- a) at the date of this document, was generally and publicly available, or subsequently becomes so available other than by breach of any duty or obligation;

- b) at the time it was disclosed to a party, was in the possession of that party lawfully and without breach of any duty or obligation; or
- c) has been disclosed to a party and was not generally and publicly available at that date of disclosure, but subsequently, through no act or omission of that party (or any person to whom it disclosed that information), becomes available from another source and is not subject to any duty or obligation as to confidence.

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

**"Credit Limit"** means the maximum value of Goods that we agree to extend on credit to you.

**"Customer", "you", "your"** means the recipient of any Goods supplied to you by us.

**"Default Event"** has the meaning given to it in clause 8.1.

**"Delivery", "Deliver", "Delivered"** has the meaning given to it in clause 2.1c).

**"Insolvent"** means unable to pay debts when they fall due, in bankruptcy, in receivership, in administration, wound up, subject to any arrangements, assignment or composition with creditors or protected from any creditors under any legislation.

**"Invoice"** means any invoice issued by us to you.

**"General Supply Terms"** means our general terms and conditions of supply located at <https://www.midwayconcrete.com.au/terms-conditions>.

**"Goods"** means any goods and/or services supplied to you by us.

**"GST"** has the meaning given to it in the GST Act.

**"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

**"Guarantee"** means the guarantee and indemnity contained in clause 6.

**"Job Area"** means the location at which you request the Goods to be Delivered to.

**"Other Property"** means property that is not Personal Property, including Real Property.

**"Personal Information"** has the meaning given in the *Privacy Act 1988* (Cth).

**"Personal Property"** has the meaning given to it in the PPSA.

**"PMSI"** has the meaning given to it in clause 2.3c).

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth).

**"PPSR"** means the Personal Property Securities Register established under the PPSA.

**"Price"** has the meaning given in clause 4.1.

**"Proceeds"** has the meaning given to it in the PPSA.

**"Quotation"** means any document issued by us that contains a quotation of the Price relating to Goods.

**"Real Property"** means all of the person's present and after acquired real property, including land and improvements, wherever located.

**"Security"** means any security given in favour of us as security for your obligations and/or any Guarantor's obligations under this document and includes the Guarantee and each Security Interest granted to us under this document.

**"Security Interest"** in relation to:

- a) Personal Property, has the meaning given in the PPSA; and
- b) Other Property, means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge trust or power.

**"Supplier", "we", "us", "our"** means Aerolink Property Corporation Pty Ltd trading as Midway Mini Mix Concrete Garden and Building Supplies or any of its related bodies corporate (as defined by the Corporations Act) or assigns from whom Goods are purchased, or its employees.

**"Taxable Supply"** has the meaning given to it in the GST Act.

**"Trading Terms"** means the trading terms section of this document.

13.1 In these Trading Terms, unless the contrary intention appears:

- a) a reference to this document or agreement includes the application form, the Concrete Surcharges and the Trading Terms.
- b) headings to clauses are for convenience only and do not affect interpretation;
- c) any reference to a clause, background recital, schedule or annexure is a reference to a clause of, recital in, schedule to or annexure to, these Trading Terms;
- d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- e) the words "include", "including", "for example", "such as" or cognate expressions are to be construed without limitation;
- f) a reference to a document (including this document) or to a statute, ordinance, code or other law includes a regulation, rule or

other statutory instrument issued under it and consolidations, amendments, re-enactments or replacements of any of them;

- g) an agreement, guarantee, representation or warranty by two or more persons, binds them jointly and each of them individually;
- h) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- i) the singular includes the plural and vice versa;
- j) where any obligation of this document is to be performed on a day other than a Business Day, that obligation is to be performed on the next Business Day;
- k) no provision of this document is to be construed to the disadvantage of a party because that party prepared, or was responsible for the preparation of, this document or a provision of this document.

**The Customer acknowledges that they have read and understood these Trading Terms:**

X

Customer Initial

Date: \_\_\_\_\_