



ABN 63 091 618 781  
Member of the  
Fletcher Building Group

Postal Address:  
Locked Bag 3501  
North Ryde BC NSW 1670  
Phone: 1800 330 104

## Application for 30 Days Commercial Credit

### Office Use Only

Debtor Area No. Region	Credit Limit Approved	Account Number	Date
<input style="width: 90%;" type="text"/>	<input style="width: 90%;" type="text"/>	<input style="width: 90%;" type="text"/>	<input style="width: 90%;" type="text"/>

### Type of Business Operation (Tick applicable box, then complete the sections indicated for your selection)

Business | Company | Trust (complete parts 1,3,4,5,7)
  Partnership & Sole Traders (complete parts 2,3,4,5)

#### Part 1 - Business | Company | Trust

Trading Name .....

Legal Entity (if different) ..... ACN ..... ABN .....

Date Business Commenced .....

Business Address .....

Postal Address .....

Telephone (Bus) ..... Mobile ..... Facsimile ..... Email .....

#### Part 2 - Partnership & Sole Traders

Mr|Mrs|Miss|Ms ..... Given Name/s ..... Family Name .....

Current Residential Address .....

#### Details of Directors, Properties, Trustees, Sole Traders

Full Name	Residential Address	Date of Birth
.....	.....	.....
.....	.....	.....
.....	.....	.....

Has the applicant or anyone associated with the applicant been:

Bankrupt or used "Part X" of the Bankruptcy Act?  YES  NO

#### Preferred Method of Receiving Invoices & Statements

Post  Email .....

Invoices & Statements .....

Accounts Payable Contact ..... Phone .....

Fax ..... Email .....

Accountant's Email Address .....

Purchase Order Number Required?  YES  NO

#### Part 3 - Trade References

Reference Name	Phone	Account No.
1 .....	.....	.....
2 .....	.....	.....
3 .....	.....	.....

#### Part 4 - Business

Premises  Owned  Rented  Lease

Order Value \$ ..... Monthly Credit Request \$ ..... Industry Type .....

**\*NB: The final credit limit or credit amount available to application is subject to ACP Pty Ltd determination.**

**Part 5**

1. In this application the term "Customer" means:

- (a) Any Sole Trader or Partnership or Company or Trust' referred to in Part 1 or 2 of this Application' and
- (b) Where the Customer is unincorporated each principal or partner of the Customer or in the case of a Trust the Trustee of the Trust.

2. Should this application be successful and an account is granted, the Customer agrees with ACP as follows:

- (a) to pay any amount due within the month following the month of Invoice;
- (b) to pay interest, at the current bank overdraft rate paid by ACP from time to time, calculated monthly on any amount not paid by the due date;
- (c) if any amount is not paid by the due date all amounts then owing by the Customer to ACP become immediately due and payable;
- (d) to pay to ACP all expenses of collection by ACP of overdue monies and enforcement of the contract on a sector and client basis.

3. The Customer agrees that ACP's General Terms and Conditions of Sale form part of the contract between the Customer and ACP and the contract does not include any terms or conditions varying or in addition to those General Terms and Conditions of Sale unless such terms and conditions have been expressly agreed in writing by ACP No prior correspondence, discussion or other terms and conditions form part of this contract unless stated in this contract.

3.1 Where any of the General Terms and Conditions of Sale is inconsistent with the terms and conditions contained in this application, then the terms and conditions of this application shall prevail to the extent of any inconsistency.

4. To secure its obligations under this contract the Customer hereby charges with payment of any moneys owed by it to ACP pursuant to this contract all the right, title, estate and interest which it now has or may in the future acquire in any freehold or leasehold property.

4.1 The Customer further agrees that if demand is made on it by ACP the Customer will immediately execute a mortgage in registrable form or other instrument of security, as required by ACP, and if the Customer fails to do so within a reasonable time of being so requested, the Customer irrevocably and by way of security appoints any secretary, director, manager, attorney or credit manager engaged by ACP from time to time to be its true and lawful attorney to execute and register such instruments.

5. The law of the state in which this credit application is lodged shall apply to the terms of this application and any proceedings in respect of or any cause of action arising out of this application shall at the option ACP be instituted, heard and determined in a court of competent jurisdiction in the capital city of that state and such court shall be deemed to possess territorial jurisdiction to hear and determine such proceedings.

6. The signatories to the application certify that they are authorised to sign this application on behalf of the Customer.

7. The Customer declares that if this application is successful and credit is granted then the credit is to be applied wholly or predominately for business or investment purposes.

8. The Customer acknowledges that it has received, read, understood and accepted ACP's General Terms and Conditions of Sale.

**PRIVACY ACT 1988 (As Amended):** ACP is subject to the Privacy Act (1988), the Australian Privacy Principles and the Credit Reporting Privacy Code. ACP has a privacy policy that may be located at [www.rocla.com.au](http://www.rocla.com.au). That policy sets out: (1) the information about the Customer that ACP collects and holds; (2) why ACP collect and hold it and for what purposes it is used, (3) how the Customer may access the personal information, seek any correction of the information, (4) how the Customer may complain about a failure of ACP to comply with the Privacy Act and the above Code, (5) how ACP will deal with the complaint and (6) information about credit reporting, including the credit reporting bodies we may disclose your credit information to. As set out in the ACP privacy policy, ACP is likely to provide the personal information contained within this credit application to a credit reporting body (Veda Advantage Ltd and/or Dun & Bradstreet (Australia) Pty Ltd and/or CreditorWatch Pty Ltd). The information and matters that are notified to a credit reporting body are set out in the ACP privacy policy and includes: information that identifies the Customer (for example, legal name, address, date of birth, driver's licence and contact details); trade reference details and information; payment defaults in relation to certain ACP debts; and, any serious credit infringements. The privacy policy also sets out the Customer's rights to access the information and make requests to credit reporting bodies not to use or disclose the personal information in certain circumstances.

Signature	Print Name	Job Title	Drivers Licence No.
1 .....			
2 .....			
3 .....			
4 .....			

Date ..... / ..... / ..... Note: If you do not understand this document you should seek independent advice.

**Part 6 - Office Use Only**

Sales Department Recommendation/Comment:

Expected Sales Per Month \$

Is a Major Contract Involved?  Yes  No Name of Principal .....

Other Comments .....

.....

.....

Manager Comment & Approval .....

.....

Approved to Total limit of \$ Date: \$.....

Recommended By:..... Date .....

**Part 7**

ACP Pty Limited ACN 091 618 781 ABN 63 091 618 781 A member of the **Fletcher Building Group**



Deed of Guarantee & Indemnity made this ..... day of ..... Year .....

BETWEEN:

(1) (Names & Addresses of Guarantors)

.....  
.....  
.....

(the "Guarantors")

(2) ACP Pty Limited ABN 63 091 618 781 ("ACP")

**RECITALS**

A. At the request of the Guarantor, ACP has agreed that it will, at its discretion provide credit and/or goods and services from time to time to:

..... (Company Name where customer is a company)

..... (Company ABN)

..... (Company Address)

(the "Debtor")

**Guarantor**

THE PARTIES AGREE AND DECLARE AS FOLLOWS:

**1. GUARANTEE**

**1.1 Guaranteed Moneys**

In consideration of ACP agreeing, at the request of the Guarantor, to provide or continue to provide credit and/or goods and services from time to time to or for the Debtor, the Guarantor unconditionally and irrevocably guarantees to ACP the due and punctual payment of:

- (a) all moneys due and payable or from time to time to become due and payable to ACP under or in connection with the provision of credit and/or goods and services;
- (b) all other moneys which the Debtor either alone or jointly with any other person now or from time to time is or becomes actually or contingently liable to pay to ACP under this Guarantee and any other agreement, security or negotiable or other instrument or as a result of any matter or thing; and
- (c) to avoid doubt, any GST that may be due and payable or from time to time become due and payable by ACP under or in connection with the provision of credit and/or goods and services. (the "Guaranteed Moneys").

**1.2 Result of Non Payment**

If the Debtor defaults in the due and punctual payment of the Guaranteed Moneys or in any part of them the Guarantor shall pay those moneys on demand to or as directed by ACP.

**1.3 Demand**

Any demand to be made upon the Guarantor or the Debtor shall be deemed to be duly made if in writing and signed for or on behalf of ACP by any secretary, director, manager, attorney, credit manager, other duly

**1.4 Continuing Guarantee**

This Guarantee is a continuing security for the whole of the Guaranteed Moneys and all other money payable under this Guarantee notwithstanding any settlement of account, intervening payment or anything else, until the Guaranteed Moneys and all other moneys payable under this Guarantee have been paid in full.

**2. GUARANTOR'S OBLIGATIONS**

**2.1 Principal Obligations**

The Guarantor's obligations:

- (a) are principal obligations and not ancillary or collateral to any other obligation; and
- (b) may be enforced against the Guarantor without ACP being required to exhaust any remedy it may have against the Debtor or to enforce any security it may hold with respect to the Guaranteed Moneys.

**2.2 Obligations Absolute and Unconditional**

The liability of the Guarantor is absolute and unconditional and is not affected by anything which, but for this provision might operate to exonerate it from any of its obligations including, without limitation, anyone or more of the following (whether occurring with or without the consent of any person):

- (a) the grant to the Debtor, the Guarantor or any other person at any time, waiver or other indulgence or concession or any whole or partial discharge or release of the Debtor, the Guarantor or any other person;
- (b) any transaction or arrangement that may take place between ACP and the Debtor, the Guarantor or any other person;
- (c) the bankruptcy, winding up, liquidation, becoming an insolvent under administration (in terms of the Corporation Law), the appointment of an administrator to or the death of, the Debtor, the Guarantor or any other person;
- (d) the fact that ACP or any other person takes or fails to take any other guarantee or security;
- (e) any increase in the credit limit set by ACP on the Debtor's account, including but not limited to where the Guarantor has not approved or been put on notice of that increase in credit limit;
- (f) the fact that ACP or any other person exercises or refrains from exercising any other guarantee or security or any of the rights, powers or remedies conferred on it by the law or by any agreement, or fails to recover, by exercise of any such rights, any moneys owing to ACP by the Debtor;
- (g) the variation (including a variation which increases the Guaranteed Moneys) replacement, extinguishment, loss, release, discharge, abandonment or transfer either in whole or in part of any agreement or document relating to the Guaranteed Moneys including any other guarantee or security now or in the future held by ACP from any person;
- (h) the obligations of the Debtor or the Guarantor or any other person under any agreement or document relating to the Guaranteed Moneys including any other guarantee or security, being or becoming wholly or partially illegal, void, voidable or unenforceable;
- (i) the failure by ACP to give notice the Guarantor of any default by the Debtor or any other person;
- (j) any legal limitation, disability, incapacity or other circumstance related to the Debtor, the Guarantor or any other person;
- (k) the fact that any person who was intended to be bound as Guarantor or surety in respect of the Guaranteed Moneys does not become bound or, having done so. Ceases to be bound; or
- (l) any laches, acquiescence, delay, acts, omissions or mistakes on the part of, or suffered by ACP or any other person, in relation to this Guarantee or any other guarantee, security, agreement, or negotiable instrument;
- (m) if the Debtor is a partnership any changes in membership of that partnership.

**3. PREFERENCE**

If ACP applies any amount against any of the Guaranteed Moneys, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to bankruptcy, winding up or the protection of creditors:

- (a) ACP's rights are to be reinstated and will be the same in respect of that amount, or in the relevant part of it, as if the application, or the payment or transaction giving rise to it, had not been made; and
- (b) the Guarantor shall immediately do anything (including the signing of the documents) required by ACP to restore to ACP any security or Guarantee to which it was entitled immediately before that application or the payment or transaction giving rise to it.

**4. SUSPENSION OF GUARANTOR'S RIGHTS**

**4.1 Suspension of rights**

Until the Guaranteed Moneys and other moneys payable under this Guarantee have been irrevocably paid and discharged in full, the Guarantor may not:

- (a) share in any security or guarantee held or money received by ACP in respect of the Guaranteed Moneys or stand in the place of ACP in respect of any such security or guarantee or right to receive money;
- (b) take any steps to enforce a right or claim against the Debtor in respect of any money paid by the Guarantor to ACP under this Guarantee; or
- (c) have or exercise any rights as surety in competition with ACP.

**4.2 Winding up or Bankruptcy of Debtor**

If the Debtor is wound up or bankrupted, the Guarantor irrevocably authorizes ACP (but without any obligation on the part of ACP) to:

- (a) prove for all moneys which the Guarantor has paid under the Guarantee; and
- (b) retain and carry to a suspense account and appropriate at ACP's discretion any dividends and other moneys received in respect of the Guaranteed Moneys, until the Guaranteed Moneys have been irrevocably paid and discharged in full.

**5. INDEMNITY**

**5.1 Indemnity in respect of Guaranteed Moneys**

For the consideration mentioned in Clause 1.1, the Guarantor unconditionally indemnifies ACP against any loss which ACP may suffer because of any of the following:

- (a) the Guaranteed Moneys, in whole or in part, are not recoverable from the Debtor or having been recovered are repaid and restored;
- (b) the Debtor fails to carry out its obligations under any agreement it has entered into with ACP.

**5.2 Payment under Indemnity**

The Guarantor shall pay to ACP on demand a sum equal to any loss in respect of which it indemnifies ACP under this clause, including any of the Guaranteed Moneys (or any of the monies which, if recoverable would have formed part of the Guaranteed Moneys) which are not or may not be recoverable.

**6. INTEREST ON OVERDUE AMOUNTS**

- (a) The Guarantor shall, on demand by ACP, pay interest on any of the Guaranteed Moneys which are due and payable by it and unpaid (including interest payable under this clause).
- (b) Interest under paragraph (a) above will accrue from day to day from the due date for payment up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the same rate and in the same currency as interest is required to be paid on the relevant amount of the Guaranteed Moneys.

**7. JOINT AND SEVERAL LIABILITY**

If two or more persons are the Guarantor:

- (a) references to the Guarantor are references to them separately and as well refer to any two or any more of them together;
- (b) the promises by them in this Guarantee bind all of them together as well as bind each of them separately;
- (c) the fact that one person is released from its promise does not mean that any other person is also released.

**8. NO SECURITY TO GUARANTOR**

The Guarantor has not taken, and shall not take, security from the Debtor for or in consideration of the Guarantor assuming its obligations or any part of them under this Guarantee.

**9. CHARGING CLAUSE**

**9.1** To further secure the Guaranteed Moneys the Guarantor hereby charges with payment of the Guaranteed Moneys all the right, title, estate and interest which it now has or may here after during the currency of the Guarantee acquire in any freehold or lease hold property.

**9.2** The Guarantor further agrees that if demand is made on it by ACP the Guarantor will immediately execute a mortgage in registerable form or other instrument of security, as required by ACP, and if it fails to do so within a reasonable time of being so requested, the Guarantor irrevocably and by way of security appoints any secretary, director, manager, attorney or credit manager engaged by ACP from time to time to be its true and lawful attorney to execute and register such instruments.

**10. COSTS**

The Guarantor indemnifies ACP against, and shall pay ACP on demand, the amount of all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and all fees or other duties or charges levied by any Government agency, in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of the Guarantee;
- (b) the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Guarantee; and (c) any amendment to, or any consent, approval, waiver, release or discharge of or under this Guarantee.

**11. NOTICES**

**11.1 Method of Giving Notices**

A notice, consent, approval or other communication (each a "Notice") under this Guarantee shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered; or
- (b) sent by pre-paid mail; or to that person's address.

**11.2 Time of Receipt**

A notice given to a person in accordance with this clause is treated as having been given and received on the day of actual delivery.

**11.3 Address for Notices**

For the purpose of this clause, a person (the "sender") may take the address of another person (the "recipient") to be:

- (a) the address given in this Guarantee; or

**12. LAW AND JURISDICTION**

The law of the state in which this Guarantee is lodged shall apply to the terms of this Guarantee and any proceedings in respect of or any cause of action arising out of this Guarantee shall at the option of ACP be instituted, heard and determined in a court of competent jurisdiction in the Capital City of that State and such court shall be deemed to possess territorial jurisdiction to hear and determine such proceedings.

**13. PRIVACY ACT**

ACP is subject to the Privacy Act (1988), the Australian Privacy Principles and the Credit Reporting Privacy Code. ACP has a privacy policy that may be located on its website at www.rocla.com.au. That policy sets out: (1) the personal information about the Guarantor that ACP collects and holds; (2) why ACP collect and hold it and for what purposes it is used, (3) how the Guarantor may access the personal information, seek any correction of the information, (4) how the Guarantor may complain about a failure of ACP to comply with the Privacy Act and the above Code, (5) how ACP will deal with the complaint and (6) information about credit reporting, including the credit reporting bodies we may disclose your credit information to. As set out in the ACP privacy policy, ACP is likely to provide the personal information contained within this credit application to a credit reporting body (Veda Advantage Ltd and/or Dun & Bradstreet (Australia) Pty Ltd and/or CreditorWatch Pty Ltd). The information and matters that are notified to a credit reporting body are set out in the ACP privacy policy and includes: information that identifies the Guarantor (for example, legal name, address, date of birth, driver's licence and contact details); payment defaults in relation to certain ACP debts; and, any serious credit infringements. The privacy policy also sets out the Guarantor's rights to access the information and make requests to credit reporting bodies not to use or disclose the personal information in certain circumstances.

**14. TRUSTEE PROVISIONS**

**14.1** The Guarantor does not execute this Guarantee as trustee of any trust unless it has told ACP about that trust in writing before this Guarantee was signed.

**14.2** If the Guarantor enters into this Guarantee as trustee of a trust after advising ACP of this fact in accordance with clause 14.1 then the Guarantor:

- (a) is liable both personally and in its capacity as trustee;
- (b) gives ACP an assurance that:
  - (i) the Guarantor has power and authority as trustee of the trust to enter into this Guarantee and is doing so for a proper purpose;
  - (ii) the Guarantor is doing so, and is entitled to do so in a way that permits

**15. GENERAL**

**15.1 Assignment**

ACP may assign or transfer all or any part of its rights or obligations under this Guarantee without the consent of the Guarantor.

**15.2 ACP's Statement Conclusive**

Is conclusive in the absence of manifest error.

**15.3 Execution**

This Guarantee is binding on the Guarantor whether or not it is executed by ACP or any other person or body corporate named as Guarantor.

**15.4 Attorneys**

Each attorney who executes this Guarantee on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under the authority of which the attorney executes this Guarantee.

The GUARANTOR acknowledges that ACP has advised it to seek independent legal advice as to the effect of the provisions of the Guarantee, prior to execution of this Guarantee.

**1. Signed By**

(Signature) ..... Date ..... / ..... / .....

(Print Name) .....

Guarantor

Witness Name ..... Date ..... / ..... / .....

Address .....

Signature .....

**2. Signed By**

(Signature) ..... Date ..... / ..... / .....

(Print Name) .....

Guarantor

Witness Name ..... Date ..... / ..... / .....

Address .....

Signature .....

**3. Signed By**

(Signature) ..... Date ..... / ..... / .....

(Print Name) .....

Guarantor

Witness Name ..... Date ..... / ..... / .....

Address .....

Signature .....

**4. Signed By**

(Signature) ..... Date ..... / ..... / .....

(Print Name) .....

Guarantor

Witness Name ..... Date ..... / ..... / .....

Address .....

Signature .....

# AUSTRALIAN CONSTRUCTION PRODUCTS GENERAL TERMS AND CONDITIONS

## 1. INTERPRETATION

"Customer" shall mean the Sole Trader, Partnership, Company or Trustee to whom the product/s are supplied including that entity's employees, contractors, partners and/or agents.

"parties" shall mean ACP and the Customer.

"product" shall mean any road barrier, road barrier related product, or any other item whatsoever supplied by ACP to the Customer.

"ACP" shall mean Australian Construction Products Pty Ltd ACN 091 618 781 including its employees, contractors, partners and/or agents.

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

"PPS register" means the Personal Property Securities Register;

"purchase money security interest", "security interest" and "verification statement" all have the meanings given by the PPSA.

## 2. CONTRACT

These general terms and conditions of sale form the contract between the Customer and ACP and the contract does not include any terms or conditions varying or in addition to these general terms and conditions of sale unless such terms and conditions have been expressly agreed in writing by ACP. No prior correspondence, discussion or other terms and conditions form part of this contract unless stated in this contract.

## 3. CANCELLATION

(1) The Customer may only cancel this contract with ACP's consent and only on the basis that the Customer meets all loss, damage, cost or expense, including loss of profits, incurred by ACP as a result of the cancellation.

(2) ACP may suspend delivery, cease manufacture or cancel the contract, if the Customer at any time:

(a) breaches any terms of the contract or any other contract with ACP;

(b) commits an act of bankruptcy, resolves to or goes into liquidation, has a receiver or manager appointed, enters into voluntary administration or enters into a scheme of arrangement or other composition with its creditors or otherwise becomes insolvent and unable to pay its debts; or

(c) refuses or neglects to take delivery of the products.

## 4. PRICE VARIATION

(1) Unless otherwise stated in this contract ACP may vary the price stated in the contract to reflect any change in costs, taxes or duties incurred by ACP after the date of this contract.

(2) Where a list price applies to products all prices listed:

(a) are subject to alteration without notice;

(b) are applicable to all deliveries on or after the effective date of any alteration;

(c) do not include tax or other government impost unless specifically stated.

## 5. VARIATIONS TO SCOPE OF CONTRACT

The price is based upon:

(a) the scope of the work as detailed in the information provided by the Customer to ACP

for the purpose of this contract including, where applicable, plans, specifications (including standards and finish), schedules, and nominated quantities; and

(b) delivery arrangements in accordance with clause 8 and any variations to the scope of the work or delivery arrangements shall be a variation of the contract entitling ACP to vary the price stated.

## 6. SPECIFICATIONS

(1) Where ACP manufactures or supplies products according to the Customer's specifications:

(a) ACP does not warrant the suitability or performance of the product; and

(b) the Customer shall provide to ACP accurate information sufficient to enable ACP to provide the products specified and the Customer warrants to ACP that the information and any products to be manufactured by ACP under the contract do not breach any copyright, registered design, patent or other right of any third party and the Customer shall indemnify ACP in relation to any such breach.

(2) Unless otherwise stated in this contract the products shall be in conformity with a standard determined by ACP.

## 7. PAYMENT

(1) Time for payment of the amount due to ACP shall be of the essence in this contract and the amount due shall include the price, any variations to the price and any additional charges which ACP is entitled to make.

(2) Subject to clauses 7(3), 7(4), 7(5) and 7(6), the Customer shall pay the amount due in accordance with the credit arrangements agreed by ACP.

(3) Where a credit arrangement has been made, payment for all the products supplied will become immediately due and payable, regardless of the credit arrangement, in the event any of the following occur:

(a) an amount due remains unpaid as at the due date;

(b) the Customer enters either Bankruptcy, Part X, Receivership, Voluntary Administration or Liquidation;

(c) a meeting of the Customer's creditors is called.

(4) Where no credit arrangements have been previously agreed by ACP, but credit has been agreed by ACP as a condition of this particular contract, the Customer shall pay the amount due within the month following the month of invoice.

(5) Where no credit arrangements have been agreed by ACP and the products are delivered within the Commonwealth of Australia, the Customer shall pay the amount due before the first delivery of the products.

(6) Where the products are to be delivered outside of the Commonwealth of Australia:

(a) terms of payment (unless otherwise agreed in writing) shall be by means of irrevocable letter of credit established in ACP' name with a bank of its nomination;

(b) ACP shall be entitled to payment in full for the products covered by shipping documents, consisting of proper bills of lading, invoices and, in the case of C.I.F sales, negotiable insurance certificates, or a certificate of manufacture if the sale is made on such basis, upon ACP tendering those documents to the Customer or the Customer's authorised agent;

(c) If the products are ready for shipment but the Customer is unable for any reason to accept delivery or ACP is unable to obtain proper shipping documents for a period of 30 days because of a lack of transportation, non-insurability of the shipment or government regulations (Australia or any other country) ACP may terminate this agreement or become entitled to payment upon tender to the Customer, or its authorised agent, of the certificate of manufacture.

(7) The Customer shall pay interest, at the current bank overdraft rate paid by ACP from time to time, calculated monthly on any amount not paid by the due date.

(8) The Customer shall pay all ACP's expenses of collection of overdue monies and enforcement of the contract on a full indemnity basis. Such expenses shall include, without limitation, collection fees and/or commission, agent's fees and legal fees.

(9) Where price is stated on a volumetric basis, payment will be based on measurement of the volume of product as loaded by ACP for delivery.

## 8. ORDERS AND DELIVERY

- (1) All orders for products are subject to acceptance from ACP.
- (2) Acceptance of orders involving import and export conditions shall be subject to ACP being furnished with evidence satisfactory to ACP that all requisite licences and permits have been granted and that all other Government prerequisites (both Australian and countries of destination) have been complied with. If such evidence is not furnished within 30 days from the date of acceptance of an order, the order shall be subject to cancellation by ACP.
- (3) Subject to clause 8(4) delivery shall be on reasonable notice from the Customer to ACP and the Customer shall not be relieved from any obligation to accept or pay for products by reason of any delay in delivery.
- (4) Where this contract includes a Delivery Schedule delivery shall be in accordance with the dates and other information contained in such Schedule.
- (5) ACP shall not be liable for delay in delivery arising from any cause whatsoever.
- (6) Where the Customer refuses or denies delivery, the Customer's obligation to pay for products, as set out in clause 7, remains unchanged. The Customer shall also pay any additional storage, freight, holding or handling charges incurred by ACP.
- (7) ACP reserves the right to deliver by instalments and failure to deliver any instalment shall not entitle the Customer to terminate the contract.
- (8) Deliveries are subject to suitable access, firm standing, storage, unloading and maneuvering space, as determined by ACP. ACP shall not be liable for, and the Customer shall indemnify ACP against any claims for damage caused to access ways, storage areas, plant, equipment or works during delivery.
- (9) Additional costs incurred by ACP in delivering or unloading the products;
  - (a) outside the hours of 7.30a.m. to 4.00p.m. weekdays (excluding public holidays);
  - (b) due to delays at the site or an unsuitable site
- (10) The Customer warrants that its receivable facilities and equipment are suitable for deliveries and meet all relevant standards, laws and regulations. The Customer hereby indemnifies ACP against any breach of such standards, laws or regulations during delivery, and against any damage or loss caused by leakage, spillage, breakage or contamination during or caused by delivery.

## 9. TITLE & PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

- (1) Whilst the risk in the products passes on delivery, legal and equitable title in the products will not pass to the Customer until payment in full for all debts accrued or owed by the Customer to ACP has been received by ACP in cleared funds.
- (2) Until ACP receives payment for the products in full, ACP reserves the following rights:
  - (a) the legal and equitable ownership of the products;
  - (b) the right to enter upon the Customer's premises and retake possession of the products;
  - (c) the right to keep or resell any products repossessed under clause 9.2(b); and
  - (d) any other rights ACP may have at law or under the PPSA.
- (3) Until ACP receives payment for the products in full, the Customer acknowledges that ACP has a purchase money security interest which attaches over the products and their proceeds and a security interest in relation to other amounts owed by the Customer to ACP.
- (4) For the avoidance of doubt, ACP may register its purchase money security interest and security interest on the PPS register established by the PPSA and, where necessary, amend the registration.
- (5) The Customer undertakes to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which ACP asks and consider necessary for the purposes of:
  - (a) ensuring that a security interest created under this agreement is enforceable, perfected and otherwise effective;
  - (b) enabling ACP to apply for any registration, or give any notification, in connection with a security interest created under this agreement so that the security interest has the priority required by ACP, including anything ACP asks the Customer to do in connection with the PPSA.
- (6) The Customer must not grant any other person a security interest over the products or their proceeds.
- (7) To the extent permitted by law, if the PPSA applies, the Customer irrevocably waives its rights it may have to:
  - (a) receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
  - (b) redeem the products under section 142 of the PPSA;
  - (c) reinstate the contract under section 143 of the PPSA;
  - (d) receive a verification statement as defined in the PPSA
- (8) Nothing in this clause 9 prevents ACP from taking action against the Customer for the purchase price of the products.
- (9) Until title in the products passes to the Customer, and without prejudice to ACP's rights under the PPSA:
  - (a) the Customer may use the products with or in other items on condition that the final commodity will be ACP's property as a security for full payment for the products;
  - (b) until the Customer uses or sells the products, the Customer must store them separately so that they are clearly identifiable as ACP's property;
  - (c) the Customer may fix the products into the articles belonging to any other person on condition that the resulting item is owned in common by ACP and that other person.
  - (d) the Customer may sell the products in the ordinary course of the Customer's business on the following conditions:
    - (i) the Customer makes the sale as Australian Construction Products' agent and bailee;
    - (ii) any proceeds of sale received by the Customer are held by the Customer on trust for ACP to the extent that the proceeds of sale relate to ACP's products which are incorporated into the final commodity or item;
    - (iii) the Customer must keep ACP's proportion of the proceeds of sale separately and so that they are clearly identifiable as ACP's;
    - (iv) if the Customer has not received the proceeds of sale, it will, if ACP requires, transfer to ACP the Customer's rights in respect of the sale price.
- (10) In addition to being liable to pay all ACP's enforcement expenses as set out in clause 7(8) the Customer agrees to be liable for ACP's costs of our registration of its purchase money security interest and security interest on the PPS register.

## 10. DEFECTS

- (1) The Customer shall ensure it has an authorised representative at the delivery site who shall check prior to unloading that the information shown on the delivery docket corresponds with the Customer's order. Unless otherwise noted on the delivery docket, the signature of the Customer's representative on the delivery docket shall represent acknowledgment by the Customer that the products comply with its order and have been supplied in accordance with this contract.
- (2) Notice of any defects shall be given to ACP in writing on the delivery docket/receipt/manifest signed by the Customer and immediately returned to ACP. Where the point of delivery or collection is unattended, the Customer shall give notice in writing to ACP, within 24 hours from the time of delivery or collection and prior to installation, of any defects in the products.
- (3) If notice in accordance with clauses 10(1) or 10(2) is not given, the products shall be deemed to be in good order and condition and in accordance with the contract and the Customer shall accept the products accordingly.
- (4) ACP shall have the right to inspect on site any products notified by the Customer as being defective and until such inspection is completed the product shall not be installed.

## **11. TESTING AND REPORTING**

(1) Where the Customer requires the products to be subject to special testing or inspection the Customer shall pay all costs of and associated with such testing or inspection.

(2) Any inspector or other person attending ACP's premises on behalf of the Customer shall be authorised in writing by the Customer.

(3) The Customer shall provide ACP with copies of all authorisations, test results, measurements and reports prepared by or for the Customer in relation to ACP's products.

## **12. LIMITATION OF LIABILITY**

(1) If a product is defective and the Customer advises ACP of that defect in accordance with clause 10(1) or 10(2) ACP shall repair or resupply the product, but ACP shall not be liable for the removal of any defective products or for the re-installation of any products or for any consequential losses or loss of profits.

(2) ACP shall not be liable for any defect, loss, damage or injury howsoever arising by reason of:

(a) a failure to use the products in a manner other than what is normally expected to be done with or in relation to the products;

(b) any delay in delivery;

(c) a failure to comply with any instructions or warnings with respect to doing anything with or in relation to the products.

(3) Any design or description of use, capacity, durability, colour, manner of installation, information, detail contained in drawings, data sheets, technical brochures or other documents provided by ACP are given as a general guide only and the Customer hereby acknowledges that it has satisfied itself as to the suitability of the products for the Customer's particular purpose, use or application and ACP shall not be liable in these respects.

(4) Other than expressly provided in this contract ACP provides no other warranty to the Customer in relation to the products and this contract comprises the whole agreement between the parties.

(5) The Competition and Consumer Act 2010 ("the Act") enables ACP to limit its liability for breach of certain conditions and warranties implied by the Act. To the fullest extent permitted by the Act and other similar legislation the liability of ACP for a breach of a condition or warranty is limited to one of the following (selected at the option of ACP):

(a) the replacement of the products; or

(b) the cost of the replacement of the products; or

(c) the repair of the products; or

(d) the cost of the repair of the products.

## **13. RISK**

Risk in the products shall pass to the Customer upon delivery and, in the event of a site being unattended, the delivery docket/manifest signed by the cartage contractor shall be prima facie evidence of delivery of the products.

## **14. AMENDMENTS AND WAIVER**

ACP shall not be taken to have agreed to any amendment or waiver of any provision of these terms and conditions or of the contract unless the amendment or waiver shall be in writing signed by ACP. No terms and conditions referred by the Customer after the date of this contract shall form part of this contract unless expressly agreed in writing by ACP.

## **15. GOVERNING LAW**

The contract is governed by the law for the time being of the State from which the products are to be supplied.

## **16. FORCE MAJEURE**

ACP shall not be liable for any delay, loss, damage or injury arising by reason of any event beyond its control and without limiting the generality of the foregoing such events include industrial disputes, the unavailability of equipment or materials, fire, flood, machinery breakdown, civil disturbance, acts of God or government action.

## **17. SUBJECT TO STATUTE**

The contract is subject to the provisions of any statute applicable to it and which may not be varied by the terms of the contract. If any provision of the contract is void or unenforceable that provision shall be severed and the remaining provisions shall continue with full force and effect.

## **18. NOTICES**

All notices given under or in connection with this contract shall be in writing and given or delivered to the recipient at its address specified in this contract or at its registered office or principal place of business.

## **19. CONFIDENTIAL INFORMATION**

If at any time ACP discloses to the Customer or the Customer becomes aware of confidential information of ACP including confidential information relating to products, material, procedures, tests or equipment, the Customer shall not use the information for any purpose not approved by ACP and shall not disclose that confidential information to any other person unless expressly agreed in writing by ACP.

## **20. ASSIGNMENT**

This contract is assignable by the Customer in whole or in part only with ACP's consent.

## **21. PRIVACY ACT 1988 (AS AMENDED)**

ACP is subject to the Privacy Act (1988), the Australian Privacy Principles and the Credit Reporting Privacy Code. ACP has a privacy policy that may be located at. That policy sets out: (1) the information about the Customer that ACP collects and holds; (2) why ACP collect and hold it and for what purposes it is used, (3) how the Customer may access the personal information, seek any correction of the information, (4) how the Customer may complain about a failure of ACP to comply with the Privacy Act and the above Code, (5) how ACP will deal with the complaint and (6) information about credit reporting, including the credit reporting bodies we may disclose your credit information to. As set out in the ACP privacy policy, ACP is likely to provide the personal information contained within this credit application to a credit reporting body (Veda Advantage Information Services & Solutions Ltd and/or Dun & Bradstreet (Australia) Pty Ltd and/or CreditorWatch Pty Ltd). The information and matters that are notified to a credit reporting body are set out in the ACP privacy policy and includes: information that identifies the Customer (for example, legal name, address, date of birth, driver's licence and contact details); trade reference details and information; payment defaults in relation to certain ACP debts; and, any serious credit infringements. The privacy policy also sets out the Customer's rights to access the information and make requests to credit reporting bodies not to use or disclose the personal information in certain circumstances.