



Kennedy Haulage Pty Ltd ABN 12 004 504 143
 Trading As Driffield Quarry, Traralgon Mixed Concrete, and Numix Concrete
GCA Concrete Pty Ltd ABN 12 166 460 948
LV Blue Metal Pty Ltd ABN 41 005 909 704 Trading As Moe Mix Concrete
PO Box 3051 Gippsland Mail Centre Victoria 3841
Phone: 03 5134 2914 Fax: 03 5133 7616
Email: office@kennedyhaulage.com.au

<u>Credit Application</u>		
Name of Applicant:		
Trading Name:		
Trust Name (if any):		
Business Address:		Post Code: _____
Postal Address:		Post Code: _____
Contact Name:	Business Phone:	
Business Fax:	Mobile Phone:	
Email:	Date Commenced Business:	
ACN:	Nature of Business:	
ABN:	New or Existing Business:	
Business Premises: <input type="checkbox"/> Owned <input type="checkbox"/> Leased <input type="checkbox"/> Mortgaged	Bank: Branch: Account Number:	
Estimate of monthly credit required: \$ _____	Order No required: <input type="checkbox"/> Yes <input type="checkbox"/> No	
(1) <u>Details of Proprietor/ Partner/ Director</u>		Full Name:
Residential Address:		
Phone No:	Date of Birth:	Drivers Licence No:
(2) <u>Details of Proprietor/ Partner/Director</u>		Full Name:
Residential Address:		
Phone No:	Date of Birth:	Drivers Licence No:
(3) <u>Details of Proprietor/ Partner/Director</u>		Full Name:
Residential Address:		
Phone No:	Date of Birth:	Drivers Licence No:
Date Application Completed: _____ / _____ / _____		

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Trade References – (4) NB all business names & contact details must be filled in to avoid delay in processing	
(1) Trade Reference	
Business Name:	Address:
Phone No:	Fax No:
(2) Trade Reference	
Business Name:	Address:
Phone No:	Fax No:
(3) Trade Reference	
Business Name:	Address:
Phone No:	Fax No:
(4) Trade Reference	
Business Name:	Address:
Phone No:	Fax No:

Please seek independent advice if you do not understand this Credit Application or the terms and conditions that apply to it.

I/We declare and affirm that:-

- (a) I/We have read and understood the terms of this credit application and confirm that the attached terms and conditions (“terms”) will apply to any credit provided by the Seller to me/us; and
- (b) The information supplied by us, the applicant, in this application is true and correct and acknowledge the Seller and its related entities (if applicable) will use this information for the purpose of assessing my/our application for commercial credit;
- (c) The Applicant is duly authorised to make this application; and
- (d) An Applicant which is a company agrees that it must procure the execution of a guarantee (in the form attached) by a director and each director of the Applicant hereby agrees to provide the guarantee. If the Applicant is a Company, a copy of its Constitution must be supplied upon request.

SIGNED BY ALL DIRECTORS, PARTNERS, OR SOLE TRADER

Full Name.....	Signature.....	Circle: Director, Partner or Sole Trader
Full Name.....	Signature.....	Circle: Director, Partner or Sole Trader
Full Name.....	Signature.....	Circle: Director, Partner or Sole Trader

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1. Definitions

- 1.1 "Seller" means any one or more of Kennedy Haulage Pty Ltd ABN 12 004 504 143, GCA Concrete Pty Ltd ABN 12 166 460 948, and LV Blue Metal Pty Ltd ABN 41 005 909 704 and includes their successors and permitted assigns.
- 1.2 "Customer" means the applicant under this Application for Credit or the person/ entity purchasing the Goods as specified in any invoice, order or other document, and if more than one Customer it is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods supplied by the Seller to the Customer at the Customer's request from time to time (where required the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the agreed Price payable for the Goods in accordance with clause 4 of these terms.

2. Acceptance

- 2.1 The Customer accepts and is immediately bound, jointly and severally, by these terms if the Customer places an order for or accepts delivery of Goods from the Seller.

3. Change in Control

- 3.1 The Customer shall give the Seller 14 days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes of name, address, contact phone or fax number/s, or business practice). The Customer is liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause 3.

4. Price and Payment

- 4.1 In the Seller's sole discretion, the Price shall be either:
- (a) as specified on any invoice provided by the Seller to the Customer;
 - (b) the Price as at the date of delivery of the Goods according to the Seller's current price list; or
 - (c) the Seller's quoted price which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days;
- and

All prices are based on minimum deliveries of 12 tonnes unless otherwise noted in any additional special conditions specified on the order; and
No guarantee of availability of material is made prior to the Seller providing confirmation or order made by the Customer.

- 4.2 All prices quoted are net per tonne, based on the acceptance of weights from the consigning quarry or depot and are based on:
- (a) conditions as at the date of tender;
 - (b) current award wages; and
 - (c) current road, rail and shipping rates.
- 4.3 The Seller may make a variation to the Price as set out in clause 4.2 for:
- (a) any increase or decrease in Basic Wage and/or Economic Loading and/or Total Wage and/or Minimum Wage and/or Quarries & (State) Award, Margins and Conditions at the rate of 1 cent per tonne for each cumulative 20 cents weekly; and
 - (b) any actual increases or decreases in Road, Rail or Shipping Rates or equivalent surcharge on overall tonnage.
- 4.4 The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested.
- 4.5 The Seller may, in its absolute discretion, require the Customer pay a non-refundable deposit.
- 4.6 Time for payment for the Goods is of the essence, the Price will be payable by the Customer on the date/s specified by the Seller, which may be:
- (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with the Seller's payment schedule;
 - (d) thirty (30) days following the end of the month in which a statement is posted to the Customer's address;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice.
- 4.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card or by any other method as agreed to between the Customer and the Seller.

- 4.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Risk

- 5.1 Risk in the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. These terms are taken to be sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

6. Delivery of Goods

- 6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer (or their nominated carrier) takes possession of the Goods at the Seller's address; or
 - (b) the Seller (or their nominated carrier) delivers the Goods to the Customer's nominated address.
- 6.2 At the Seller's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price. Payments shall unless agreed in writing be made within thirty (30) days from the date of delivery. Delivery shall be by the shortest access route available at the time of the quotation and the Seller reserves the right to charge for any additional costs incurred by it in completing such delivery.
- 6.3 Unless otherwise agreed, Delivery shall be at the kerb alignment and the Seller shall not be bound to deliver on site and any entry is at the sole discretion of the Seller, its servants, agents or contractors. In the event of such entry, the Seller, its servants, agents, and contractors shall not be liable in any way or manner whatsoever for any loss or damage or injury caused to or sustained by any person or persons and arising out of and in any way connected with such entry or other delivery and the Seller, its servants, agents and contractors shall at all times be indemnified and kept indemnified thereof.
- 6.4 The Customer must take delivery by receipt or collection of the Goods when the Goods are tendered for delivery. If Customer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.5 The Seller may, in its discretion, deliver the Goods in separate installments. Each separate installment shall be invoiced and paid in accordance with these terms.
- 6.6 Any delivery time given by the Seller to the Customer is an estimate only. The Seller shall not be liable for any delay in the delivery of Goods occasioned by an Act of God, war, fire, strike, lock out, industrial dispute, flood, tempest, failure or inability to obtain or provide licenses or transport or labour or materials or equipment. In any of the foregoing circumstances, the Seller is entitled to suspend for such period as it may think fit such delivery of the carrying out of such work or at its option terminate any such contract and shall not be liable in any way or manner whatsoever by any reason for any such suspension or termination.

7. Title

- 7.1 The Seller and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Seller all amounts owing to the Seller; and
 - (b) the Customer has met all of its other obligations to the Seller.
- 7.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured or cleared.
- 7.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer, that the Customer is only a bailee of the Goods and must return the Goods to the Seller on request and the remainder of this clause 7.3 shall apply;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Seller and must

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- pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
- (e) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;
- (f) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller;
- (g) the Seller may recover possession of any Goods in transit whether or not delivery has occurred; and
- (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 8. Security and Charge**
- 8.1 In consideration of the Seller agreeing to supply the Goods to the Customer, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms including, but not limited to, the payment of any money.
- 8.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause 8.
- 8.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 8 including, but not limited to, signing any document on the Customer's behalf.
- 9. Personal Property Securities Act 2009 ("PPSA")**
- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms in writing, the Customer acknowledges and agrees that these terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Seller to the Customer.
- 9.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Seller;
- (e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 The Seller and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms.
- 9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by the Seller, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Customer must unconditionally ratify any actions taken by the Seller pursuant to this clause 9.
- 9.9 Subject to any express provisions to the contrary nothing in these terms is intended to have the effect of contracting out of any of the provisions the PPSA.
- 10. Defects, Warranties and Returns**
- 10.1 The Customer must inspect the Goods on delivery and must on delivery notify the Seller in writing of any defect/damage, shortage in quantity, or failure to comply with the description by endorsing the Seller's copy of the delivery docket relating to such delivery and unless so endorsed the Seller will not be liable in respect of any such alleged defect. Any claim relating to the quality of any goods so delivered must be in writing and lodged with the Seller within five (5) days of any such delivery and if not so lodged the Seller will not be liable in respect thereof. Notwithstanding any such claim/s, all monies due to the Seller with respect of the Goods supplied shall be paid immediately on the due date for payment.
- 10.2 Under applicable law, including without limitation the *Competition and Consumer Act 2010* (Cth) ("CCA"), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms ("Non-Excluded Guarantees").
- 10.3 The Seller acknowledges that nothing in these terms purports to modify or exclude the Non-Excluded Guarantees.
- 10.4 Except as expressly set out in these terms or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Customer has paid for the Goods.
- 10.6 If the Customer is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty provided to the Customer by the Seller at the Seller's sole discretion;
- (b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods; or
- (c) otherwise negated absolutely.
- 10.7 Subject to this clause 10, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 10.1;
- (b) the Seller has agreed that the Goods are defective;
- (c) the Goods are returned within a reasonable time at the Customer's cost; and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 10.8 Notwithstanding clauses 10.1 to 10.7, but subject to the CCA, the Seller shall not be liable for any defect/damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonable prudent user of the Goods;
- (d) the Customer failing to follow any instructions or guidelines provided by the Seller; and/or
- (e) fair wear and tear, any accident, or act of God.
- 10.9 The Seller may, in its absolute discretion, accept non-defective Goods for return in which case the Seller may require the Customer to pay handling fees of up to 10% of the value of the returned Goods plus any freight costs.

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- 10.10 If the services requested by the Customer involve any works not performed by the Seller, then the Seller shall not be liable in any way or manner whatsoever for any deficiency, delay or default in any such work or services.
- 10.11 Notwithstanding anything contained in this clause, if the Seller is required by a law to accept a return then the Seller will only accept a return only as imposed by that law.
- 11. Default and Consequences of Default**
- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 2% per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate).
- 11.2 If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 11.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms then the Seller may suspend or terminate the supply of Goods to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause. The Seller shall be entitled in the event of suspension or termination to forthwith receive all monies due to it under for goods delivered or work and service performed up to the date of such suspension or termination.
- 11.4 Without prejudice to the Seller's other remedies at law, the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
 - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 11.5 The liability to the Seller for breach of any condition or warranty express or implied in any contract shall not exceed in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods of the payment of the cost of having the goods repaired, in the case of services, the supplying of the services against or the payment of the cost of having services supplied again.
- 12. Cancellation**
- 12.1 The Seller may cancel any contract to which these terms apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any money paid by the Customer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 If the Customer cancels delivery of Goods, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 12.3 Cancellation of custom orders or for items not contained on the stocklist, will not be accepted once production has commenced, or an order has been placed by the Customer.
- 13. Privacy Act 1988**
- 13.1 The Customer agrees for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Seller.
- 13.2 The Customer agrees that the Seller may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an application by the Customer;
 - to notify other credit providers of a default by the Customer;
 - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 13.3 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit pursuant to section 18K(1)(h) Privacy Act 1988).
- 13.4 The Customer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as shall be agreed between the Customer and Seller or required by law from time to time):
- the provision of Goods;
 - the marketing of Goods by the Seller, its agents or distributors;
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods;
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 13.5 The Seller may give information about the Customer to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Customer; or
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 13.6 The information given to the credit reporting agency may include:
- personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - details concerning the Customer's application for credit or commercial credit and the amount requested;
 - advice that the Seller is a current credit provider to the Customer;
 - advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - information that, in the opinion of the Seller, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once; and/or
 - that credit provided to the Customer by the Seller has been paid or otherwise discharged.
- 14. Unpaid Seller's Rights**
- 14.1 Where the Customer has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of any moneys owing to it by the Customer, the Seller shall have, until all moneys owing to the Seller are paid:
- a lien on the item; and
 - the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 14.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Seller having been obtained against the Customer.
- 15. General**
- 15.1 These terms and any contract to which they apply shall be governed by the laws of the state of Victoria and each party submits to the non-exclusive jurisdiction of the courts in the State of Victoria.

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- 15.2 A notice, demand, waiver, approval, communication or other document in connection with these terms shall be served to the address for that party as stated on the Application, unless otherwise advised in writing.
- 15.3 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 15.4 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 15.5 The Customer agrees that the Seller may amend these terms at any time. If the Seller makes a change to these terms, then that change will take effect from the date on which the Seller notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Seller to provide Goods to the Customer.
- 15.6 The failure by the Seller to enforce any provision of these terms shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. If any provision of these terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.7 Subject to clause 10, the Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or damages (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 15.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.9 The Seller may license all or any part of its rights and obligations without the Customer's consent.
- 15.10 These terms shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller.
- 15.11 These terms constitute the entire agreement between the parties and supersedes all prior negotiations, agreements or representations.

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TO: **Kennedy Haulage Pty Ltd ABN 12 004 504 143** ("the Seller")
GCA Concrete Pty Ltd ABN 12 166 460 948 ("the Seller")
LV Blue Metal Pty Ltd ABN 41 005 909 704 ("the Seller")
DEED OF GUARANTEE AND INDEMNITY ("Guarantee")

- A. The Guarantors listed below acknowledge that (*insert the Customer name*) ("Customer") has, at the request of the Guarantors, submitted an application to be supplied credit by the Seller ("Contract").
- B. The Guarantors acknowledge and agree that this Guarantee shall apply to the provision of credit to the Customer by the Seller, and that the Guarantee is enforceable by the Seller which has supplied credit to the Customer.

OPERATIVE PROVISIONS:

- 1 The Guarantor/s jointly and severally unconditionally guarantee the payment by the Customer to the Seller of all amounts due and owing by the Customer to the in respect of all credit extended by the Seller under the Contract, whether now or in the future and the compliance by the Customer of all obligations under the Contract (whether due now or in the future) and indemnify the Seller against any and all loss it may suffer if the Customer breaches its obligations under the Contract.
- 2 This Guarantee creates a principal obligation from the Guarantors to the Seller and it is in addition to any security which the Seller holds from the Customer. This Guarantee may be enforced without the Seller having to take any steps against the Customer or its security.
- 3 This Guarantee is not affected and is still enforceable notwithstanding: if any amount owing to the Seller by the Customer is not recoverable by the Seller for any reason at all; if the Seller does not comply with any law or any agreement with the Customer, if the Seller grants any time, release or other concession to the Customer or the Guarantors or any one or more of the Guarantors, if one or more of the Guarantors or any other party does not execute this Guarantee; in the event of death, incapacity, administration, bankruptcy or insolvency of the Customer or of any of the Guarantors; if a payment by the Customer or by any Guarantor to the Seller is set aside in bankruptcy, litigation or official management of the Customer or of any Guarantor; if a Guarantor ceases to be director of or be involved with the Customer or the status or structure of the Customer changes at all; if the Seller agrees to extend or increase, at any time any credit limit imposed on the Customer; or if any other thing occurs which could otherwise limit the effect of the Guarantee.
- 4 This Guarantee is a continuing guarantee and indemnity and is not wholly or partially discharged until all credit arrangements between the Seller and the Customer are ended, all amounts owing to the Seller by the Customer are paid, and all obligations of the Customer to the Seller are complied with in full.
- 5 If there are two or more Guarantors, their obligations are joint and several and none of them shall be discharged from their obligations under this Guarantee including if this Guarantee is not enforceable against one of them or one of them ceases to have liability, on death of any Guarantor, or if one of the Guarantor cannot perform their obligations under this Guarantor for any reason.

- 6 The Guarantors agree to waive all rights inconsistent with the terms of this Guarantee.
- 7 Each Guarantor hereby charges with payment of the moneys and the compliance with all obligations secured by this Guarantee all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future. Each Guarantor agrees that if demand is made upon him or her or it by the Seller, that Guarantor will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required by the Company and against the event that he, she or it fails to do so within a reasonable time from being so requested, that Guarantor hereby irrevocably and by way of security appoints any credit manager or solicitor engaged by the Company to be his or her true and lawfully attorney to execute and register such instrument. The Guarantor authorises the attorney appointed pursuant to this clause to enter into conflict transactions within the meaning of the *Powers of Attorney Act 1998*.
- 8 The Guarantors acknowledge having read the Contract, in particular clause 7 and agree that clause 6 of the Contract applies to this Guarantee without limitation and this Guarantee constitutes a security agreement and the Seller is entitled to register the security agreement pursuant to the *Personal Property Securities Act 2009* (Cth).
9. The Guarantors acknowledge they have been given the opportunity to seek independent legal advice prior to entering into this Guarantee.
10. If the Customer is a trustee of a trust, the Guarantors warrant that the Customer has full authority as trustee to enter into agreements for the supply to it of products, goods or services, or both, on credit and this guarantee and the terms of this guarantee applies to the trust.
11. If a notice or a demand is given to one of the Guarantors it will mean it has been given to all of them.

Definitions

The following words have their corresponding meanings:
 "Seller" means any one or more of Kennedy Haulage Pty Ltd ACN 004504143, GCA Concrete Pty Ltd ACN 166460948, and LV Blue Metal Pty Ltd ACN 005909704 and includes its successors in title and permitted assigns.
 "Customer" means the Customer specified above and includes their successors and assigns.
 "Guarantee" means this Deed of Guarantee & Indemnity.
 "Guarantors" includes the heirs, executors, administrators and assignees of each Guarantor.

SIGNED AS A DEED on this _____ day of _____ 20_____

<p>SIGNED SEALED AND DELIVERED by the Guarantor) in the presence of:) Full name of Guarantor Address of Guarantor Witness – sign and print full name</p>	<p>SIGNED SEALED AND DELIVERED by the Guarantor) In the presence of:) Full name of Guarantor Address of Guarantor Witness – sign and print full name</p>
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