

# Credit Account Application **Mini-Crete Pty Ltd** ABN 12 143 670 777

25 Anvil St, Seven Hills, 2147, PO Box 7448, Wilberforce, 2756, Accts Phone: 02 4579 9699, Accts Fax:02 4579 8377

Email: accounts@minicrete.com.au

<b>Buyer Details ("the Buyer")</b>		
Type of Legal Entity (Tick): <input type="checkbox"/> Company <input type="checkbox"/> Partnership <input type="checkbox"/> Individual, Sole Trader <input type="checkbox"/> Trustee		
Buyer/Business Name:		ABN:
Business Trading Name:		
Business Address:		
Postal Address:		
Phone No:	Fax No:	Credit Limit Required: \$
Mobile:		Email:
<b>Trade References</b>		
1.	Phone Number:	
2.	Phone Number:	
3.	Phone Number:	
<b>Director/Partner/Sole Trader/Trustee Details:</b>		
	Name	Residential Address
1.		Drivers License No.
2.		
3.		
<b>Acceptance of terms &amp; conditions of sale ("Terms and Conditions") and Privacy Declaration</b>		
<p>I/we confirm that I/we have received, read and understood the Terms &amp; Conditions for Mini-Crete Pty Ltd . I/we accept and agree to be bound by these Terms &amp; Conditions and that they are the complete and exclusive statement of the agreement between the Buyer and Mini-Crete Pty Ltd, which supersedes any proposal or prior terms and conditions of sale, oral or written, and any other communication between the Buyer and Mini-Crete Pty Ltd relating to the subject matter of the Terms and Conditions. In the event of any inconsistency between the provisions of the Terms and Conditions and any other agreement between the Buyer and Mini-Crete Pty Ltd, the provisions of these Terms and Conditions will prevail. I/we declare that the information provided on this application is true and correct in every particular and that Mini-Crete Pty Ltd will determine in its absolute discretion whether or not to grant credit based on this completed application. Where credit is granted, payment of all amounts is due within the specified credit period.</p> <p>I/we being the person(s) named as the Buyer or, being the directors of the Buyer, authorise Mini-Crete Pty Ltd to make any enquiries (including obtaining a credit report) concerning my/our credit worthiness and to verify the accuracy of the information provided in this application and consent to any credit report concerning me/us being made available to Mini-Crete Pty Ltd for the purpose of assessing this application for credit and authorise Mini-Crete Pty Ltd to exchange or disclose information concerning my/our credit worthiness or this application to any person or source and acknowledge that all or some of this information may be disclosed to a credit reporting agency within the meaning of the <i>Privacy Act 1988</i> (Cth) as amended. I/we further authorise Mini-Crete Pty Ltd to make any periodic checks that it seems fit to perform. Signed by:</p>		
Director, name:	Signature:	on / /
Director, name:	Signature:	on / /
<b>Guarantee &amp; Indemnity</b>		
<p>The Guarantors jointly and severally:</p> <p>a) confirm that they have read and agree to be bound by the Terms and Conditions in respect of any payment obligations of the Buyer;</p> <p>b) guarantee payment to Mini-Crete Pty Ltd of all amounts which the Buyer owes or will owe to Mini-Crete Pty Ltd ;</p> <p>c) as a separate and independent liability, indemnify and hold harmless Mini-Crete Pty Ltd against all losses and expenses it may suffer or incur if the Buyer fails to comply with the obligations it owes to Mini-Crete Pty Ltd ; and</p> <p>d) acknowledge that Mini-Crete Pty Ltd may recover from a Guarantor any amount owing by the Buyer to Mini-Crete Pty Ltd and each waive any right to require Mini-Crete Pty Ltd to first commence proceedings against the Buyer in relation to any amount owing. Each Guarantor's liabilities under this guarantee and indemnity are not and will not be affected by anything which might release or exonerate or otherwise affect the Buyer or the Guarantor at law.</p>		
Guarantor		Guarantor
Signature: x	/ /	Signature: x / /
Guarantor		Guarantor
Name and Address:		Name and Address:
Witness		Witness
Signature: x	/ /	Signature: x / /
Witness		Witness
Name and Address:		Name and Address:

## Mini-Crete Pty Ltd ABN 12 143 670 777

### Terms & Conditions of Sale

#### 1. DEFINITIONS

- (1) **Buyer** means the entity to whom Goods are supplied by Mini-Crete Pty Ltd;
- (2) **Buyer's Representative** means the Buyer's employees, agents & contractors;
- (3) **Contract** means a contract of the sale of Goods arising out of an order accepted by Mini-Crete Pty Ltd;
- (4) **Delivery** means the Goods have been:
  - a. handed to the Buyer or the Buyer's Representative;
  - b. delivered to the carrier or site nominated by the Buyer;
- (5) **Goods** means any goods and or services supplied by Mini-Crete Pty Ltd;
- (6) **Mini-Crete Pty Ltd** means Mini-Crete Pty Ltd ABN 12 143 670 777 and its assigns;
- (7) **GST** means Goods and Services Tax as provided for in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (8) **MSDS** means any Material Safety Data Sheet or other similar information published or made available by Mini-Crete Pty Ltd from time to time;
- (9) **Invoice** means the Invoices issued by Mini-Crete Pty Ltd in relation to a Contract; and
- (10) words importing the singular number include the plural and vice versa.

#### 2. CONDITIONS

- 2.1 Every Contract between Mini-Crete Pty Ltd and a Buyer is governed by these terms and conditions.
- 2.2 These terms and conditions, the terms of the relevant invoice & any other written agreement between Mini-Crete Pty Ltd & the Buyer constitutes the entire agreement between them and supersedes any prior agreement between them.
- 2.3 Any terms & conditions contained in the Buyer's order documentation inconsistent with these terms and conditions, including a statement that they Buyer's terms & conditions prevail, are expressly excluded.
- 2.4 Mini-Crete Pty Ltd may after giving the Buyer notice vary these terms & conditions from time to time.

#### 3. QUOTATIONS & ORDERS

- 3.1 All information about the Goods including quotations provided by Mini-Crete Pty Ltd to Buyers are invitations to do business.
- 3.2 Purchase orders from the Buyer are deemed to be offers to purchase.
- 3.3 Mini-Crete Pty Ltd may in its absolute discretion choose to accept or reject a Buyer's purchase order. Such acceptance may be in writing or by the supply of Goods to the Buyer.
- 3.4 Any quotation or other document provided by Mini-Crete Pty Ltd to the Buyers may be varied or withdrawn by Mini-Crete Pty Ltd at any time.

#### 4. PRICES & PAYMENT

- 4.1 Prices of the Goods, including all GST and other government taxes in relation to the Goods, will be set out in the relevant Invoice. Unless otherwise expressly stated, all prices quoted to the Buyer are exclusive of GST.
- 4.2 In addition to the price payable for the supply of Goods, the Buyer must pay the GST payable in respect of that supply.
- 4.3 Where the Goods are concrete, unless otherwise stated, the prices quoted are for:
  - (1) Delivery during normal hours of 7.00am to 4.00pm on weekdays to a single location;
  - (2) A discharge period of 7 minutes per cubic metre for unloading. Additional charges will apply for actual discharge periods in excess of this.
- 4.4 Payment by the Buyer of the price of all Goods supplied & all charges on the Invoice must be made before or immediately on Delivery, unless Mini-Crete Pty Ltd has granted the Buyer credit, so that payments then become due within 7 days from the Invoice date or as otherwise agreed.
- 4.5 All payments by the Buyer must be made without any set off.

4.6 All losses, legal & other costs arising from the Buyer's failure to pay the total Invoice amount by the due date are recoverable from the Buyer as liquidated damages.

#### 5. RETENTION OF TITLE

- 5.1 Property in the Goods supplied will not pass to the Buyer until the money owing for the Goods and any other money owing by the Buyer to Mini-Crete Pty Ltd has been paid.
- 5.2 Until the Goods have been paid for in full the Buyer:
  - (1) has possession of the Goods as bailee only;
  - (2) must properly store, protect and insure the Goods, including storing them in a manner that shows clearly that they are the property of Mini-Crete Pty Ltd; and
  - (3) may sell or consume the Goods, in the ordinary course of business, but only as the fiduciary agent of Mini-Crete Pty Ltd.  
The Buyer has no authority to bind Mini-Crete Pty Ltd to any liability by contract or otherwise and must not purport to do so.
- 5.3 The Buyer must, if requested by Mini-Crete Pty Ltd, deliver up the Goods to Mini-Crete Pty Ltd, failing which Mini-Crete Pty Ltd is irrevocably authorised to enter the place where the Goods are stored and repossess the Goods, if:
  - (1) the buyer fails to pay a due amount following demand by Mini-Crete Pty Ltd;
  - (2) the Buyer commits an act of bankruptcy;
  - (3) a receiver is appointed to the Buyer;
  - (4) the Buyer goes into liquidation, administration or some other form of insolvency administration;
  - (5) the Buyer ceases to carry on business; or
  - (6) the Buyer enters into a scheme or compromise with its creditors.

5.4 Mini-Crete Pty Ltd's property in the Goods is not affected if the Goods become a fixture attached to premises of the Buyer or a third party.

5.5 The provisions of this clause 5 apply despite any arrangement between the parties under which Mini-Crete Pty Ltd grants the Buyer credit.

5.6 Mini-Crete Pty Ltd may commence legal action against the Buyer if Goods are not paid for, although property in the Goods has not passed to the Buyer.

#### 6. DELIVERY

- 6.1 If Mini-Crete Pty Ltd is unable to Deliver the Goods it may charge the Buyer all costs and expenses associated with the delayed Delivery.
- 6.2 The circumstances in which Mini-Crete Pty Ltd will be deemed to be unable to Deliver the Goods including where (without limitation):
  - (1) the Buyer is unable or unwilling to accept Delivery;
  - (2) the site where Delivery is to take place is deemed unsafe or unsuitable by Mini-Crete Pty Ltd; or
  - (3) the Buyer does not pay the price for the Goods in cash or by cheque or by credit card where the Goods were supplied on a payment on or before delivery basis.
- 6.3 The Buyer will not be relieved of any obligation to accept and to pay Mini-Crete Pty Ltd for the Goods by reason of any delay in Delivery.
- 6.4 Mini-Crete Pty Ltd has no liability to the Buyer for any loss or damage consequential or otherwise for failure to deliver the Goods or for late Delivery of the Goods.
- 6.5 The Buyer indemnifies Mini-Crete Pty Ltd against any loss or damage it might suffer or incur arising out of Delivery of the Goods to anywhere other than a kerbside or road.
- 6.6 The Buyer accepts all risks associated with the Buyer, or the Buyer's Representative entering Mini-Crete Pty Ltd's premises and sites.
- 6.7 Risk in the Goods will pass to the Buyer on Delivery.

#### 7. SPECIFICATIONS FOR THE SALE OF CONCRETE

- 7.1 At the time of ordering concrete the Buyer must specify the properties such as strength, durability and water cement ratio referred to in AS1397-2007. Concrete will comply with AS1379-2007 only if conditions of exposure comply with AS3600-2001.
- 7.2 Testing will only be arranged if requested by the Buyer and will be charged to the Buyer at Mini-Crete Pty Ltd's ruling rates in place from time to time. If the results of any concrete testing are to be used in any claim against Mini-Crete Pty Ltd, the testing must be performed strictly in accordance with AS1379-2007 and AS1012 and the results provided to Mini-Crete Pty Ltd.

7.3 The Buyer cannot cancel orders for concrete after batching of the concrete has started and the Buyer must pay for the full quantity of concrete ordered regardless of whether they are able to accept delivery of the full order.

7.4 Where the Buyer does not accept Delivery of concrete ordered by the Buyer, the Buyer will be liable for all expenses incurred by Mini-Crete Pty Ltd in handling and disposing of the returned concrete.

7.5 The Buyer fully indemnifies and holds Mini-Crete Pty Ltd harmless against any and all losses, costs or claims arising out of any defects, shrinkages, or other faults which are in or may develop in the concrete due to:

- (1) faulty handling, placing or curing of the concrete;
- (2) the addition of any water or other material to the concrete either before or after discharge by Mini-Crete Pty Ltd by a party other than Mini-Crete Pty Ltd;
- (3) the use of Mini-Crete Pty Ltd of non-standard materials or mix at the Buyer's request; or
- (4) the concrete not being laid within 1.5 hours of leaving Mini-Crete Pty Ltd's plant.

7.6 Concrete specification must be checked by the Buyer at Delivery & the Buyer accepts responsibility for ensuring the concrete is the required specification at Delivery.

7.7 Unless otherwise stated in writing, Mini-Crete Pty Ltd does not recommend any concrete specification as being suitable for a particular purpose and will not be liable for any loss or costs associated with the inappropriate use of a concrete specification.

7.8 Unless otherwise stated, prices are based upon slumps not exceeding 80mm.

7.9 Mini-Crete Pty Ltd delivery drivers are not authorised representatives of Mini-Crete Pty Ltd for any purposes arising under this Contract.

## 8. RETURNS

8.1 Goods, other than concrete, may only be returned for credit or exchange at the discretion and prior approval of Mini-Crete Pty Ltd. A restocking fee of 15% of the price will apply to any Goods returned to Mini-Crete Pty Ltd.

8.2 All claims for defective Goods or claims for short quantities delivered must be made within 48 hours of Delivery.

## 9. IMPLIED TERMS AND LIMITATION OF LIABILITY

9.1 Except as otherwise specifically provided in a Contract and except for any condition or warranty the exclusion of which could be void or otherwise contravene the *Trade Practices Act 1974* (Cth) ("**Trade Practices Act**") or any other applicable law ("**Non-Excludable Condition**"), Mini-Crete Pty Ltd makes no warranty or representation, either express or implied, with respect to the Goods it supplies, including without limitation to the quality, performance, merchantability, or fitness for a particular purpose.

9.2 Except for any Non-Excludable Condition, Mini-Crete Pty Ltd excludes all liability for the breach of any warranty or condition of any kind in respect of the Application or other goods or services it supplies;

9.3 Where legislation implies into a Contract any Non-Excludable Condition, Mini-Crete Pty Ltd's liability for any breach of such Non-Excludable Condition will be limited at Mini-Crete Pty Ltd sole discretion to one or more of the following:

- (1) the repair or replacement of the Goods,
- (2) the supply of equivalent goods;
- (3) paying the cost of repair or replacement of the Goods; or
- (4) paying the cost of the supply of equivalent goods.

9.4 Except as provided in clause 9.3, Mini-Crete Pty Ltd will not be liable to the Buyer or any other person whatsoever for any and all direct, indirect or consequential loss, damage, expense or injury suffered by the Buyer or any other person in relation to:

- (1) the Goods;
- (2) the Buyer or the Buyer's Representative entering Mini-Crete Pty Ltd's premises & sites.

9.5 To the fullest extent allowed under the Trade Practices Act or any other applicable law except for liability for any Non-Excludable Condition:

- (1) In no event will Mini-Crete Pty Ltd be liable for any indirect loss, consequential loss, loss of profits, loss of revenue, loss of goodwill, exemplary damages, punitive damages or special damages in connection with or arising out of use of

the Application, the accuracy of the data contained in the Application, any breach of this Licence and any negligence in Mini-Crete Pty Ltd performing its obligations under this Licence; and

- (2) in no event will Mini-Crete Pty Ltd's liability to the Buyer for any claim or damage arising out of or in connection with a Contract exceed the cost of the Goods supplied under such Contract.

## 10. SAFETY RESPONSIBILITY

10.1 The Buyer accepts responsibility for the proper storage and use of the Goods and must ensure that the Goods are stored and used without risk to people or to the environment.

10.2 Without limiting the Buyer's obligations under clause 10.1, the Buyer acknowledges that it has familiarised itself and its employees, contractors and agents with any recommended handling procedures contained in any MSDS in respect of the Product.

## INDEMNITY

10.3 The Buyer indemnifies Mini-Crete Pty Ltd and holds Mini-Crete Pty Ltd harmless against any and all claim, loss or expense whatsoever which Mini-Crete Pty Ltd suffers or is liable for in respect of or in connection with:

- (1) the Goods, or their use, storage or handling;
- (2) Mini-Crete Pty Ltd exercising its rights under clause 5; or
- (3) the Buyer or the Buyer's Representative entering Mini-Crete Pty Ltd's premises & sites.

The Buyer agrees to indemnify, defend and hold Mini-Crete Pty Ltd harmless against any claims, liabilities, proceedings, costs, losses, expenses or damages incurred by Mini-Crete Pty Ltd in connection with the Buyer's use of the Goods, breach of these terms and conditions or any other negligent or wrongful act or omission by the Buyer.

## 11. TERMINATION

11.1 In addition to any other right of termination it may have, Mini-Crete Pty Ltd may terminate a Contract if any of the following happens:

- (5) the Buyer fails to perform a precondition of the Contract for Delivery of the Goods;
- (6) Mini-Crete Pty Ltd is unable to deliver the Goods for 30 days after first attempting Delivery;
- (7) the Buyer commits an act set out in clause 5.3;
- (8) the Buyer purports to assign its rights under this Contract; or
- (9) an event occurs outside the control of Mini-Crete Pty Ltd which in Mini-Crete Pty Ltd's opinion makes it impractical or impossible for it to fulfill its obligations under the Contract.

## 12. OTHER

12.1 Mini-Crete Pty Ltd will not be liable for any delay or any breach or default under the contract in circumstances where such delay, breach or default results from causes beyond Mini-Crete Pty Ltd's reasonable control.

12.2 Any indulgence or extension of time which Mini-Crete Pty Ltd may grant to the Buyer will not prejudice or interfere with Mini-Crete Pty Ltd's rights under a Contract and will not constitute a waiver.

12.3 The Buyer is not a partner, joint venture or agent of Mini-Crete Pty Ltd and is not authorised to hold itself out as a partner joint venture of or agent of Mini-Crete Pty Ltd or purport to incur any obligation, undertaking or warranty or representation on behalf of Mini-Crete Pty Ltd.

12.4 Any notice to be given to a party must be in writing.

12.5 Mini-Crete Pty Ltd may assign the benefit of any Contract to any person.

12.6 The Contract is governed by the laws of New South Wales. The Buyer agrees to submit to the non-exclusive jurisdiction of the courts of New South Wales.

The Buyer's obligations under these terms and conditions of sale survive the termination of any Contract with Mini-Crete Pty Ltd.

The Buyer may not assign or transfer a Contract with Mini-Crete Pty Ltd without its prior written consent.

If any provision of these terms and conditions may prove to be invalid or unenforceable, it is to be read down or severed to the extent of the invalidity or unenforceability and it does not affect the validity of the remaining provisions of these terms and conditions which shall continue in full force and effect.

