



**MT. MARROW BLUE METAL QUARRIES PTY. LTD.**

A.C.N. 004 879 930 ABN 64 004 879 930

**ORDERS:**  
237 Mt. Marrow, Quarry Road,  
Haiglelea, Q. 4306  
TELEPHONE: (07) 5464 4644  
Fax: (07) 3818 4015

**ACCOUNTS:**  
Unit 21 / 200, Grand Avenue  
Forest Lake, Q. 4078  
TELEPHONE: (07) 3278 8741  
Fax: (07) 3579 7184

Mt. Marrow Unit Coy. No.: .....  
Credit Limit \$.....  
Account Number: .....  
Date: .....



**APPLICATION FOR A 30 DAY COMMERCIAL CREDIT ACCOUNT**

**PART 1. FOR SOLE TRADERS/PARTNERSHIPS (Parts 1,3,4, 5 to be completed)**

Principals Name(s) in full	Address	Date of Birth	Do you own your own home?	
1. ....	.....	...../...../.....	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2. ....	.....	...../...../.....	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3. ....	.....	...../...../.....	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4. ....	.....	...../...../.....	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Trading as: ..... ABN: ..... Email: .....

Business Address: ..... Postcode: .....

Phone Number: 0 / ..... Mobile: ..... Fax: 0 / .....

Postal Address: ..... Postcode: .....

**PART 2. FOR COMPANIES/TRUSTS (Parts 2,3,4,5,7 to be completed)**

Company Name: ..... ACN: .....

(Guarantees must be completed)

Trading as: ..... ABN: .....

Business Address: ..... Postcode: .....

Phone Number: 0 / ..... Mobile: ..... Fax: 0 / .....

Postal Address: ..... Postcode: .....

Directors:	Full Name	Private Address	Date of Birth	Telephone Number
1. ....	.....	.....	...../...../.....	.....
2. ....	.....	.....	...../...../.....	.....
3. ....	.....	.....	...../...../.....	.....
4. ....	.....	.....	...../...../.....	.....

(if additional names please attach list)

**PART 3. TRADE REFERENCES**

1. Reference Name: ..... Account No: ..... Phone Number: 0 / .....

2. Reference Name: ..... Account No: ..... Phone Number: 0 / .....

3. Reference Name: ..... Account No: ..... Phone Number: 0 / .....

4. Reference Name: ..... Account No: ..... Phone Number: 0 / .....

Accountant's Name: .....

If the applicant is a Builder or Plumber, please advise Licence Number: .....

**PART 4. BUSINESS**

Premises:  Owned  Rented  Leased

Order Value: \$ ..... Monthly Credit Req'd: ..... Monthly Payment via EFTPOS? Yes  No

Industry Type: ..... Date Business Commenced: .....

Bank & Branch: .....

**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 be granted, the Customer agrees with Mt. Marrow 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 Mt. Marrow 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 Mt. Marrow become immediately due and payable;
  - (d) to pay to Mt. Marrow all expenses of collection by Mt. Marrow of overdue monies and enforcement of the contract on a solicitor and client basis.
- 3.1 The Customer agrees that Mt. Marrow's General Terms and Conditions of Sale form part of the contract between the Customer and Mt. Marrow 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 Mt. Marrow. No prior correspondence, discussion or other terms and conditions form part of this contract unless stated in this contract.
- 3.2 Where any of the General Terms and Conditions of Sale are 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.
- 4.1 To secure its obligations under this contract the Customer hereby charges with payment of any moneys owed by it to Mt. Marrow 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.
- 4.2 The Customer further agrees that if demand is made on it by Mt. Marrow the Customer will immediately execute a mortgage in registerable form or other instrument of security, as required by Mt. Marrow, 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 Mt. Marrow 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 of Mt. Marrow 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 Mt. Marrow's General Terms and Conditions of Sale.

TO COMPLY WITH *THE PRIVACY ACT 1988* (As Amended) the Customer acknowledges that Mt. Marrow has informed it, in accordance with s.18E(8)(c) of The Privacy Act 1988, that certain items of personal information about the Customer contained in/or relating to this application and permitted to be kept on a credit information file might be disclosed to a credit reporting agency. Furthermore, the Customer agrees, in accordance with the following sections: s.18H(3), s.18K(1)(b), s.18K(1)(c), s.18K(1)(h), s.18N(1)(b) that use by Mt. Marrow of the relevant information referred to in those sections may occur for the purpose of assessing this application.

To be signed by Principals/Directors

Date: ...../...../.....

- 1.....Driver's Licence No.: .....State.....
- 2.....Driver's Licence No.: .....State.....
- 3.....Driver's Licence No.: .....State.....
- 4.....Driver's Licence No.: .....State.....

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

**PART 6. Sales Department Recommendation/Comment:**

**OFFICE USE ONLY**

Expected Sales Per Month:

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

Other Comments: .....

Manager Comment & Approval: .....

Recommended Total limit of \$..... Date: ...../...../.....

Credit Office Recommendation: .....

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

**HEAD OFFICE USE ONLY**

Account Approved/Rejected: .....

Total Credit Limit: \$.....Based on Two Months Purchases

Comments .....

Authorised By: ..... Date: ...../...../.....

**PART 7.**

MT. MARROW BLUE METAL QUARRIES PTY. LTD. ABN 64 004 879 930

**DEED OF GUARANTEE & INDEMNITY**

made this .....day of .....

**BETWEEN:**

(1) ..... Names & Addresses  
..... of Guarantors  
.....  
.....

(the "Guarantors")

(2) MT. MARROW BLUE METAL QUARRIES PTY. LTD. ABN 64 004 879 930

**RECITALS**

A. At the request of the Guarantor, Mt. Marrow 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 Address)  
(the "Debtor")

B. The Guarantor considers that by providing this Guarantee and Indemnity ("this Guarantee") there will be a commercial benefit flowing to the Guarantor.

THE PARTIES AGREE AND DECLARE AS FOLLOWS:

1. GUARANTEE

1.1 Guaranteed Monies

In consideration of Mt. Marrow 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 Mt. Marrow the due and punctual payment of:

- all monies due and payable or from time to time to become due and payable to Mt. Marrow under or in connection with the provision of credit and/or goods and services;
- all other monies 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 Mt. Marrow under this Guarantee and any other agreement, security or negotiable or other instrument or as a result of any matter or thing; and
- to avoid doubt, any GST that may be due and payable or from time to time become due and payable by Mt. Marrow under or in connection with the provision of credit and/or goods and services.

(the "Guaranteed Monies").

1.2 Result of Non Payment

If the Debtor defaults in the due and punctual payment of the Guaranteed Monies or in any part of them the Guarantor shall pay those monies on demand to or as directed by Mt. Marrow.

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 Mt. Marrow by any secretary, director, manager, attorney, credit manager, other duly authorised officer or solicitor of Mt. Marrow from time to time.

1.4 Continuing Guarantee

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

2. GUARANTOR'S OBLIGATIONS

2.1 Principal Obligations

The Guarantor's obligations:

- are principal obligations and not ancillary or collateral to any other obligation; and
- may be enforced against the Guarantor without Mt. Marrow 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 Monies.

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, any one or more of the following (whether occurring with or without the consent of any person):

- 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;
- any transaction or arrangement that may take place between Mt. Marrow and the Debtor, the Guarantor or any other person;
- 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;
- the fact that Mt. Marrow or any other person takes or fails to take any other guarantee or security;
- the fact that Mt. Marrow 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 monies owing to Mt. Marrow by the Debtor;
- the variation (including a variation which increases the Guaranteed Monies) replacement, extinguishment, loss, release, discharge, abandonment or transfer either in whole or in part of any agreement or document relating to the Guaranteed Monies including any other guarantee or security now or in the future held by Mt. Marrow from any person;
- the obligations of the Debtor or the Guarantor or any other person under any agreement or document relating to the Guaranteed Monies including any other guarantee or security, being or becoming wholly or partially illegal, void, voidable or unenforceable;
- the failure by Mt. Marrow to give notice to the Guarantor of any default by the Debtor or any other person;
- any legal limitation, disability, incapacity or other circumstance related to the Debtor, the Guarantor or any other person;
- the fact that any person who was intended to be bound as Guarantor or surety in respect of the Guaranteed Monies does not become bound or, having done so, ceases to be bound; or
- any laches, acquiescence, delay, acts, omissions or mistakes on the part of, or suffered by Mt. Marrow or any other person, in relation to this Guarantee or any other guarantee, security, agreement, or negotiable instrument;
- if the Debtor is a partnership any changes in membership of that partnership.

3. PREFERENCE

If, after Mt. Marrow applies any amount against any of the Guaranteed Monies, 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:

- Mt. Marrow'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
- the Guarantor shall immediately do anything (including the signing of the documents) required by Mt. Marrow to restore to Mt. Marrow 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 Monies and other monies payable under this Guarantee have been irrevocably paid and discharged in full, the Guarantor may not:

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

4.2 Winding up or Bankruptcy of Debtor

If the Debtor is wound up or bankrupted, the Guarantor irrevocably authorises Mt. Marrow (but without any obligation on the part of Mt. Marrow) to:

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

5. INDEMNITY

5.1 Indemnity in respect of Guaranteed Monies

For the consideration mentioned in clause 1.1, the Guarantor unconditionally indemnifies Mt. Marrow against any loss which Mt. Marrow may suffer because of any of the following:

- the Guaranteed Monies, in whole or in part, are not recoverable from the Debtor or having been recovered are repaid and restored;
- the Debtor fails to carry out its obligations under any agreement it has entered into with Mt. Marrow.

5.2 Payment under Indemnity

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

6. INTEREST ON OVERDUE AMOUNTS

- The Guarantor shall, on demand by Mt. Marrow, pay interest on any of the Guaranteed Monies which are due and payable by it and unpaid (including interest payable under this clause);
- 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 judgement, at the same rate and in the same currency as interest is required to be paid on the relevant amount of the Guaranteed Monies.

7. JOINT AND SEVERAL LIABILITY

If two or more persons are the Guarantor:

- references to the Guarantor are references to them separately and as well refer to any two or any more of them together;
- the promises by them in this Guarantee bind all of them together as well as bind each of them separately;
- 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 Monies the Guarantor hereby charges with payment of the Guaranteed Monies all the right, title, estate and interest which it now has or may hereafter during the currency of the Guarantee acquire in any freehold or leasehold property.

9.2 The Guarantor further agrees that if demand is made on it by Mt. Marrow the Guarantor will immediately execute a mortgage in registerable form or other instrument of security, as required by Mt. Marrow, 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 Mt. Marrow from time to time to be its true and lawful attorney to execute and register such instruments.

10. COSTS

The Guarantor indemnifies Mt. Marrow against, and shall pay Mt. Marrow 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:

- the negotiation, preparation, execution, stamping and registration of the Guarantee;
- the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Guarantee; and
- 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:

- delivered; or
- 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:

- the address given in this Guarantee; or
- where the recipient notifies the sender of another address, the last address so notified to it.

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 Mt. Marrow 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

To comply with the *Privacy Act 1988 (As Amended)* the Guarantor acknowledges that Mt. Marrow has informed it, in accordance with section 18E(8)(c) of the *Privacy Act*, that certain personal items of personal information about the Guarantor contained in or relating to this Guarantee and permitted to be kept on a credit information file may be disclosed to a credit reporting agency. Furthermore, the Guarantor agrees, in accordance with the following sections: sections 18(1)(3), 18K(1)(b), 18K(1)(c), 18K(1)(f), & 18N(1)(b) that use by Mt. Marrow of the relevant information referred to in those sections may occur for the purpose of assessing this Guarantee.

14. TRUSTEE PROVISIONS

14.1 The Guarantor does not execute this Guarantee as trustee of any trust unless it has told Mt. Marrow 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 Mt. Marrow of this fact in accordance with clause 14.1 then the Guarantor:

- is liable both personally and in its capacity as trustee;
- gives Mt. Marrow an assurance that:
  - the Guarantor has power and authority as trustee of the trust to enter into this Guarantee and is doing so for a proper purpose;
  - the Guarantor is doing so, and is entitled to do so in a way that permits Mt. Marrow to resort to the trust property in priority to the claims of the beneficiaries;
  - the Guarantor is entitled to be indemnified fully out of the property of the trust for its liabilities and obligations under this Guarantee in priority to the claims of the beneficiaries.

15. GENERAL

15.1 Assignment

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

15.2 Mt. Marrow's Statement Conclusive

A statement, signed on behalf of Mt. Marrow by any of its authorised representatives, as to any matter or of any amount (including, without limitation, amounts owing by the Guarantor) at the date specified in the statement 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 Mt. Marrow on 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.

# MT. MARROW BLUE METAL QUARRIES PTY. LTD. GENERAL TERMS AND CONDITIONS OF SALE

ABN 64 004 879 930

1. **CONTRACT**
- 1.1 These general terms and conditions of sale form the contract between the Customer and Mt. Marrow Blue Metal Quarries Pty. Ltd. (hereinafter referred to as "Mt. Marrow") 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 Mt. Marrow. No prior correspondence, discussion or other terms and conditions form part of this contract unless stated in this contract.
- 1.2 Where any of these general terms and conditions are inconsistent with the terms and conditions contained in Mt. Marrow's Application for a Thirty (30) Day Commercial Credit Account, then the terms and conditions of the Application for a Thirty (30) Day Commercial Credit Account shall prevail to the extent of any inconsistency.
2. **CANCELLATION**
- 2.1 The Customer may only cancel this contract with Mt. Marrow's consent and only on the basis that the Customer meets all loss, damage, cost or expense, including loss of profits, incurred by Mt. Marrow as a result of the cancellation.
- 2.2 Mt. Marrow 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 Mt. Marrow;
  - (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, deed of company 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 described in the contract.
3. **PRICE VARIATION**
- 3.1 Unless otherwise stated in this contract Mt. Marrow may vary the price stated in the contract to reflect any change in costs, taxes or duties incurred by Mt. Marrow after the date of this contract.
- 3.2 Where a list price applies to products supplied by Mt. Marrow under this contract 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 GST or other government impost unless specifically stated.
4. **VARIATIONS TO SCOPE OF CONTRACT**
- 4.1 The price is based upon:
  - (a) the scope of the work as detailed in the information provided by the Customer to Mt. Marrow 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 7, and any variations to the scope of the work or delivery arrangements shall be a variation of the contract entitling Mt. Marrow to vary the price stated.
5. **SPECIFICATIONS**
- 5.1 Where Mt. Marrow manufactures or supplies products according to the Customer's specifications:
  - (a) Mt. Marrow does not warrant the suitability or performance of the product; and
  - (b) the Customer shall provide to Mt. Marrow accurate information sufficient to enable Mt. Marrow to provide the products specified and the Customer warrants to Mt. Marrow that the information and any products to be manufactured by Mt. Marrow under the contract do not breach any copyright, registered design, patent or other right of any third party and the Customer shall indemnify Mt. Marrow in relation to any such breach.
- 5.2 Unless otherwise stated in this contract the products shall be in conformity with a standard determined by Mt. Marrow.
6. **PAYMENT**
- 6.1 Time for payment of the amount due to Mt. Marrow 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 Mt. Marrow is entitled to make.
- 6.2 Subject to sub-clauses 6.3 and 6.4 the Customer shall pay the amount due in accordance with the credit arrangements as agreed by Mt. Marrow.
- 6.3 Where no credit arrangements have been previously agreed by Mt. Marrow, but credit has been agreed by Mt. Marrow as a condition of this particular contract, the Customer shall pay the amount due within the month following the month of invoice.
- 6.4 Where no credit arrangements have been agreed by Mt. Marrow, the Customer shall pay the amount due before the first delivery of the products.
- 6.5 The Customer shall pay interest at the current bank overdraft interest rate paid by Mt. Marrow from time to time, calculated monthly on any amount not paid by the due date.
- 6.6 If any amount is not paid by the due date all amounts then owing by the Customer to Mt. Marrow become immediately due and payable.
- 6.7 Where price is stated on a volumetric basis, payment will be based on measurement of the volume of product as loaded by Mt. Marrow for delivery.
7. **DELIVERY**
- 7.1 Subject to clause 7.2 delivery shall be on reasonable notice from the Customer to Mt. Marrow and the Customer shall not be relieved from any obligation to accept or pay for products by reason of any delay in delivery.
- 7.2 Where this contract includes a Delivery Schedule delivery shall be in accordance with the dates and other information contained in such Schedule.
- 7.3 Mt. Marrow shall not be liable for delay in delivery arising from any cause whatsoever.
- 7.4 Where the Customer refuses or delays delivery, the Customer's obligation to pay for products, as set out in clause 6, remains unchanged; the Customer shall also pay any additional storage, freight, holding or handling charges incurred by Mt. Marrow.
- 7.5 Mt. Marrow reserves the right to deliver by instalments and failure to deliver any instalment shall not entitle the Customer to terminate the contract.
- 7.6 Deliveries are subject to suitable access, firm standing, storage, unloading and manoeuvring space, as determined by Mt. Marrow. Mt. Marrow shall not be liable for, and the Customer shall indemnify Mt. Marrow against any claims for damage caused to access ways, storage areas, plant, equipment or works during delivery.
- 7.7 Additional costs incurred by Mt. Marrow in delivering or unloading the products:
  - (a) Outside the hours of 7.30am. to 4.00pm, weekdays (excluding public holidays);
  - (b) due to delays at the site or on unsuitable site, or
  - (c) where less than full truckloads are required, shall be at the Customer's expense.
- 7.8 The Customer warrants that its receipt facilities and equipment are suitable for deliveries and meet all relevant standards, laws and regulations. The Customer hereby indemnifies Mt. Marrow 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.
8. **TITLE**
- 8.1 The risk in the goods shall not 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 the delivery of the products.
- 8.2 The Customer shall adequately insure the products from loss or damage from delivery.
- 8.3 Notwithstanding the passing of risk all products delivered by Mt. Marrow to the Customer remain the property of Mt. Marrow until all products supplied by Mt. Marrow have been paid in full.
- 8.4 Until such time as all products supplied by Mt. Marrow to the Customer have been paid for in full the Customer may only sell the products in the ordinary course of its business as agent for Mt. Marrow and the proceeds of such sale shall be held in a separate trust account for and as the property of Mt. Marrow.
- 8.5 Prior to any such sale, the Customer shall hold possession of the products for and on behalf of Mt. Marrow and not on its behalf, and shall return the products to Mt. Marrow on demand.
- 8.6 The Customer authorises Mt. Marrow by its servants or agents to enter any premises owned, leased or otherwise occupied by the Customer or any agent or associate of the Customer without notice to the Customer, associate or agent for the purpose of taking possession of the products and thereby authorises Mt. Marrow by its servants or agents to use reasonable force to obtain such possession.
- 8.8.1 In the event that the Customer uses the products in some manufacturing or construction process of its own or for some third party, then the Customer shall hold on trust for Mt. Marrow such part of the proceeds of the manufacturing or construction process as equals the total amount then owing by the Customer to Mt. Marrow in relation to all products supplied to the Customer by Mt. Marrow.
- 8.8.2 For the avoidance of doubt the term "proceeds" in sub-clause 8.8.1 includes:
  - (a) obligations owed to the Customer arising from the sale of the manufactured or constructed products for example, the obligations in debt of a third party owed to the Customer in respect of the sale of the products; and
  - (b) monetary sums paid by third parties to the Customer, for example, upon the realisation by the Customer of its book debts.
- 8.9 The Customer's right to possession of the products shall, subject to any relevant statutory provision, cease if Mt. Marrow at its discretion recalls or recovers the products or if the Customer, not being a company, commits an act of bankruptcy or if it, being a company:
  - (a) does anything which would entitle a receiver to take possession of any assets,
  - (b) does anything which would entitle any person to present a petition for winding up, or
  - (c) enters into voluntary administration or executes a Deed of Company Arrangement or enters into a
- Scheme of Arrangement.
- and Mt. Marrow may for the purpose of recovery of its products enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the products.
9. **DEFECTS**
- 9.1 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 responds 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 acknowledgement by the Customer that the products comply with its order and have been supplied in accordance with this contract.
- 9.2 Notice of any defects shall be given to Mt. Marrow in writing on the delivery docket/receipt/manifest signed by the Customer and immediately returned with the cartage contractor. Where the point of delivery or collection is unattended, the Customer shall give notice in writing to Mt. Marrow, within 24 hours from the time of delivery or collection and prior to installation, of any defects in the products.
- 9.3 If notice in accordance with clause 9.1 or 9.2 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.
- 9.4 Mt. Marrow 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.
10. **TESTING AND REPORTING**
- 10.1 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.
- 10.2 Any inspector or other person attending Mt. Marrow's premises on behalf of the Customer shall be authorised in writing by the Customer.
- 10.3 The Customer shall provide Mt. Marrow with copies of all authorisations, test results, measurements and reports prepared by or for the Customer in relation to Mt. Marrow's products.
11. **LIMITATION OF LIABILITY**
- 11.1 If a product is defective and the Customer advises Mt. Marrow of that defect in accordance with sub-clause 9.1 or 9.2 Mt. Marrow shall repair or resupply the product, but Mt. Marrow 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.
- 11.2 Mt. Marrow 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.
- 11.3 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 Mt. Marrow 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 Mt. Marrow shall not be liable in these respects.
- 11.4 Other than expressly provided in this contract Mt. Marrow provides no other warranty to the Customer in relation to the products and this contract comprises the whole agreement between the parties.
- 11.5 Section 88A of the Trade Practices Act, 1974 ("the Act") enables Mt. Marrow to limit its liability for breach of certain conditions and warranties implied by the Act. To the fullest extent permitted by that section and other similar legislation the liability of Mt. Marrow for a breach of condition or warranty (other than a condition or warranty implied by Section 69 of the Act) is limited to one of the following (selected at the option of Mt. Marrow):
  - (a) the replacement of the products; or
  - (b) the repair of the products unless the Customer is able to establish the matters set forth in sub-section 68A(2) of the Act.
12. **AMENDMENTS AND WAIVER**
- 12.1 Mt. Marrow 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 Mt. Marrow. 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 Mt. Marrow.
13. **GOVERNING LAW**
- 13.1 If a credit application has been approved then the law of the state in which the credit application has been lodged shall apply but otherwise the contract is to be governed by the law for the time being of the State from which the products are to be supplied.
- 13.2 Any proceedings in respect of a cause of action arising out of the contract between the parties shall at the option of Mt. Marrow 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.
14. **FORCE MAJEURE**
- 14.1 Mt. Marrow 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.
15. **SUBJECT TO STATUTE**
- 15.1 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.
16. **NOTICES**
- 16.1 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.
17. **CONFIDENTIAL INFORMATION**
- 17.1 If at any time Mt. Marrow discloses to the Customer or the Customer becomes aware of confidential information of Mt. Marrow including confidential information relating to products, material procedures, tests or equipment, the Customer shall not use the information for any purpose not approved by Mt. Marrow and shall not disclose that confidential information to any other person unless expressly agreed in writing by Mt. Marrow.
18. **ASSIGNMENT**
- 18.1 This contract is assignable by the Customer in whole or in part only with Mt. Marrow's consent.
19. **RETURNABLE PACKAGING**
- 19.1 Unless otherwise stated, all pallets, stillages, timbers, dunnage, formers or similar packaging delivered with the products remain the property of Mt. Marrow and shall be returned in good order and condition to Mt. Marrow within 30 days of the date of delivery. Any such packaging not returned by the due date shall be paid for by the Customer at a price determined by Mt. Marrow.
20. **SAMPLES AND BLENDING**
- 20.1 Any sample product or sample colour is provided to indicate only the general nature of the product. Mt. Marrow provides no warranty or guarantee that the products supplied shall correspond in colour, texture or blend with any sample or with any previous or future product supplied. Mt. Marrow shall not be liable for any failure of the Customer or others to blend the products.
21. **NON-CONFORMING PRODUCT**
- 21.1 Where a product is supplied by Mt. Marrow on the basis of a description or marking such as "non-conforming", "second", "reject" or similar, no warranty or undertaking (express or implied) whatsoever is given by Mt. Marrow. Notwithstanding the preceding terms and conditions, Mt. Marrow shall not be liable in any way for the performance or use of, or any defect in, such a product.
22. **GOODS & SERVICES TAX**
- 22.1 Consideration to be increased for GST
- 22.1.1 In addition to any other consideration payable by the Customer to Mt. Marrow under this contract, the Customer must, upon receipt of a tax invoice from Mt. Marrow, pay to Mt. Marrow an amount equal to the GST as payable by Mt. Marrow on the taxable supply specified in the tax invoice on the same basis as the other consideration is payable by the Customer under this contract.
- 22.2 Issue of Tax Invoice
- 22.2.1 Mt. Marrow must issue a tax invoice or tax invoices to the Customer for the amount of GST referable to the taxable supply.
- 22.3 Information in Tax Invoice
- 22.3.1 Mt. Marrow must include a tax invoice under this clause such particulars are required by the GST law in order that the Customer may obtain a credit for the amount of GST payable on the taxable supply.
- 22.4 Non Merger
- 22.4.1 This clause shall not merge on completion of this contract.
- 22.5 Interpretation
- 22.5.1 In this clause:
  - (a) "GST" means the goods and services tax as provided for by the GST Law;
  - (b) "GST Law" means A new Tax System (Goods & Services Tax Act), 1989 As Amended or replaced from time to time and any associated legislation including without limitation delegated legislation;
  - (c) "Rate of GST" means the rate of GST payable by Mt. Marrow under the GST Law;
  - (d) any expression used that is defined in the GST law has that defined meaning.

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

**EXECUTED as a deed**

**First Guarantor**

**In the Presence of:**

**SIGNED by**

Date:...../...../.....

Date: ...../...../.....

Name (printed):

Witness Name (printed):

\_\_\_\_\_

\_\_\_\_\_

Signature: .....

Witness  
Signature: .....

**Second Guarantor**

**In the Presence of:**

**SIGNED by**

Date:...../...../.....

Date: ...../...../.....

Name (printed):

Witness Name (printed):

\_\_\_\_\_

\_\_\_\_\_

Signature: .....

Witness  
Signature: .....

**Third Guarantor**

**In the Presence of:**

**SIGNED by**

Date:...../...../.....

Date: ...../...../.....

Name (printed):

Witness Name (printed):

\_\_\_\_\_

\_\_\_\_\_

Signature: .....

Witness  
Signature: .....

**Fourth Guarantor**

**In the Presence of:**

**SIGNED by**

Date:...../...../.....

Date: ...../...../.....

Name (printed):

Witness Name (printed):

\_\_\_\_\_

\_\_\_\_\_

Signature: .....

Witness  
Signature: .....

**DO NOT USE COMMON SEAL**