

# Terms of Credit

Holcim (Australia) Pty Ltd

01 July 2015

## Definition

1. Supplier means Holcim (Australia) Pty Ltd ABN 87 099 732 297 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) whose business names and brands include but are not limited to Holcim, Humes, Wembley Cement, Heatherton Sand Supplies, Grantville Sand and Gravel.

## Security/charges

2. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
3. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
4. The Applicant appoints as its duly constituted attorney the Supplier's company secretary and National credit manager, severally, from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.
5. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security interest (including a security interest as defined in the Personal Property Securities Act 2009 (PPSA)) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Applicant under this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

## Purpose of credit

6. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

## Cancellation of terms of credit

7. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.
8. Upon cancellation with or without notice all debts and liabilities incurred by the Applicant become immediately due and payable to the Supplier.

## Provision of further information

9. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.

10. If the Applicant is a corporation (with the exception of a public listed company or a subsidiary of a publicly listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier reserves the right to request for new guarantors to sign a guarantee and indemnity.
11. The Applicant must notify the Supplier in writing within 7 days of:
  - a) any change in the beneficial ownership of the Applicant;
  - b) it becoming a trustee of a trust, or a partner in a partnership; or
  - c) it becoming aware that any ABN, ARBN or ARSN allocated to it, a trust of which it is a trustee or any partnership of which it is a partner, will change, will be cancelled or will otherwise cease to apply to it or if it does not have an ABN, ARBN or ARSN, one is allocated, or otherwise starts to apply, to it.

### **Corporations**

12. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

### **Trustee capacity**

13. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
  - a) the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
  - b) the Applicant has the right to be indemnified out of trust assets;
  - c) the Applicant has the power under the trust deed to sign this agreement and
  - d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
14. The Applicant must give the Supplier a copy of the trust deed upon request.

### **Partnership**

15. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners have the authority to bind all of the partners and will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
16. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

### **Insolvency**

17. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

### **Signing Agreement**

18. The person signing this agreement warrants that:
  - a) that he/she has authority to execute this agreement on behalf of the Applicant;
  - b) that the Applicant had the opportunity to seek independent legal advice; and
  - c) has either elected not to obtain legal advice on he/her own free will or obtained legal advice and enters freely into this agreement.