



Rocla Pty Limited  
 ABN 31 000 032 191  
 A member of the  
 Fletcher Building Group

Rocla Unit Coy. No.: .....  
 Credit Limit \$ .....  
 Account Number: .....  
 Rep/Area/Type Code: .....  
 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: ..... Email: .....  
 ..... 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 / .....  
 A/c Opened ...../...../..... Pay ..... Days ..... Fax Number: 0 / .....

2. Reference Name: ..... Account No: ..... Phone Number: 0 / .....  
 A/c Opened ...../...../..... Pay ..... Days ..... Fax Number: 0 / .....

3. Reference Name: ..... Account No: ..... Phone Number: 0 / .....  
 A/c Opened ...../...../..... Pay ..... Days ..... Fax Number: 0 / .....

4. Reference Name: ..... Account No: ..... Phone Number: 0 / .....  
 A/c Opened ...../...../..... Pay ..... Days ..... Fax 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: .....

DO YOU PURCHASE ANY OF THE FOLLOWING PRODUCTS FROM ROCLA / FLETCHER BUILDING GROUP (Please Tick)

Concrete Products  Sand  Stramit Building Products  Laminex Products  Insulation Solutions Products

**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 Rocla 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 Rocla 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 Rocla become immediately due and payable;
  - (d) to pay to Rocla all expenses of collection by Rocla of overdue monies and enforcement of the contract on a solicitor and client basis.
- 3.1 The Customer agrees that Rocla's General Terms and Conditions of Sale form part of the contract between the Customer and Rocla 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 Rocla. 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 Rocla 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 Rocla the Customer will immediately execute a mortgage in registerable form or other instrument of security, as required by Rocla, 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 Rocla 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 Rocla 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 Rocla's General Terms and Conditions of Sale.  
 TO COMPLY WITH *THE PRIVACY ACT 1988* (As Amended) the Customer acknowledges that Rocla 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 Rocla of the relevant information referred to in those sections may occur for the purpose of assessing this application.
9. To comply with the Privacy Amendment (Private Sector) Act 2001 the Guarantor acknowledges that Rocla has provided a copy of its Privacy Policy and Statement and Declaration. Furthermore, the Guarantor agrees that all personal information obtained by Rocla will be utilised in Rocla's absolute discretion in accordance with the National Privacy Principles and Rocla's Privacy Policy. Moreover the Guarantor expressly consents to the use and disclosure of all personal information relating to credit information that Rocla may from time to time need to disclose to a credit reporting agency.

To be signed by Principals/Directors

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

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

Approved to 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.**

Rocla Pty Limited ABN 31 000 032 191 A member of the Fletcher Building Group.



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

**BETWEEN:**

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

**(the "Guarantors")**

**(2) ROCLA PTY LIMITED ABN 31 000 032 191 ("Rocla")**

**RECITALS**

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

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

..... **(Company ABN Number)**

..... **(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 Moneys**

In consideration of Rocla 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 Rocla the due and punctual payment of:

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

(the "Guaranteed Moneys").

**1.2 Result of Non Payment**

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

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

**1.4 Continuing Guarantee**

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

**2. GUARANTOR'S OBLIGATIONS**

**2.1 Principal Obligations**

The Guarantor's obligations:

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

**2.2 Obligations Absolute and Unconditional**

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

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

**3. PREFERENCE**

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

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

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

**4.1 Suspension of rights**

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

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

- 4.2 **Winding up or Bankruptcy of Debtor**  
If the Debtor is wound up or bankrupted, the Guarantor irrevocably authorises Rocla (but without any obligation on the part of Rocla) to:
- prove for all moneys which the Guarantor has paid under the Guarantee; and
  - retain and carry to a suspense account and appropriate at Rocla's discretion any dividends and other moneys received in respect of the Guaranteed Moneys, until the Guaranteed Moneys have been irrevocably paid and discharged in full.
5. **INDEMNITY**
- 5.1 **Indemnity in respect of Guaranteed Moneys**  
For the consideration mentioned in clause 1.1, the Guarantor unconditionally indemnifies Rocla against any loss which Rocla may suffer because of any of the following:
- the Guaranteed Moneys, 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 Rocla.
- 5.2 **Payment under Indemnity**  
The Guarantor shall pay to Rocla on demand a sum equal to any loss in respect of which it indemnifies Rocla under this clause, including any of the Guaranteed Moneys (or any of the monies which, if recoverable would have formed part of the Guaranteed Moneys) which are not or may not be recoverable.
6. **INTEREST ON OVERDUE AMOUNTS**
- The Guarantor shall, on demand by Rocla, pay interest on any of the Guaranteed Moneys 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 Moneys.
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 Moneys the Guarantor hereby charges with payment of the Guaranteed Moneys 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 Rocla the Guarantor will immediately execute a mortgage in registerable form or other instrument of security, as required by Rocla, 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 Rocla from time to time to be its true and lawful attorney to execute and register such instruments.
10. **COSTS**  
The Guarantor indemnifies Rocla against, and shall pay Rocla 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 Rocla 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 Rocla 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 18H(3), 18K(1)(b), 18K(1)(c), 18K(1)(h), & 18N(1)(b) that use by Rocla of the relevant information referred to in those sections may occur for the purpose of assessing this Guarantee.
- 13.1 **Privacy Amendment (Private Sector) Act 2001**  
To comply with the Privacy Amendment (Private Sector) Act 2001 the Guarantor acknowledges that Rocla has provided a copy of its Privacy Policy and Declaration. Furthermore, the Guarantor agrees that all personal information obtained by Rocla will be utilised in Rocla's absolute discretion in accordance with the National Privacy Principles and Rocla's Privacy Policy. Moreover the Guarantor expressly consents to the use and disclosure of all personal information relating to credit information that Rocla may from time to time need to disclose to a credit reporting agency.
14. **TRUSTEE PROVISIONS**
- 14.1 The Guarantor does not execute this Guarantee as trustee of any trust unless it has told Rocla 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 Rocla of this fact in accordance with clause 14.1 then the Guarantor:
- is liable both personally and in its capacity as trustee;
  - gives Rocla 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 Rocla 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**  
Rocla may assign or transfer all or any part of its rights or obligations under this Guarantee without the consent of the Guarantor.
- 15.2 **Rocla's Statement Conclusive**  
A statement, signed on behalf of Rocla 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 Rocla or any other person or body corporate named as Guarantor.
- 15.4 **Attorneys**  
Each attorney who executes this Guarantee on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under the authority of which the attorney executes this Guarantee.

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

**EXECUTED** as an deed.

<p>1. <b>SIGNED BY,</b></p> <p>(Signature) ..... Date ...../...../.....</p> <p>(Print Name) .....</p> <p style="text-align: center;">Guarantor</p> <p>Witness Name ..... Date ...../...../.....</p> <p style="text-align: center;">PRINT</p> <p>Address .....</p> <p>Signature .....</p>	<p>2. <b>SIGNED BY,</b></p> <p>(Signature) ..... Date ...../...../.....</p> <p>(Print Name) .....</p> <p style="text-align: center;">Guarantor</p> <p>Witness Name ..... Date ...../...../.....</p> <p style="text-align: center;">PRINT</p> <p>Address .....</p> <p>Signature .....</p>
<p>3. <b>SIGNED BY,</b></p> <p>(Signature) ..... Date ...../...../.....</p> <p>(Print Name) .....</p> <p style="text-align: center;">Guarantor</p> <p>Witness Name ..... Date ...../...../.....</p> <p style="text-align: center;">PRINT</p> <p>Address .....</p> <p>Signature .....</p>	<p>4. <b>SIGNED BY,</b></p> <p>(Signature) ..... Date ...../...../.....</p> <p>(Print Name) .....</p> <p style="text-align: center;">Guarantor</p> <p>Witness Name ..... Date ...../...../.....</p> <p style="text-align: center;">PRINT</p> <p>Address .....</p> <p>Signature .....</p>

**DO NOT USE COMPANY SEAL**

## **ROCLA GENERAL TERMS AND CONDITIONS**

### **1. CONTRACT**

These general terms and conditions of sale form the contract between the Customer and Rocla Pty Limited (hereinafter referred to as "Rocla") 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 Rocla. No prior correspondence, discussion or other terms and conditions form part of this contract unless stated in this contract.

### **2. CANCELLATION**

- (1) The Customer may only cancel this contract with Rocla's consent and only on the basis that the Customer meets all loss, damage, cost or expense, including loss of profits, incurred by Rocla as a result of the cancellation.
- (2) Rocla 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 Rocla;
  - (b) commits an act of bankruptcy, resolves to or goes into liquidation, has a receiver or manager appointed, enters into voluntary administration or enters into a scheme of arrangement or other composition with its creditors or otherwise becomes insolvent and unable to pay its debts; or
  - (c) refuses or neglects to take delivery of the products described in the contract.

### **3. PRICE VARIATION**

- (1) Unless otherwise stated in this contract Rocla may vary the price stated in the contract to reflect any change in costs, taxes or duties incurred by Rocla after the date of this contract.
- (2) Where a list price applies to products supplied by Rocla 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 tax or other government impost unless specifically stated.

### **4. VARIATIONS TO SCOPE OF CONTRACT**

The price is based upon:

- (a) the scope of the work as detailed in the information provided by the Customer to Rocla 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 Rocla to vary the price stated.

### **5. SPECIFICATIONS**

- (1) Where Rocla manufactures or supplies products according to the Customer's specifications:
  - (a) Rocla does not warrant the suitability or performance of the product; and
  - (b) the Customer shall provide to Rocla accurate information sufficient to enable Rocla to provide the products specified and the Customer warrants to Rocla that the information and any products to be manufactured by Rocla under the contract do not breach any copyright, registered design, patent or other right of any third party and the Customer shall indemnify Rocla in relation to any such breach.
- (2) Unless otherwise stated in this contract the products shall be in conformity with a standard determined by Rocla.

### **6. PAYMENT**

- (1) Time for payment of the amount due to Rocla 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 Rocla is entitled to make.
- (2) Subject to sub-clauses (3) and (4) the Customer shall pay the amount due in accordance with the credit arrangements as agreed by Rocla.
- (3) Where no credit arrangements have been previously agreed by Rocla, but credit has been agreed by Rocla as a condition of this particular contract, the Customer shall pay the amount due within the month following the month of invoice.
- (4) Where no credit arrangements have been agreed by Rocla, the Customer shall pay the amount due before the first delivery of the products.
- (5) The Customer shall pay interest, at the current bank overdraft rate paid by Rocla from time to time, calculated monthly on any amount not paid by the due date.
- (6) Where price is stated on a volumetric basis, payment will be based on measurement of the volume of product as loaded by Rocla for delivery.

### **7. DELIVERY**

- (1) Subject to sub-clause (2) delivery shall be on reasonable notice from the Customer to Rocla and the Customer shall not be relieved from any obligation to accept or pay for products by reason of any delay in delivery.
- (2) Where this contract includes a Delivery Schedule delivery shall be in accordance with the dates and other information contained in such Schedule.
- (3) Rocla shall not be liable for delay in delivery arising from any cause whatsoever.
- (4) Where the Customer refuses or denies 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 Rocla.
- (5) Rocla reserves the right to deliver by installments and failure to deliver any installment shall not entitle the Customer to terminate the contract.
- (6) Deliveries are subject to suitable access, firm standing, storage, unloading and maneuvering space, as determined by Rocla. Rocla shall not be liable for, and the Customer shall indemnify Rocla against any claims for damage caused to access ways, storage areas, plant, equipment or works during delivery.
- (7) Additional costs incurred by Rocla in delivering or unloading the products;
  - (a) outside the hours of 7.30a.m. to 4.00p.m. weekdays (excluding public holidays);
  - (b) due to delays at the site or an unsuitable site; or
  - (c) where less than full truckloads are required, shall be at the Customer's expense.
- (8) The Customer warrants that its receivable facilities and equipment are suitable for deliveries and meet all relevant standards, laws and regulations. The Customer hereby indemnifies Rocla 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**

- (1) Title in the products shall not pass to the Customer until payment in full for the products together with any interest due has been received by Rocla.
- (2) If payment is overdue in whole or in part, Rocla may (without prejudice to any of its other rights) recover or recall the products and may enter upon any premises where they are stored or where they are reasonably thought to be stored.
- (3) The Customer's right to possession of the products shall cease if Rocla 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.Rocla 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**

- (1) The Customer shall ensure it has an authorised representative at the delivery site who shall check prior to unloading that the information shown on the delivery docket corresponds with the Customer's order. Unless otherwise noted on the delivery docket, the signature of the Customer's representative on the delivery docket shall represent acknowledgment by the Customer that the products comply with its order and have been supplied in accordance with this contract.

- (2) Notice of any defects shall be given to Rocla 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 Rocla, within 24 hours from the time of delivery or collection and prior to installation, of any defects in the products.
- (3) If notice in accordance with clauses 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.
- (4) Rocla 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**

- (1) Where the Customer requires the products to be subject to special testing or inspection the Customer shall pay all costs of and associated with such testing or inspection.
- (2) Any inspector or other person attending Rocla's premises on behalf of the Customer shall be authorised in writing by the Customer.
- (3) The Customer shall provide Rocla with copies of all authorisations, test results, measurements and reports prepared by or for the Customer in relation to Rocla's products.

#### **11. LIMITATION OF LIABILITY**

- (1) If a product is defective and the Customer advises Rocla of that defect in accordance with clause 9(1) or 9(2) Rocla shall repair or resupply the product, but Rocla shall not be liable for the removal of any defective products or for the re-installation of any products or for any consequential losses or loss of profits.
- (2) Rocla shall not be liable for any defect, loss, damage or injury howsoever arising by reason of:
  - (a) a failure to use the products in a manner other than what is normally expected to be done with or in relation to the products;
  - (b) any delay in delivery;
  - (c) a failure to comply with any instructions or warnings with respect to doing anything with or in relation to the products.
- (3) Any design or description of use, capacity, durability, colour, manner of installation, information, detail contained in drawings, data sheets, technical brochures or other documents provided by Rocla 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 Rocla shall not be liable in these respects.
- (4) Other than expressly provided in this contract Rocla provides no other warranty to the Customer in relation to the products and this contract comprises the whole agreement between the parties.
- (5) Section 68A of the Trade Practices Act, 1974 ("the Act") enables Rocla 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 Rocla for a breach of a 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 Rocla):
  - (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. RISK**

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

#### **13. AMENDMENTS AND WAIVER**

Rocla 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 Rocla. 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 Rocla.

#### **14. GOVERNING LAW**

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

#### **15. FORCE MAJEURE**

Rocla 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.

#### **16. SUBJECT TO STATUTE**

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

#### **17. NOTICES**

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

#### **18. CONFIDENTIAL INFORMATION**

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

#### **19. ASSIGNMENT**

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

#### **20. RETURNABLE PACKAGING**

Unless otherwise stated, all pallets, stillages, timbers, dunnage, formers or similar packaging delivered with the products remain the property of Rocla and shall be returned in good order and condition to Rocla 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 Rocla.

#### **21. SAMPLES AND BLENDING**

Any sample product or sample colour is provided to indicate only the general nature of the product. Rocla 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. Rocla shall not be liable for any failure of the Customer or others to blend the products.

#### **22. NON-CONFORMING PRODUCT**

Where a product is supplied by Rocla 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 Rocla. Notwithstanding the preceding terms and conditions, Rocla shall not be liable in any way for the performance or use of, or any defect in, such a product.

#### **23. FITTINGS**

Unless otherwise stated in this contract, cast in or similar fittings for handling the products are to be removed or finished by the Customer.

#### **24. PRESSURE APPLICATIONS**

Unless otherwise stated in this contract, the products supplied are not warranted by Rocla to be suitable for applications or use involving internal pressure.

25. The customer acknowledges that if it sells any of Rocla's products:

- (a) it sells the products as fiduciary agent of Rocla provided that such sales shall not give rise to any obligations on the part of Rocla; and
- (b) prior to making full payment for all products supplied by Rocla to the Customer, the Customer shall hold the proceeds of sale on trust for Rocla, and shall hold the proceeds in a separate account.