



# SPRYCRETE

CONCRETE SUPPLY

SPRYCRETE PTY LTD ACN 648 951 071  
CUSTOMER APPLICATION FORM

APPLICANT/CUSTOMER DETAILS:					
Trading Name and ABN of Applicant:					
Entity Type:	Company <input type="checkbox"/>	Partnership <input type="checkbox"/>	Trustee <input type="checkbox"/>	Sole trader <input type="checkbox"/>	Other <input type="checkbox"/>
Legal Name of Applicant:					
ACN if a Company / Date of Birth if an Individual:					
Postal Address:					
Date Established:		Credit Limit Requested:	\$		
Delivery Address:					
Email:		Telephone:		Fax:	
Contact Person:		Mobile:			
NAME AND ADDRESS OF DIRECTOR(S) / PARTNERS / PROPRIETOR(S)					
Name:	Designation:	Residential Address:	Phone No:	Date of Birth:	
CREDIT REFERENCES: (Minimum of 3 regular established and unrelated accounts)					
	Name:	Business:	Email:	Address:	Phone No:
1.					
2.					
3.					
DECLARATION AND AGREEMENT:					
In consideration of SPRYCRETE PTY LTD agreeing to supply Goods (and any associated services) to the Applicant named above, you (or in the case of an Applicant that is not a sole trader, you on behalf of the Applicant) hereby:					
1.	agree to the Terms set out on the reverse side of this form;				
2.	declare that the information supplied in this form is true and correct; and				
3.	consent to SPRYCRETE PTY LTD obtaining a credit check on the Applicant's credit rating and history.				
Full Name:		Signed:			
Position:		Date:			
GUARANTEE & INDEMNITY:					
In consideration of SPRYCRETE PTY LTD agreeing to supply Goods (and any associated services) to the Applicant at my/our request:					
1.	I/We unconditionally: a. guarantee to SPRYCRETE PTY LTD the due and punctual payment by the Applicant of all monies payable in accordance with the Terms set out on the reverse side of this form as and when the same become due and payable by the Applicant; and b. indemnify SPRYCRETE PTY LTD against any losses, charges and expenses which SPRYCRETE PTY LTD might incur as a result of any default by the Applicant under the credit facility or the enforcement of this Guarantee, including but not limited to the costs of collection and legal costs.				
2.	I/We agree to be deemed as principal debtor for all accounts held by the Applicant with SPRYCRETE PTY LTD.				
3.	I/We agree that this Guarantee shall be a continuing guarantee and shall not be discharged by any settlement or payment of account and that this Guarantee is both joint and several.				
4.	I/We agree that my/our liability under this Guarantee shall not be discharged, abrogated, prejudiced or affected by: a. the granting of time, credit or the indulgence or other concession to the Applicant; b. any alteration, modification, variation or addition to any agreement in respect of the supply of goods and services; or c. any other act, omission or event which but for this provision might operate to discharge, impair or otherwise affect, my/our obligations under this Guarantee or any powers or remedies conferred upon SPRYCRETE PTY LTD by this Guarantee or by law.				
5.	I/We confirm that I/we have been advised by SPRYCRETE PTY LTD that I/we should seek legal advice before signing this Guarantee.				
Guarantor Name:		Signed:		Designation:	
Guarantor Name:		Signed:		Designation:	
Witness Name:		Witness Signed:		Date:	

**SPRYCRETE PTY LTD**  
**TERMS OF TRADE**

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In these Terms of Trade, we have used "we", "us" and "our" to refer to **SPRYCRETE PTY LTD** and "you" to refer to you, our customer. By agreeing to acquire Goods (and any associated services) from us you agree to these Terms.

**1. ORDERS AND DELIVERY**

- 1.1 If you place an order with us, we have no obligation to accept the order. The order will not be effective until we approve and accept the order by confirmation to you.
- 1.2 If we accept your order, we will use reasonable endeavours to Deliver the Goods to you within the timeframe we agree with you, the timeframe specified in our Quote or, if no time is agreed or specified, within a reasonable time.
- 1.3 If we accept your order, you cannot cancel, modify or defer your order without our consent which we may withhold at our discretion. We may give our consent subject to any conditions we consider appropriate including, without limitation, charging a cancellation fee and being reimbursed for all losses we suffer as a direct or indirect consequence (including loss of profits) of your cancellation, modification or deferral. For the purposes of this clause 1.3:
  - (a) for orders of Goods equal to or over 50m<sup>3</sup>, you cannot cancel, modify or defer your order with less than 24 hours' notice from the scheduled Delivery time of your Goods; and
  - (b) for orders of Goods under 50m<sup>3</sup>, you cannot cancel, modify or defer your order with less than 6 hours' notice from the scheduled Delivery time of your Goods, subject to the weather conditions existing on the scheduled day of Delivery.
- 1.4 We will charge you for the Goods if you fail or refuse to take or accept Delivery or indicate to us that you will fail to do so.
- 1.5 Prior to discharge of the Goods from the delivery vehicle, you shall check that the Goods as described on the order or delivery docket conforms with your order requirements and you must record any discrepancies in writing on the order or delivery docket. Failure to record such discrepancies on the order or delivery docket retained by us is deemed to be conclusive evidence that the order or delivery docket is accurate and that you accept the Goods as delivered to the Site.

**2. TITLE AND RISK**

- 2.1 We shall retain title to Goods we supply to you until they have been paid for in full and you have performed all your other obligations under these Terms.
- 2.2 Risk in all Goods passes to you when the Goods are on board the transport required to Deliver the Goods to you.
- 2.3 You shall bear the risk of any damage to the Goods during transit to your premises and you agree that we will have no liability for any damage to the Goods arising directly or indirectly in connection with the transit of the Goods.

**3. PRICE AND PAYMENT**

- 3.1 All our prices are exclusive of GST and other taxes and duties and you must pay those amounts in addition to our price.
- 3.2 The price for the Goods will be calculated based on the volume of Goods supplied multiplied by the applicable Rate (which may be set out in our order or Quote) plus any additional costs incurred in relation to the Goods and supply.
- 3.3 You must pay for Goods you order from us by:
  - (a) paying the full price that we specify for the Goods and associated costs before we Deliver the Goods to you (in which case, we shall have no obligations to you until you have paid for the Goods in full); or
  - (b) if we give our consent, paying the full price we specify within 30 days after the end of the month in which the Goods are Delivered to you; or
  - (c) if we provide you with a Quote which you accept, paying for the Goods referred to in the Quote on the terms set out in the Quote.
- 3.4 We may refuse consent to you ordering Goods from us for payment on credit (that is, payment either pursuant to clause 3.2(b) or (c)), unless you have completed our customer application form and we have approved your application for credit based on the information in that form. We may revoke our consent at any time by written notice to you in which case you must immediately pay to us all amounts you owe us.
- 3.5 Our prices are subject to change without notice, unless you have received official notice in writing that your purchase order/Quote has been accepted by us.
- 3.6 If we provide a Quote to you, it is based on information available to us at that time and we may charge you more than the amount quoted if our costs (e.g. the cost of labour, materials, transport, tax, exchange rates or other costs) or the specifications change. Any Quote will be valid and open for your acceptance for 30 days from the date of the Quote.
- 3.7 All payments shall be made without set-off or deduction. Receipt of a cheque, bill of exchange, or other negotiable instrument will not constitute payment and you remain liable for payment until payment is received by us.
- 3.8 We may apportion payments to outstanding accounts as we see fit.

**4. DEFAULT**

- 4.1 You will be in Default if:
  - (a) you fail to pay an amount due under these Terms by the due date for payment; or
  - (b) you commit a breach of any of your other obligations under these Terms, the Security or the terms of any other contract you have entered into, or enter into in the future, with us or one of our related entities; or
  - (c) you become insolvent, are wound up, have a receiver appointed, enter into any composition or arrangement with your creditors, do any act which would render you liable to be placed in liquidation or have a receiver appointed over your property, commit an act of bankruptcy, cease to be of full legal capacity, or die;
  - (d) Goods that we have retained title to are at risk; or
  - (e) an event or a series of events (whether related or not) occurs which, in our opinion, may cause a material adverse change in your ability to meet your obligations to us.
- 4.2 If you are in Default then we may, at our option, do any one or more of the following:
  - (a) charge you default interest at 10% per annum on any late payments calculated on a daily basis from the due date until the date payment is received;
  - (b) require you to remedy the default in the manner and within the period that we tell you;
  - (c) require you to pay to us all amounts you owe us immediately;
  - (d) suspend or terminate your account with us;
  - (e) enforce security interests created by these Terms; and/or
  - (f) exercise any rights that we have under these Terms, any security or that are available to us at law.
- 4.3 We may suspend or terminate your account with us at any time in our sole discretion. If your account is terminated, you must immediately pay us any amount you owe us. Termination will not affect any of our rights that have arisen before termination.

**5. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")**

- 5.1 Clause 2.1 creates a security interest in Goods we supply to you on credit.
- 5.2 You shall not grant any other security interest or any lien over Goods that we have a security interest in.
- 5.3 At our request you shall promptly sign any documents and do anything else required by us to ensure our security interest constitutes a first ranking perfected security interest in the Goods.
- 5.4 We may at any time enter your premises and properties to uplift Goods that we have a security interest in (if practical to do so).
- 5.5 If Goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled Goods, our security interest will continue in the whole in which they are included. You shall not grant any other security interest or any lien in either the Goods or in the whole.
- 5.6 You waive any rights you may have under sections 130, 132, 135, 137, 92, 93, 94, 95, 97 and 143, of the PPSA.
- 5.7 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 5.8 You shall give us prior written notice of any proposed change of your name or address.

**6. WARRANTIES**

- 6.1 The *Competition and Consumer Act 2010* and *Competition and Consumer Act 2010, Schedule 2 (Australian Consumer Law)*, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. Other than expressly provided for in these Terms, we exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 6.2 The guarantees contained in the Australian Consumer Law are excluded where you acquire goods and services from us for the purposes of a business.

**7. LIMITATION OF LIABILITY**

- 7.1 Except as expressly otherwise provided by clauses 7.2 or 7.3, we shall not be liable for any loss or damage or liability of any kind whatsoever (including but not limited to special, consequential or incidental loss, penalty or lost profit revenues or business, loss of use of equipment and costs of substitute equipment or facilities) whether suffered or incurred by you or another person and whether in contract, tort (including negligence), warranty, liability, equity otherwise and whether such loss or damage arises directly or indirectly from Goods or services provided by us to you, by delay in Delivery of any Goods or services or for any other reason.
- 7.2 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms or for any other reason, such liability is limited to the amount of the price of the Goods concerned that you have actually paid to us.

- 7.3 We may agree to a higher limitation of liability with you than the limit provided in clause 7.2, but such agreement will only be effective if recorded in writing and signed on our behalf by an authorised signatory.
- 7.4 While every effort has been made to supply the Goods and/or services in accordance with the specifications and/or any quote or estimate provided to you for the Goods and/or services, we will not be liable for any loss or damage arising from any representations or warranties, either express or implied and to the extent permissible by law we will not be liable for the merchantability or fitness for a specific purpose of the Goods and/or services supplied and relied upon by you.
- 7.5 To the maximum extent permitted by law, you hereby indemnify, and forever hold harmless, us from all losses, liabilities costs and expenses caused or contributed to by any negligent and/or wilful act or omission or any breach of these Terms by you or by us arising from the supply of the Goods in accordance with these Terms.
- 8. SITE**
- 8.1 You will be responsible for providing adequate and timely access to the Site and you will indemnify us against any loss, liability, costs and expenses incurred by us as a result of failing to provide such access.
- 8.2 If we, or our agents, enter the Site for the purposes of delivering the Goods, you shall indemnify us for any loss, liability, costs and expenses incurred by us arising out of or in connection with such.
- 9. SAFETY**
- 9.1 You are responsible for ensuring safe and adequate access to the Site for delivery of the Goods and all other aspects of Site safety.
- 9.2 You must notify us prior to Delivery of any obstacles or peculiarities in relation to the Site.
- 9.3 You must ensure that all personnel involved in, or in relation to, the Delivery and acceptance of the Goods avoid contact with exposed skin areas and eyes and are wearing appropriate personal protection including but not limited to protective clothing, safety goggles and gloves.
- 10. INTELLECTUAL PROPERTY**
- 10.1 In respect of Intellectual Property used in or arising from the production of the Goods or the performance of any associated services:
- all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date of these Terms (whether you, us or any third party); and
  - any new Intellectual Property will be dealt with in accordance with clause 11.
- 10.2 If any Goods are to be supplied to your design, you warrant that the manufacture and supply of such Goods by us will not infringe any third party's Intellectual Property rights and you indemnify us against any loss, liability, costs and expenses in the event of any claim being made that the manufacture or supply of such Goods by us infringes any patent, copyright or other rights of any other person.
- 11. INTELLECTUAL PROPERTY OWNERSHIP**
- 11.1 Subject to clause 10.1, we are and will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests in the Goods, and any other work performed by us for you, as first owner of those Intellectual Property rights and interests where we hold such rights before transferring ownership of the Goods to you.
- 11.2 We shall retain exclusive worldwide ownership at all times of our artistic styles, methods of working, techniques, ideas, skills and know-how.
- 11.3 This clause 11 shall continue in force as between us and you notwithstanding the termination of these Terms or Delivery of the Goods.
- 12. PRIVACY OF INFORMATION**
- 12.1 You authorise us:
- to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
  - to disclose information about you (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us; and (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms.
- 13. NOTICES**
- 13.1 Any notice may be given by phone, in person, posted, or sent by facsimile or email to you or where you are a company, to any of your directors.
- 14. CONFIDENTIALITY**
- 14.1 You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.
- 15. COSTS**
- 15.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms.
- 16. CREDIT INFORMATION**
- 16.1 You consent to us, or any financier or credit-rating agency, making enquiries of and obtaining any information about your financial standing and credit worthiness.
- 17. JURISDICTION**
- 17.1 These Terms are governed by the laws of South Australia. You may take legal action against us only in a South Australian Court.
- 18. DISPUTES**
- 18.1 Any claim or dispute arising under these Terms shall be determined by arbitration under the *Commercial Arbitration Act 2010* if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the South Australian Courts.
- 19. FORCE MAJEURE**
- 19.1 If we have given you a time for Delivery of the Goods (or any part of them), such time is approximate only and is not deemed to be of the essence.
- 19.2 We shall not be liable for delay or failure to perform our obligations under these Terms if the cause of delay or failure is beyond our reasonable control.
- 20. GENERAL**
- 20.1 These Terms replace any earlier representations, warranties, understandings and agreements (whether oral or written), and together with your customer application form and Quote (if any) constitute the entire agreement between us and you relating to their subject matter.
- 20.2 You shall not transfer or assign your rights, powers or obligations under these Terms without our prior written consent.
- 20.3 If you have entered into these Terms as the trustee of a trust and you have no right to or interest in any of the assets of the trust except in your capacity as trustee of the trust, your liability shall be limited to the value of the assets of the trust which now or in the future are (or, but for your wilful neglect or default, would be) in the hands of the trustees for the time being of the trust. This clause does not limit any liability you have to us as a personal guarantor.
- 20.4 No failure or delay by us in insisting upon the strict performance of these Terms or exercising any right under these Terms will operate as a waiver of those matters.
- 20.5 We may change these Terms at any time. Any change applies from when it is published on our website or notified to you in writing.
- 21. DEFINITIONS**
- 21.1 In these Terms unless the context otherwise requires:
- "Concrete" means ordinary structural and/or pavement concrete we supply to you.
- "Delivery" means the despatch of the Goods from our premises. If you indicate to us that you will fail or refuse to take or accept delivery, then the Goods are deemed to have been delivered when we are willing to deliver them and "Deliver" has a corresponding meaning.
- "Default" has the meaning set out in clause 4.
- "Goods" means goods including Concrete and any associated services that we supply to you.
- "Intellectual Property" means all intellectual property rights including, without limitation, copyright, patent and design rights, drawings, documents, data, ideas, procedures, calculations and all other statutory and common law rights and interests.
- "Quote" means our quotation to supply Goods to you and/or provide related services to you for a specified price (subject to adjustment in accordance with these Terms) and on these Terms as varied in the Quote.
- "Rate" means (i) the rate or fee for the Goods on a volume basis as specified in the Quote or, if not so specified, (ii) as set out in our Schedule of Rates as at the date of acceptance of your order.
- "Schedule of Rates" means our schedule of rates for Goods and associated costs as issued and amended by us from time to time.
- "Security" means all existing and future security held by us that secures your obligations under these Terms.
- "Site" means the location for supply/delivery of the Goods specified in the order or Quote.
- 21.2 The rule of construction known as the contra proferentem rule does not apply to these Terms.
- 21.3 Words importing the singular include the plural and vice versa.
- 21.4 Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms.
- 21.5 References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.
- 21.6 References to a statute include references to:
- regulations, orders, rules or notices made pursuant to that statute;
  - all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and
  - any statute passed in substitution of that statute.