

# Application For 30 Day Credit Account

Accounts: PO BOX 2528, Regency Park SA 5942

E accounts.receivable@mspgroup.com.au

T 08 8366 7770

F 08 8266 9300

mspgroup.com.au



Please indicate which company you would like to trade with:



Direct Plumbing & Building  
Supplies Pty Ltd

ACN 008 056 371  
ABN 83 008 056 371



MSP Group Pty Ltd

ACN 007 991 666  
ABN 85 007 991 666



MSP Group Pty Ltd

ACN 007 991 666  
ABN 85 007 991 666



MSP Group Pty Ltd

ACN 007 991 666  
ABN 85 007 991 666



**HALLETT  
RESOURCES**

Hallett Resources Pty Ltd

ACN 114 534 753  
ABN 42 114 534 753



**MCLAREN  
VALE  
QUARRIES**

MSP Nominees Pty Ltd

ACN 008 085 363  
ABN 43 762 744 840



**KULPARA  
QUARRY**

Kara Resources Pty Ltd

ACN 080 865 103  
ABN 51 080 865 103



**HALLETT  
RESOURCES  
TRURO**

Kara Resources Pty Ltd

ACN 080 865 103  
ABN 51 080 865 103



**HALLETT  
RESOURCES**  
CONSTRUCTION SANDS

MSP Nominees Pty Ltd

ACN 008 085 363  
ABN 43 762 744 840



**MSP  
TRANSPORT**

MSP Nominees Pty Ltd

ACN 008 085 363  
ABN 43 762 744 840



**HALLETT  
CONCRETE**

Hallett Concrete Pty Ltd

ACN 007 955 419  
ABN 46 007 955 419



**MSP  
CONSTRUCTIONS**

MSP Group Pty Ltd

ACN 007 991 666  
ABN 85 007 991 666



**Registered Company Name:**

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**Trading Name:**

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**ABN:**

**ACN:**

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**Physical Address:**

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**Postal Address:**

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**Please Indicate:**    Company                  Partnership                  Sole Trader.                  Govt. Dept.                  Trustee Co                  \*\*see below

**Telephone:**

**Facsimile:**

**Mobile Phone:**

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**Email:**

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**Accounts Contact Name:**

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**Nature of Business:**

**How long in this Business:**

**Builders License No:**

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**Purchase Order Number Required:**

YES

NO

**Estimated Monthly Purchases: \$**

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**Invoice / Statement Delivery Method:** EMAIL

POST

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**Full name and residential addresses of the Directors / Partners / Sole Trader:** (Please attach a separate page if insufficient space)

**Name**

**Residential Address**

**Date of Birth**

**Drivers License**

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**Please provide a minimum of three trade credit references:**

**Company Name**

**Contact Name**

**Telephone No.**

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1.

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2.

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3.

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\*\*Special Note: If the Company acts as, or is part of, a Trust / Nominee company then the provision of Personal Guarantee and Indemnity from the Trust Beneficiary / Beneficiaries may, at the Supplier's discretion, be required to process this application.

- **Completing a Credit Application does not infer that credit will be granted.**
- **The Supplier reserves the right to refuse credit to any Applicant without explanation.**
- **The Supplier reserves the right to suspend or withdraw credit facilities at any time without notice.**

**IN CONSIDERATION OF** the Supplier jointly and severally providing commercial credit facilities to the Customer who is completing the Application for 30 Day Credit Account that is attached to these General Terms and Conditions:-

- The Customer agrees that these General Terms and Conditions contained herein are incorporated into any contracts, made now and in the future, for the supply of goods and/or services to the Customer;
- The Customer acknowledges that the General Terms and Conditions take precedence over any terms and conditions which may be contained in any document provided by the Customer;
- The Customer hereby charges, in favour of the Supplier, all the Customer's estate and interest in any land, freehold or leasehold, in which the Customer now has any legal or beneficial interest in, or which the Customer later acquires any such interest in, with payment of all monies owed by the Customer to Supplier from time to time and consents to the Supplier lodging a caveat or caveats which note the Supplier's interest in the Customer's real property;
- The Customer acknowledges that where the Customer consists of more than one party, liability shall be joint and several.

## GENERAL TERMS AND CONDITIONS

**1. DEFINITIONS** In these terms and conditions, unless a contrary intention is stated:

- "ACL"** is an abbreviation of 'Australian Consumer Law' and means Schedule 2 of the Competition and Consumer Act 2010 (Cth) as amended from time to time;
- "COD"** is an abbreviation of 'cash on delivery' and means the Customer is required to pay the Price for all Goods and/or Services in full (with no deduction or set-off), on or prior to, delivery or collection of the Goods and/or Services;
- "Customer"** means the Company, Partnership or Sole Trader who completed the 'Application for 30 Day Credit Account' and/or orders Goods and/or Services from the Supplier, and it includes the Customer's personal representatives, successors and permitted assigns;
- "Force Majeure Event"** means with respect to the Supplier, any event or circumstance, regardless of whether it was foreseeable, that was not caused by the Supplier and which prevents the Supplier from complying with, or performing, any of its obligations under any contract with the Customer;
- "Goods"** means any goods, and any component part of or accessory thereto, supplied by the Supplier to the Customer, or ordered by the Customer but not yet supplied;
- "Price"** means the cost of the Goods and/or Services as referred to in the Supplier's price lists and/or otherwise nominated by the Supplier and may be subject to change from time to time without notice;
- "PMSI"** means a purchase money securities interest and has the meaning given in section 14 of the PPSA;
- "PPSA"** means the Personal Property Securities Act 2009 (Cth) as amended from time to time;
- "PPSR"** means the Personal Property Securities Register established under section 147 of the PPSA;
- "Security Interest"** has the meaning given in section 12 of the PPSA;
- "Services"** means any services supplied by the Supplier to the Customer and includes, without limitation, building, construction, excavation, paving, concreting, surface texturing, joinery, mining, transportation, health and safety consultancy, and any advice and/or recommendations;
- "Supplier"** means jointly and severally, M.S.P. Group Pty Ltd ACN 007991666, Direct Plumbing & Building Supplies Pty Ltd ACN 008056371, Direct Building Supplies (Aust) Pty Ltd ACN 092244810, Kara Resources Pty Ltd ACN 080865103, Hallett Resources Pty Ltd ACN 114534753, Hallett Concrete Pty Ltd ACN 007955419 and/or MSP Nominees Pty Ltd ACN 008085363 and any related entity of the above companies, as that term is defined in section 9 of the Corporations Act 2001 (Cth); and
- "Verification Statement"** has the meaning given in section 155 of the PPSA.

## 2. PAYMENT TERMS

- Unless otherwise agreed in writing by the Supplier, the Customer is on COD terms. In all other circumstances, the Customer is required to pay the Price of all amounts for purchases and all accounts, in full (with no deduction or set-off), no more than 30 days from the end of the month during which any given purchase is made.
- Any forbearance by the Supplier in respect of the Customer's failure to pay strictly in accordance with the payment terms shall not constitute a waiver by the Supplier of its rights to payment nor will it be construed as an agreement to extend credit.
- The Supplier reserves the right, at all times, to suspend or discontinue the supply of Goods and/or Services to the Customer without being obliged to give any reason for its action.
- Where the Customer is on COD terms, the Supplier reserves the right not to deliver or provide the Goods and/or Services until payment of the Price has been received in full.
- Where the Supplier has agreed to provide the Goods and/or Services to the Customer other than on COD terms:
  - the Supplier reserves the right to suspend the account immediately if any payment becomes overdue;
  - where applicable, the Supplier reserves the right to withdraw the credit facilities in the event of: any credit limit internally set by the Supplier, or trading terms, being exceeded; or in the event that the Supplier becomes aware of any factor, in its sole opinion, that materially affects the Customer's credit worthiness;
  - interest on overdue amounts may be charged at a rate of 1.50% per calendar month or part thereof, and the Customer shall be liable for, and expressly undertakes to pay, all such interest; and
  - in the event of a dispute, the complete undisputed portion of the account must be paid in accordance with the Payment Terms.
- At the Supplier's sole discretion, a deposit may be required prior to any supply. The Supplier reserves the right not to provide the Goods and/or Services until such time as the required deposit is paid in full.
- Any quotation given by the Supplier to the Customer is not an offer or obligation to supply but an invitation to treat only. The Supplier will endeavour, but will not be obliged, to maintain the quotation price for a period of 30 days. However, the Supplier reserves the right to accept or reject any order. The Supplier is not obliged to supply Goods and/or Services unless the Supplier accepts the Customer's order in writing.
- Should the Supplier incur legal and/or any other expenses, including any such expenses to any collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Customer, the Customer shall be liable for all such expenses (on a full indemnity basis). The Customer acknowledges that the collection expenses may be calculated on a commission basis at a percentage rate of up to 25% of the amount due and expressly agrees to pay those expenses irrespective of the amount of work actually performed by the collection agency.
- Any amounts received by the Supplier may be applied at the Supplier's discretion: first against interest, fees, charges, collection expenses and legal expenses; and second, towards any amount that the Customer owes to the Supplier from time to time.
- The Customer shall be liable for, and expressly undertakes to pay, all fees (including an administration fee in an amount to be set from time to time by the Supplier) for all costs, fees and/or charges incurred by the Supplier as a result of any cheque given by the Customer, or electronic banking transaction made by the Customer, being dishonoured for whatever reason.

### 3. RISK, RETENTION OF TITLE AND PPSA

- 3.1. The Goods supplied by the Supplier are at the Customer's risk immediately on delivery to the Customer or into the custody of the carrier or anyone acting on the Customer's behalf, whichever comes first.
- 3.2. Whilst the risk in the Goods passes on delivery, legal and equitable title remains with the Supplier until payment in full for all debts accrued or owed by the Customer to the Supplier is received by the Supplier. Payment will not be deemed to be made until any cheque (or other form of payment) has been honoured or cleared.
- 3.3. Until the Supplier has received payment for all amounts owing to it by the Customer, it reserves the following rights:
  - 3.3.1. legal and equitable ownership of the Goods;
  - 3.3.2. the right to enter the Customer's premises (or the premises of any third party where the Goods are located) using reasonable force to repossess the Goods;
  - 3.3.3. the right to keep or resell any Goods repossessed under Clause 3.3.2; and
  - 3.3.4. any other rights it may have at law or under the PPSA.
- 3.4. The Customer agrees that, until the Supplier has received payment for all amounts owing to it by the Customer, the Supplier has a:
  - 3.4.1. PMSI in the Goods (and their proceeds) supplied presently and in the future by the Supplier to the Customer; and
  - 3.4.2. Security Interest in relation to any other amounts owed by the Customer to the Supplier.
- 3.5. The Customer agrees, to the extent permitted by law:
  - 3.5.1. to do all things necessary and execute all documents reasonably required which the Supplier requests for the purpose of: ensuring that a Security Interest is enforceable, perfected and otherwise effective; enabling the Supplier to apply for any registration, or give any notification, in connection with a Security Interest created so that the Security Interest has the priority required by the Supplier; and, includes anything the Supplier reasonably asks the Customer to do in connection with the PPSA;
  - 3.5.2. that the Supplier may register its Security Interest on the PPSR and where necessary amend its registration from time to time;
  - 3.5.3. to not grant any other person a Security Interest in respect of the Goods or their proceeds; and
  - 3.5.4. the Customer irrevocably waives any rights it may have to: receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA; redeem the Goods under section 142 of the PPSA; reinstate this contract under section 143 of the PPSA; and, receive a Verification Statement.
- 3.6. Nothing in this Clause 3 prevents the Supplier from taking collection action or legal action against the Customer to recover any amounts outstanding from time to time.
- 3.7. Until the Supplier has received payment for all amounts owing to it by the Customer:
  - 3.7.1. the Customer agrees to take the Goods as bailee for the Supplier;
  - 3.7.2. the Customer must insure the Goods, against all usual risks, to full replacement value until ownership passes to the Customer noting, on such insurance policy, the interest of the Supplier and any insurance monies received by the Customer in respect of Goods owned by the Supplier, will be received on trust for, and paid to, the Supplier;
  - 3.7.3. the Customer must, where reasonably possible, store each delivery of Goods separately, clearly identified as the Supplier's property and in a manner to enable the Goods to be identified and cross-referenced to particular invoices;
  - 3.7.4. the Customer may only sell, use or part with possession of Goods in the ordinary course of its business. Any sale will be as fiduciary agent for the Supplier and the Customer must receive on trust for and account to the Supplier for that part of the proceeds of sale that equates to the amount owing by the Customer to the Supplier for those Goods, however this agency will only extend to the obligation to account for proceeds, and the Customer will not be bound by any contract between the Customer and the Customer's customer; and
  - 3.7.5. if the Customer uses the Goods in a manufacturing or value added process of its own or of a third party, then the Customer will hold that part of the proceeds of the manufacturing or value added process as relates to the Goods on trust for the Supplier. Such part will be deemed to equal in dollar terms the amount owing by the Customer to the Supplier for those Goods at the time of the receipt of the proceeds.
- 3.8. The Customer is liable for all costs (on a full indemnity basis) associated with the exercise by the Supplier of its rights under this clause 3.

### 4. DELIVERY

- 4.1. The Supplier shall not be liable for any loss or damage, including consequential loss or damage, arising from any delay in delivery or failure to deliver or supply Goods and/or Services, either whole or in part, due to any Force Majeure Event.
- 4.2. The Supplier's obligation to deliver shall be discharged on arrival of the Goods at the Customer's nominated delivery destination or nominated agent or carrier. If the Customer is unable or unwilling to accept physical delivery of the Goods when the Goods are ready for delivery, the Supplier shall be entitled to charge a fee for any delay suffered, or to arrange for storage of the Goods at the risk and cost of the Customer including all transportation, storage and other consequential costs.

### 5. DEFECTS

- 5.1. The Customer shall inspect the Goods upon delivery and will, within 48 hours, notify the Supplier of any defects, short deliveries or any failure to fulfill any quotation or order.
- 5.2. The Customer will, within a reasonable time following delivery, grant the Supplier access to the Goods in order to inspect for any alleged defects.
- 5.3. Should the Customer fail to notify the Supplier within the specified period then the Goods shall be deemed to be in compliance with the order and free from any defect whatsoever.

### 6.6. LIMITATION OF LIABILITY AND THE ACL

- 6.1. The only conditions and warranties which are binding on the Supplier in respect of: the state, quality or condition of the Goods; and/or the due care and skill rendered, the fitness for a particular purpose, or the time for supply, of any Services; are those set out in Clause 7 below, and those imposed and required to be binding under the ACL.
- 6.2. The Customer warrants that the Goods are to be used, and the Services are acquired, for commercial business purposes; and in respect of the Goods, that the Goods are to be: resupplied to its customers; or, used up in a process of construction, production or manufacture; or, for repairing or treating other goods or fixtures on land. Accordingly, the Customer warrants that Part 3-2 of the ACL does not apply to the Goods and/or Services supplied.
- 6.3. The liability of the Supplier to the Customer for any reason related to the performance of Goods under this agreement shall be limited to the replacement or repair of the Goods or the amount paid or payable by the Customer in respect of the particular Goods.
- 6.4. To the fullest extent permitted by law, the Supplier will not be liable to the Customer for loss of profit or other economic loss, direct or indirect or consequential loss (including, but without limiting the generality of this term, consequential loss due to delay, lack of performance, loss of contract or depreciation in the value of any undamaged property), special, general or other damages or other expenses or costs arising out of a breach of contract or any common law duty (including negligence).
- 6.5. Any advice, recommendation, information, assistance or service provided by the Supplier in relation to the performance, application or appropriateness of Services and/or the use of Goods is given in good faith, but is given without liability or responsibility on the Supplier's part unless the provisions of any relevant Commonwealth or State Legislation provide otherwise.

**7. WARRANTY**

- 7.1. The Supplier warrants that Goods supplied shall be of merchantable quality; and Services supplied will be rendered with due care and skill.
- 7.2. The Supplier does not warrant that: the Goods and/or Services are fit for a particular purpose, unless that particular purpose is specifically and expressly stated by the Supplier in writing to the Customer; and, the Services will be supplied within a reasonable time, unless that time is specifically and expressly stated by the Supplier in writing to the Customer.
- 7.3. Any costs associated with the return of Goods for the purpose of a warranty claim shall be the responsibility of the Customer.

**8. CANCELLATION**

- 8.1. The Supplier may cancel the delivery of Goods and/or Services at any time before delivery by giving written notice to the Customer.
- 8.2. The Supplier shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation by the Supplier.
- 8.3. The Customer may cancel the delivery of Goods and/or Services at any time before delivery by giving written notice to the Supplier.
- 8.4. In the event that the Customer cancels delivery of Goods and/or Services, the Customer shall be liable for any costs incurred by the Supplier up to the time of the cancellation including, but not limited to, any re-stocking fees incurred by the Supplier.

**9. JURISDICTION**

- 9.1. These terms and words shall be construed in accordance with the laws of the State of South Australia and, where applicable, the Commonwealth of Australia; and the Customer submits to the non-exclusive jurisdiction of the courts of South Australia.

**10. GENERAL**

- 10.1. The invalidity or unenforceability of any provision of these Terms and Conditions shall not affect the validity or enforceability of the remaining provisions.
- 10.2. The Customer acknowledges that all purchases are made relying solely upon the Customer's own skill and judgment.

The Supplier is committed to protecting your privacy. Its policy is to comply with appropriate Australian Privacy Principles for the handling of personal information as set out in the Privacy Act 1988 (Cth). In accordance with those principles, and with the Supplier's Privacy Policy, persons will be given access to their personal information upon request. The Supplier uses the types of personal information collected, to enable it to supply customers with its products and for assessing Applications for Commercial Credit, managing accounts and, if necessary, assessing its risk in, and collecting debts. This information may be disclosed to the Supplier's associated or related entities, parties related to the Customer's employment (e.g. referees and others as set out in the Privacy Policy) contractors, other credit providers, whether or not an account is overdue and, if necessary, its risk insurers, debt collectors and credit reporting agencies. If all or part of the information requested is not provided, the Supplier may not be able to consider any application or to provide credit facilities. Customers who have any concerns about the Privacy Policy are requested to direct them to **The Credit Manager, Level 1, 126 Churchill Road North, Dry Creek SA 5094.**

**I/We acknowledge and give consent** that the Supplier may make enquiries as to the credit and financial situation of me or any of us and further consent to the use of any information obtained as a result of those enquiries, including information disclosed in the Credit Application, as the Supplier reasonably sees fit from time to time, for purposes including but not limited to:

- passing the information on to a credit reporting agency;
- passing the information on to a debt collector; and/or
- obtaining further personal information, including consumer and/or commercial credit information, relating to me or any of us from another body for any use reasonably connected with provision of credit or the collection of debt subject to the provisions of the Privacy Act 1988.

**I/We have read and understood this document and have been given the opportunity to seek independent legal advice prior to signing it.**

**I/We warrant by signature/s below that the information given in support of this application is true and correct.**

**In the event that the Customer is an incorporated entity, the person/s signing this agreement warrants that they are authorised to sign on behalf of the Customer and to bind the Customer in contract.**

**The Customer hereby accepts the above General Terms and Conditions**

**Name (print):** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**NAME OF CUSTOMER:** \_\_\_\_\_

**ACN:** \_\_\_\_\_

(as per the Application for 30 Day Credit Account)

**THIS GUARANTEE, INDEMNITY AND CHARGE** is between the Supplier, AND the Guarantor/s stated below ("**Guarantor/s**").

**The Guarantor/s hereby JOINTLY AND SEVERALLY AGREE with the Supplier as follows:**

1. At the request of the Guarantor/s, the Supplier may, at the Supplier's sole discretion:
  - 1.1. supply Goods and/or Services under the General Terms and Conditions as amended from time to time to the Customer; and/or
  - 1.2. make available a credit facility to the Customer.
2. The Guarantor/s give this Guarantee, Indemnity & Charge at the request of the Customer and in consideration of the Supplier:
  - 2.1. providing a credit facility to the Customer; and/or
  - 2.2. refraining from immediately asking for payments of any amounts owing by the Customer to the Supplier.
3. The Guarantor/s unconditionally and irrevocably guarantee to the Supplier the due and punctual payment by the Customer to the Supplier of all monies at any time actually or contingently owing to the Supplier by the Customer either alone or jointly or severally with others on any account ("Guaranteed Monies"), including without limitation, by way of: (a) monies payable for Goods and/or Services supplied by the Supplier to the Customer; (b) interest; (c) costs and charges; and (d) loss, indemnity or damages from any past, present or future dealing with the Customer by the Supplier.
4. If the Customer defaults in payment of the Guaranteed Monies, the Guarantor/s shall pay those monies on demand, by way of currency, to or as directed by the Supplier in order to discharge the debt owed by the Customer in full.
5. This Guarantee, Indemnity and Charge shall constitute a continuing guarantee and indemnity to the Supplier for all Guaranteed Monies which are now or may from time to time be owing or remain unpaid.
6. The Guarantor/s' obligations under this Guarantee, Indemnity and Charge are primary obligations and are not ancillary or collateral to any other right or obligation. The Guarantor/s' obligations may be enforced against the Guarantor/s without the Supplier being required to take any action against the Customer whether by making a demand or under any security it may hold for the Guaranteed Monies.
7. The liability of the Guarantor/s under this Guarantee, Indemnity and Charge is absolute and unconditional and it shall not be avoided, released or affected by anything at all which, but for this provision, might operate to relieve the Guarantor/s of any obligation in whole or in part, including without limitation:
  - 7.1. the Supplier making any variation or alteration in the terms of any agreement made with, or to be made with, the Customer, or the General Terms and Conditions, or entering into any purchase or arrangement;
  - 7.2. including an arrangement which increases the Guaranteed Monies, any extension of time, any waiver of release, which may be made or given between the Supplier, the Customer, the Guarantor/s and anyone else;
  - 7.3. any agreement between the Supplier and the Customer becoming wholly or partly unenforceable;
  - 7.4. the Supplier's failure to give notice, or any other omission, mistake, delay or negligence on the Supplier's part;
  - 7.5. the Supplier's refusal to supply Goods and/or Services to the Customer;
  - 7.6. the bankruptcy, winding up, liquidation, insolvency, or appointment of an administrator to, the Guarantor/s, the Customer or any other person;
  - 7.7. any change in the constitution, ownership, directors or management of the Customer;
  - 7.8. the Supplier compounding or compromising with or releasing the Customer or any Guarantor of this Guarantee, Indemnity and Charge or any other person or corporation whatsoever or the release, abandonment, variation, relinquishment, loss or renewal in whole or in part of any security, asset or right held by the Supplier;
  - 7.9. the Supplier's failure to register the Supplier's interests in respect of any property secured by the Customer or any of the Guarantor/s;
  - 7.10. the fact that any other person fails to become bound or ceases to become bound as surety in respect of the Guaranteed Monies;
  - 7.11. if the Customer is the trustee of a trust, it acting beyond its powers under the trust; or
  - 7.12. anything else which might prejudice or discharge any Guarantor/s' liability under this Guarantee, Indemnity and Charge.
8. Any payment made to the Supplier and later avoided by the application of any statutory provision or legal or equitable principle shall be deemed not to discharge the Guarantor/s' liability and, that in such event, the parties hereto are to be restored to the rights which each respectively would have had if the payment had not been made.
9. Notwithstanding the fact that this Guarantee, Indemnity and Charge may have been intended or expressed to be executed and given by more than one person it shall bind each person who executes it from execution, notwithstanding that any proposed or contemplated party does not execute this Guarantee, Indemnity and Charge.
10. Until the Supplier has received all monies due from the Guarantor/s to the Supplier under this Guarantee, Indemnity and Charge, the Guarantor agrees:
  - 10.1. in the event of any liquidation, provisional liquidation, receivership, voluntary administration, deed of company arrangement ("DOCA"), scheme of arrangement or other administration in insolvency of the Customer, that the Guarantor will not without the Supplier's prior consent lodge any proof of debt or similar claim for any debt or liability to the Guarantor on any account whatsoever, nor enforce any security held by the Guarantor in respect of the Customer and shall hold any such debt, liability or security and any rights or benefits in respect thereof on trust for the Supplier;
  - 10.2. on the Supplier's request, to lodge a proof of debt or similar claim in any such administration and enforce any such security and to execute all such documents and do all such things as the Supplier may require to enable the Supplier to have and receive the benefit of or arising from any such proof, claim or security;
  - 10.3. not to attempt or purport to be subrogated to the Supplier;
  - 10.4. to waive all rights as surety which are inconsistent with this Guarantee, Indemnity and Charge; and
  - 10.5. that the Guarantor's liability under this Guarantee, Indemnity and Charge shall be that of principal debtor.
11. The Guarantor/s agree that a certificate issued by any of the Supplier's authorised officers stating any monies owed by the Customer or Guarantor to the Supplier including monies due under this Guarantee, Indemnity and Charge, shall be conclusive evidence of such amounts owing by the Customer and each Guarantor.
12. All payments which a Guarantor is required to make under this Guarantee, Indemnity and Charge must be made without any set-off, counterclaim, condition or deduction and are payable on demand by the Supplier.
13. As security for payment of the Guaranteed Monies, the Guarantor/s hereby charges in the Supplier's favour, all of their respective present and future beneficial interests in real property with payment of the Guaranteed Monies. The Guarantor/s agree that, on demand by the Supplier, the Guarantor/s will immediately execute such mortgage or other instrument of security ("Security Instruments"), as the Supplier may require, and in the event that the Guarantor/s fail to do so within a reasonable time of being so requested, the Guarantor/s hereby irrevocably appoint any credit manager or solicitor engaged by the Supplier to be each Guarantor/s' true and lawful attorney to execute and register such Security Instruments. No Guarantor will object to the lodgment by the Supplier of a caveat noting the interest given by this Guarantee, Indemnity and Charge, or any other security interest or other instrument of security, on the title of the charged property.
14. The Guarantor/s unconditionally and irrevocably guarantee the Supplier the due and punctual performance by the Customer of the General Terms and Conditions

15. The Guarantor/s agree to indemnify the Supplier against any losses, costs, charges or expenses of any nature (including the Supplier's solicitors' costs and disbursements on an indemnity basis of any litigation, arbitration or other alternative dispute resolution process between the Supplier and the Customer or any Guarantor, or any commission paid or payable by the Supplier to any commercial or mercantile agent) which it has incurred or incurs in the future:
  - 15.1. as a result of the Customer's breach of any of the terms and conditions of the Application for 30 Day Credit Account or General Terms and Conditions; or
  - 15.2. otherwise arising out of the business relationship between the Customer and the Supplier; or
  - 15.3. in connection with the preparation, enforcement or discharge of this Guarantee, Indemnity and Charge or further security requested under Clause 13; or
  - 15.4. otherwise arising under, or in connection with, this Guarantee, Indemnity and Charge.
16. Until such time as the Guaranteed Monies have been irrevocably paid in full, if the Customer is wound up, the Supplier may prove for all monies which the Guarantor/s may have paid under this Guarantee, Indemnity and Charge and need not apply, in discharge of the Guaranteed Monies, any monies which the Supplier receives.
17. The Guarantor/s unconditionally and irrevocably indemnify the Supplier against any loss or liability which they may suffer because the whole or any part of the Guaranteed Monies is not recoverable from the Customer, and not recoverable from any Guarantor as surety, because of any default by the Customer in the performance and observance by the Customer of the General Terms and Conditions, by reason of the Customer's insolvency or bankruptcy, or by reason of the contract between the Customer and the Supplier being void, voidable or unenforceable for any reason whatever, whether or not the circumstances were known to the Supplier.
18. If the Customer goes into liquidation, voluntary administration, receivership, bankruptcy or appoints a trustee pursuant to the provisions of the Bankruptcy Act, then the Guarantor/s irrevocably appoint any credit managers or solicitors engaged by the Supplier to be each Guarantor's true and lawful attorney to prove in any debt or claim in any bankrupt, insolvent or assigned estate or in the liquidation or administration of the Customer and to attend all meetings of creditors, and to vote at said meetings, and to receive all dividends in any such bankrupt, insolvent or assigned estate or any such winding up or administration and to appoint a proxy or proxies for all or any such matters.
19. That the Supplier's liability under this Guarantee, Indemnity and Charge shall not be avoided, released or affected by the Customer entering into a DOCA or by the Supplier voting in favour of, or against, or abstaining from voting, in relation to any proposal by the Customer to enter a DOCA.
20. That if the Supplier forms the view, for any reason, after it receives a payment from the Customer and applies the payment or a debt owed by the Customer, that the Supplier is obliged to disgorge the payment or portion thereof to a Liquidator appointed to the Customer, the Supplier's rights are reinstated in relation to the debt that the Supplier applied the payment to (as if the payment had never been made) and the Guarantor/s shall be liable to pay the Supplier the amount it disgorges to the Liquidator.
21. That the Guarantor/s indemnify the Supplier against any and all losses and legal costs (on a full indemnity basis) that the Supplier incurs suffer as a result of disgorging monies to a Liquidator of the Customer.
22. That the Supplier is entitled to recover against a Guarantor without having first taken steps to recover against the Customer or any other Guarantor.
23. If, after the Supplier applies any amount against any of the Guaranteed Monies, the Supplier forms the view that the Supplier is obliged to, or that it is reasonable to compromise and, make a payment in respect of the amount so applied by the Supplier to any person under the law relating to bankruptcy, winding up or the protection of creditors, the Supplier's rights under this Guarantee, Indemnity and Charge will be re-instated, and will be the same in respect of the amounts as if the application, or the payment or transaction giving rise to it, had not been made.
24. Service of any notice, demands, proceedings, summonses, suits or actions (together, "Notice") upon any Guarantor herein may be effected by the Supplier or the Supplier's solicitors sending such process by prepaid post to the Guarantor's address shown above or to the last disclosed address of the Guarantor in any company search or business name search. Service shall be deemed to have been effected four business days after the posting of the Notice.
25. That this Guarantee, Indemnity and Charge may not be unilaterally revoked by the Supplier and remains in force until such time as the Guarantor/s receive written confirmation from the Supplier that the Guarantor/s are released from their obligations and liabilities under this Guarantee, Indemnity and Charge.
26. That the Guarantor/s sign in both their personal capacity and as Trustee of every Trust of which the Guarantor/s are Trustee and/or a beneficiary.
27. To notify the Supplier of any change in the Customer's structure or management including any sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship 7 days prior to any such change taking effect.
28. This Guarantee, Indemnity and Charge and the construction and interpretation of it shall be governed by the laws of the State of South Australia and, where applicable, the Commonwealth of Australia, in force for the time being and from time to time, and the parties to this Guarantee, Indemnity and Charge irrevocably submit generally and unconditionally to the jurisdiction of the Courts of South Australia in respect of all claims, proceedings and matters arising out of or in respect of this Guarantee, Indemnity and Charge.
29. By signing this Guarantee Indemnity and Charge, the Guarantor/s consent to and authorise the Supplier:
  - 29.1. to obtain from a credit reporting agency a consumer credit report containing information for the purpose of assessing whether to accept the Guarantor/s as a guarantor for credit applied for by, or provided to, the Customer, until the credit covered by the Customer's application ceases;
  - 29.2. unless otherwise prevented by law, to obtain any information about any of the Guarantor/s' consumer or commercial credit or business history or their commercial activities or commercial credit worthiness from their bank or any other credit provider for the purposes of assessing whether to accept the Guarantor/s as a Guarantor for credit applied for by, or provided to, the Customer and to disclose information to a credit reporting agency;
  - 29.3. unless otherwise prevented by law, to collect from, store, use, disclose to or exchange with any of the parties named in this Clause 29 or other credit providers, third party provider, solicitors, mercantile agents, insolvency administrators, insurers and insurance brokers, persons involved in the collection of trade debt, information about their personal or commercial worthiness or business history in order to assess the Application for 30 Day Credit (including whether to accept the Guarantor/s), monitor the credit worthiness or withdrawing credit facilities, notification of the Guarantor's default, issues trade bills, insure risk processing any payment instructions, direct debit facilities and/or credit facilities requested by the Customer and/or Guarantor/s, and enable the daily operation of the Customer/s credit account and collect overdue accounts; and
  - 29.4. to the extent permitted by law, to disclose the contents of a credit report by a credit reporting agency to the Supplier's solicitors or mercantile agents.
30. The Guarantor/s agree that, in dealing with information disclosed to the Supplier by the Guarantor/s pursuant to Clause 29, the Supplier will deal with that information in accordance with the General Terms and Conditions and the Australian Privacy Principles and the Privacy Act 1988.
31. In this Guarantee, Indemnity and Charge the following rules of interpretation apply unless the context otherwise requires:
  - 31.1. "Customer" means the Company, Partnership or Sole Trader who completed the 'Application for 30 Day Credit Account' and/or orders Goods or Services from the Supplier, and it includes the Customer's personal representatives, successors and permitted assigns;
  - 31.2. "General Terms and Conditions" means the General Terms and Conditions of the Supplier as amended from time to time.
  - 31.3. "Guarantor" means the Guarantors jointly and each person who is a Guarantor severally and their respective successors and assigns.
  - 31.4. "Supplier" means jointly and severally, M.S.P. Group Pty Ltd ACN 007991666, Direct Plumbing & Building Supplies Pty Ltd ACN 008056371, Direct Building Supplies (Aust) Pty Ltd ACN 092244810, Kara Resources Pty Ltd ACN 080865103, Hallett Resources Pty Ltd ACN 114534753, Hallett Concrete Pty Ltd ACN 007955419 and/or MSP Nominees Pty Ltd ACN 008085363 and any related entity of the above companies, as that term is defined in section 9 of the Corporations Act 2001 (Cth); and
  - 31.5. words denoting the singular number includes the plural (and vice versa);
  - 31.6. any capitalised terms not defined in this Guarantee, Indemnity and Charge have the same meaning as set out in the Terms of Hire.
  - 31.7. words denoting natural persons include bodies corporate and unincorporated and their permitted assigns (and vice versa); and
  - 31.8. references to any party to this Guarantee, Indemnity and Charge or any other agreement or instrument include the party's successors and permitted assigns.



**LEGAL ADVICE** - Each Guarantor acknowledges that:

(a) the Guarantor has either: (i) sought advice if necessary as to the purport, effect and consequences of and obligations created by this Guarantee, Indemnity and Charge from a solicitor or barrister independent of Us; or (ii) having had the opportunity to seek such advice, determined such advice was not necessary and that it understood the effect and consequences of and obligations created by this Guarantee, Indemnity and Charge, before executing this Guarantee, Indemnity and Charge; and

(b) it enters into this Guarantee, Indemnity and Charge freely after considering such advice or electing not to obtain such advice

**Name of Guarantor:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_ **Drivers License No.:** \_\_\_\_\_

**Of (Address):** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **(Guarantor)**

**in the presence of:** \_\_\_\_\_

**(Name of Witness)** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **(Witness)**

**Name of Guarantor:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_ **Drivers License No.:** \_\_\_\_\_

**Of (Address):** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **(Guarantor)**

**in the presence of:** \_\_\_\_\_

**(Name of Witness)** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **(Witness)**