



## TRADEMARK USER AGREEMENT

This Agreement is made this 31st day of July, 1998, between FOSROC INTERNATIONAL LIMITED (Company No. 959643), incorporated according to the laws of England and whose registered office is at Burmah Castrol House, Pipers Way, Swindon SN3 1RE England ("the Licensor"), and MASTER BUILDERS, INC., having its business offices at 23700 Chagrin Boulevard, Cleveland, Ohio 44122 U.S.A. ("the Licensee").

### WHEREAS:

The Licensor is the owner of the Trademarks described in this Agreement relating to the business of manufacturing and supplying surface retarders, form retarders, release agents, surface treatments and a range of accessories to the pre-cast concrete market ("the Business");

Fosroc Inc., an affiliate of Licensor, and Licensee are simultaneously entering into an Agreement of Purchase and Sale of Assets with respect to the Business (the "Sale and Purchase Agreement"), and Licensor and Licensee are concurrently herewith entering into a License Agreement with respect to Licensor's Industrial Property Rights (the "License Agreement"); and

Licensor has agreed to grant to the Licensee the right to use such Trademarks upon the terms and conditions hereinafter contained.

NOW THEREFORE in consideration of the premises and covenants hereinafter set forth, the parties hereto agree as follows:

### 1. DEFINITIONS

1.1 In this Agreement (including the Recitals and Schedules) the following words and expressions shall have the following meanings and any capitalized Terms herein not defined herein shall have the meanings when used herein as assigned to same in the Sale and Purchase Agreement or the License Agreement:

"the Products"	those Business products sold under the Trademarks by the Preco Division of Fosroc Inc. in the Territory as of the signing of this Agreement.
"the Field"	the pre-cast concrete industry.
"the Trademarks"	the trademarks and trademark applications specified in Schedule 1.

"the Territory" Canada, Mexico, and the United States of America.

"Group Company" any company in which Burmah Castrol plc holds, either directly or indirectly, not less than 20% of the issued share capital.

"Person" any person, firm, incorporated or unincorporated association, body or entity.

"Exclusive" means in respect of a right granted under this Agreement that the Licensor may not itself exercise that right nor authorize others to exercise that right.

1.2 All words denoting the singular number only shall include the plural and *vice versa*.

1.3 Headings to clauses in this Agreement are included for the purpose of ease of reference only and shall not have any effect on construction and interpretation.

## 2. DURATION OF LICENSE

Subject to Clause 8 hereof, this Agreement shall come into effect on the date of execution of the Sale and Purchase Agreement and License Agreement and, subject as hereinafter provided, shall continue in perpetuity.

## 3. GRANT OF LICENSE

3.1 The Licensor hereby grants to the Licensee, its successors and assigns, an exclusive non-transferable license to use the Trademarks in the Field in relation to the promotion, sale and distribution of the Products in the Territory (and only the Products and not any other products nor in any corporate name or business name) subject as hereinafter provided.

3.2 The Licensee shall not have the right to grant sublicenses nor in any way share or part with its rights under this Agreement except that Licensee is hereby granted the right to grant Affiliates of Licensee sublicenses hereunder or the terms and conditions as provided herein.

## 4. CONSIDERATION

As consideration for the rights granted under Clause 3, the Licensee is simultaneously entering into (i) the Sale and Purchase Agreement with Fosroc Inc., an affiliate of Licensor, and (ii) the License Agreement with the Licensor, with their attendant duties and obligations.

## 5. QUALITY AND MARKING

- 5.1 The Licensee shall manufacture the Products to the same specifications and standards of quality as those to which the Products were manufactured by Fosroc Inc. immediately prior to the sale of the Business.
- 5.2 At the request and cost of the Licensor, the Licensee shall provide the Licensor from time to time with samples of the Products which are sold under the Trademarks in order that the Licensor may ensure the standards of quality of the Products so manufactured by the Licensee.
- 5.3 The Licensee undertakes to use the Trademarks only in the form represented by the Licensor.
- 5.4 The Licensee hereby agrees that all use of the Trademarks by the Licensee shall inure to the benefit of the registered proprietor of said Trademarks.

## 6. MAINTENANCE OF THE TRADE MARKS

Subject to the Licensee demonstrating substantive use of each Trademark, the Licensor shall pay all costs and fees and do all such acts and things as may be reasonably necessary to obtain the registration of and shall during the period of this Agreement pay all renewal fees and do all such acts and things as may be necessary to maintain each Trademark.

## 7. INFRINGEMENT; MODIFICATION OF LICENSE FEE OR ROYALTY

- 7.1 Each party shall forthwith give notice in writing to the other party of any infringement or suspected or threatened infringement in the Territory of the Trade Marks including any misleading or deceptive conduct or any common law passing off (by reason of imitation or get up or otherwise) which shall at any time come to its knowledge.
- 7.2 In the event of Licensor receiving notification of any infringement under Clause 7.1 above, Licensor agrees (unless Licensor grants Licensee permission to pursue such action pursuant to Clause 7.3 hereof) that it will take appropriate action to prevent or stop any such reported infringement, including, where necessary, promptly instituting legal proceedings with all costs, attorney fees and expenses to be paid by the Licensor. Any such action or proceeding shall be under the sole control of Licensor. Licensee agrees that it shall provide or procure such assistance (including the furnishing of documents and information and the execution of all necessary documents at Licensor's cost) as Licensor may reasonably request in order to assist Licensor in any action which it might decide to take. The Licensor shall be

entitled to any recovery of damages resulting from any lawsuit brought by it to enforce any of the Trade Marks pursuant to this paragraph.

7.3 In the event that the Licensor elects not to take action against any such infringement pursuant to Clause 7.2 above, the Licensee shall have the right at Licensee's cost to institute suit for infringement of the Trade Marks. The Licensor agrees to join as a party plaintiff in any such lawsuit initiated by the Licensee, if required by the Licensee (with all costs, attorney fees and expenses to be paid by the Licensee) and the Licensor agrees to use its best efforts to assist the Licensee in all reasonable respects in any such lawsuit. The Licensee shall be entitled to any recovery of damages resulting from any lawsuit brought by it to enforce any of the Trade Marks pursuant to this Clause 7.3.

7.4 Each party shall forthwith give notice to the other party of any claim or allegation that Licensee's use of the rights granted hereunder infringe upon the trade marks of another Person. In the event that within five (5) years of the Closing Time any Person files a legal action in a court of competent jurisdiction alleging that Licensee's use of the rights granted hereunder infringe upon such Person's trade marks, Licensor shall at its cost (i) provide the legal defense of Licensee in such action (which defense, and all decisions regarding same, shall be under the sole control of Licensor) and (ii) satisfy any judgment rendered in such action (and upheld by the court of ultimate appellate jurisdiction) against Licensee or any settlement which may be consummated. The Licensee agrees to use its best efforts to assist the Licensor in all reasonable respects in any such lawsuit.

7.5 In the event that, within five (5) years of the Closing Time any legal proceeding described in and subject to Clause 7.2 or 7.4 above is filed which results in a judgment, which serves to materially impair, diminish or restrict the Licensee's use of the rights granted in Clause 3.1 hereof, the Licensor agrees to negotiate in good faith with the Licensee in an effort to reach an equitable (i) modification to Clause 5.1 of the License Agreement or (ii) arrangement whereby Licensor would secure for Licensee the right to continue to use the Trade Marks in the manner licensed hereunder.

## 8. TERMINATION

This Agreement shall terminate upon the termination of the License Agreement between Licensor and Licensee.

## 9. CONSEQUENCES OF TERMINATION

In the event of termination of this Agreement, and as otherwise provided in the License Agreement, all rights and licenses granted hereunder shall cease automatically to be of any force and effect, and all rights in the Trademarks and the good will connected therewith shall remain the property of the Licensor.

## 10. GENERAL PROVISIONS

10.1 If there is any conflict between a provision of this Agreement and either the Sale and Purchase Agreement or the License Agreement, then the language of the Sale and Purchase Agreement or License Agreement shall control, as the case may be.

10.2 The Licensor may assign or transfer the benefit of this Agreement to any Group Company or to any Person in connection with the sale of its business to which the Trademarks relate. The Licensor may nominate any Group Company to perform its obligations under this Agreement.

10.3 The Licensee may not assign, transfer, charge, encumber or otherwise deal with the whole or any part of this Agreement or its right or obligations hereunder except to an Affiliate or purchaser of substantially all the assets of the business to which this Agreement pertains, with the express written consent of the Licensor, which consent shall not be unreasonably withheld.

10.4 This Agreement is made in duplicate original counterparts and constitutes the complete understanding between the parties. It may only be modified or amended if mutually agreed in writing and signed by both parties.

## 11. GOVERNING LAW AND JURISDICTION

11.1 In the event the Licensor files a legal action, suit or proceeding of whatever nature against the Licensee which arises from, relates to, or is in any way connected with this Agreement, this Agreement shall be governed by, subject to and construed according to the laws of the State of Ohio, without regard to its principles of conflicts of laws, and the Licensor agrees that any such proceeding shall be commenced in the Ohio court of the Licensee's choice, Licensor hereby consenting to the jurisdiction and venue of such court for any such proceeding.

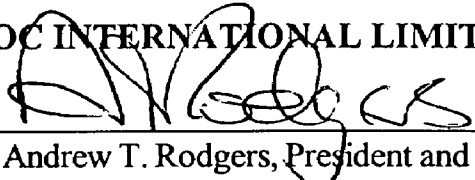
11.2 In the event the Licensee files a legal action, suit or proceeding of whatever nature against the Licensor which arises from, relates to, or is in any way connected with this Agreement, this Agreement shall be governed by, subject to and construed according to the laws of England, without regard to its principles of conflicts of laws and the Licensee agrees that any such

proceeding shall be commenced in the English Court of the Licensor's choice, the Licensee hereby consenting to the jurisdiction and venue of such court for any such proceeding.

AS WITNESS the hands of the duly authorized representatives of the parties hereto the day and year first above written.


**FOSROC INTERNATIONAL LIMITED**

By: \_\_\_\_\_

  
Andrew T. Rodgers, President and CEO  
of Fosroc, Inc. Pursuant to Written  
Authority Given by Licensor

**MASTER BUILDERS, INC.**

By: \_\_\_\_\_

  
L. Michael Shydłowski,  
President and CEO

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SCHEDULE 1  
THE TRADE MARKS

The Registered Trade Marks

Mark	Class	Registration	
		Number	Date

Canada

FOSROC <sup>1</sup>	NC	387384	09 AUG 1991
FOSROC (& Dev FOSR1) <sup>1</sup>	NC	456504	19 APR 1996
PRECO	NC	244349	02 MAY 1980

Mexico

FOSROC <sup>1</sup>	6	409717	31 MAR 1992
FOSROC (& Dev FOSR1) <sup>1</sup>	1	426572	27 NOV 1992
FOSROC (& Dev FOSR1) <sup>1</sup>	2	430731	31 OCT 1991
FOSROC (& Dev FOSR1) <sup>1</sup>	17	431730	31 OCT 1991
FOSROC (& Dev FOSR1) <sup>1</sup>	19	437312	13 JUL 1993
PRECO	01	339718*	14 JUL 1998*

USA

FOSROC <sup>1</sup>	1	1754704	02 MAR 1993
	2		
	17		
	19		
FOSROC (& Dev FOSR1) <sup>1</sup>	1	1841089	21 JUN 1994
	2		
	17		
	19		
PRECO	1	1005989	04 MAR 1975
	2		
	19		
PRECO	1	75/268346*	08 MAY 1997*
	19		
NITOCOTE	2	2105504	14 OCT 1997

NOTES:

*three (3)*

<sup>1</sup> Indicates that use will be restricted to ~~six~~ months from closing.

\* Denotes application pending.



The Unregistered Trade Names

Cementrate  
Heatcote  
HI-V  
Lo Lustre  
Lo Odor  
Mini Etch  
Minicote  
Envirocote  
Tank Cote  
Tufcote  
X-POZ-R