

## 1. Interpretation

1.1 In these terms and conditions:

(a) “The Company” means the entity stated in the Application for Credit and any related body corporate as defined in the Corporations Act 2001 (Cth) and its successors and assigns.

(b) “Client” means the entity stated in the Application for Credit, its successors and assigns and any other person offering to contract with the Company on these terms and conditions or, where such person is acting in the course of employment, such persons as employer.

## 2. Agents

2.1 The Company shall be at liberty to retain any of its authorised agents or any other entity it sees fit and at the sole discretion of the Company and the Client consents to disclosure of information about the Client or its contacts to these agents.

## 3. Risk

3.1 Should the Company elect to post any goods or organise delivery of goods, the Client’s risk of loss or damage to such good passes to the Client on the date and at the time that the goods were ordered, and it is the Client’s responsibility to ensure these goods are insured and covered for their time in transit.

3.2 The Company will not be responsible for non-delivery or delay in delivery of any goods where such non-delivery or delay occurs, the Company may deliver the goods not delivered or delayed at any subsequent time and the Client must accept and pay for them.

## 4. Title of Property

4.1 In relation to goods supplied to the Client, ownership and property in the goods vests absolutely with the Company and does not pass to the Client UNTIL the Client:

(a) Pays for the goods in full;

(b) Pays in full all other monies owing or unpaid by the Client to the Company including monies in respect of goods previously or subsequently supplied to the Client by the Company.

4.2 In relation to goods supplied to the Client for which payment in full has not been received:

(a) The relationship between the Client and the Company shall be fiduciary;

(b) The Client will hold those goods as bailee for the Company;

(c) Where the Client sells those goods, the Client does so as fiduciary agent of the Company;

(d) When new goods or objects are formed with the Company’s goods into other products or the goods are affixed to other objects, the Company will be given full ownership of such new goods or objects;

(e) Where the goods are disposed of, the monies resulting from the disposal and all other proceeds received in respect of the goods, including insurance proceeds will be kept separately in trust for the Company;

(f) Where the goods are disposed of, the Client may only dispose of the goods in the ordinary course of its business on commercially reasonable terms;

(g) The Client undertakes that until it delivers the goods to a third party, it will store the goods on its premises separately from its own goods, or those of any other person, and in a manner which makes the goods readily identifiable as the Company’s goods.

## 5. Access

5.1 The Client irrevocably permits the Company or any person authorised by the Company in writing, upon giving reasonable notice to enter the Client’s premises or at premises where the goods are reasonably believed by the Company to be held on the Client’s behalf for the purpose of examining or recovering the goods. The Client also agrees to indemnify and hold the Company harmless for reasonable costs of removal, enforcement, and legal action in respect of the removal of any goods, the subject of this Agreement.

## 6. Transactions contemplated by this Agreement

6.1 The Company's tender of delivery of goods and services under this Agreement is a condition of the Client's duty to accept the goods or services provided and, unless otherwise agreed, the Client's duty to pay for them.

## 7. Disputes

7.1 If the Client disputes any goods sold or services supplied by the Company are faulty or defective or disputes the Invoices the Company has issued, the Client must notify their reasons in writing to the Company within 14 days of the Invoice date, failing which the Client loses any right to dispute the quality of the goods, services or quantum of.

## 8. Whole Agreement

8.1 These terms and conditions together with the Application for credit agreement embody the whole agreement between the parties and, subject to the express terms contained in any written acceptance thereof, all previous dealings, representations and arrangements are hereby excluded and cancelled.

## 9. Payment

9.1 The Client agrees to pay all amounts due in clear funds via Electronic Funds Transfer (Cheques are NOT acceptable) within the Company's agreed timeframe but no later than 14 days from the date of invoice. The Client agrees that if it fails to pay in accordance with this clause, the Company may:

- (a) Charge a late payment fee of 5% on all amounts paid after the due date;
- (b) Charge interest on debts at 20% per annum from time to time;
- (c) Charge a dishonour handling fee in the amount of \$95.00;
- (d) Recover all collections costs and expenses incurred in collecting overdue accounts on an indemnity basis;
- (e) Withhold supply;
- (f) Sue for the money owing on the goods or services provided.

9.2 In the event where this agreement has been entered into by more than one party each party shall be jointly and severally liable for any amounts overdue.

## 10. Default

10.1 If the Client:

- (a) Fails to pay for any goods or services on the due date; or
- (b) Otherwise breached this agreement and failed to rectify such breach within seven days' notice; or
- (c) Cancel delivery of goods or services; or
- (d) Commits an act of bankruptcy or allows a trustee in bankruptcy or receiver and manager to be appointed to the Client or any of its property; or
- (e) Allow a judgment or order to be enforced or become enforceable against the Client's property; or
- (f) Permits proceedings to be commenced to wind the Client up or controller, receiver, administrator, liquidator or similar officers appointed to the Client in respect of any part of its property;

then the Company may enter upon the Client's premises (doing all that is necessary to gain access) where goods supplied under this contract are situated at any time and re-take possession of any or all of the goods the Company has supplied to the Client and:

- (a) Resell the goods concerned;
- (b) Terminate the agreement; and
- (c) Sue for any monies owing.

10.2 The Client will be in default if the Client does not pay any monies payable when called upon so to do the Client and the Guarantor jointly and severally acknowledge and agree that the Company is authorised to contact a credit reporting agency throughout the term of the Agreement to obtain a report about the creditworthiness of either the Client or the Guarantor or both.

10.3 The Client and the Guarantor jointly and severally authorise the Company to engage in the exchange of information with a credit reporting agency or with other such parties as are necessary to give effect to the contract and to the ongoing relationship between the parties hereto.

10.4 The Company reserves the right to report a Client's delinquent account to a credit reporting agency should payment remain outstanding for more than 60 days. In addition the Company may refer the outstanding account for debt collection or issue legal proceedings to recover any outstanding invoices. Should an account be referred for debt collection the Client acknowledges and agrees to pay debt collection charges to be calculated at not less than 20% plus GST and will be incurred on the day the Company refers the matter to their nominated debt collection agency. The client shall also be liable for interest and all legal recovery costs associated with such action on a solicitor and own client or indemnity cost basis.

### **11. Charge**

11.1 The Client charges in favour of the Company any land that it owns (or acquires after the date of this agreement) as security for any and all monies owed to the Company and hereby authorises and consents to the Company registering a caveat over the land if the Client defaults in making payment of any amounts owing to the Company.

### **12. Right to amend terms and conditions**

12.1 The Company reserves the right to amend terms and conditions of this agreement by giving the Client notice in writing of the amended terms and conditions to the Client's address as specified on the face of this agreement or as notified by the Client from time to time. The Client is deemed to accept any amended Terms and Condition unless it notifies the Company in writing within seven days of its objection to the proposed amendment to the Terms and Conditions.

### **13. Set-off**

13.1 The Client agrees that:

(a) The Company may set-off any credit amount that the Company owes to the Client against any debt due by the Client to the Company at the Company's sole discretion;

(b) The Client is not entitled to withhold payment of any money in respect of any alleged set-off or claim the Client might have against the Company.

### **14. Severance and Waiver**

14.1 If any part of this agreement is found to be void, unlawful, or unenforceable then that part will be deemed to be severed from the agreement and the severed part will not affect the validity and enforceability of any remaining provisions. Any waiver of the Company's right under this agreement must be in writing and signed by an authorised representative of the Company.

### **15. Jurisdiction**

15.1 The agreement shall be deemed to have been made in Victoria and shall be interpreted in accordance with the Laws of Victoria Australia, and the parties submit to the exclusive jurisdiction of the Victorian Courts.

### **16. Consumer Credit Code**

16.1 The Client and Guarantors declare that the credit to be provided is to be applied wholly or predominantly for business purposes and not for personal, domestic or household purposes.

### **17. Contaminated Quarry Materials**

17.1 Unscreened and unwashed sand may contain contaminates.

17.2 Contaminates include but are not limited to; flora, rock, weeds, soil other than sand, animal remains and human remains. When purchasing unscreened and unwashed sand the client takes full responsibility that such contaminates may be present and is responsible for all cost that may be associated with the removal of such contaminates if required.

### **18. Delivery**

18.1 Bulk means truck and trailer combinations greater than 31.50 tonnes.

18.2 No splitting of trailers upon delivery.

18.3 Good access with suitable area to turn and level hardstand area for unloading.

Allowance for 30 minutes on site to unload, additional time will incur \$120.00/hr