Clinton Sands Pty Ltd

Terms and Conditions of Supply - Goods

1. **Application**

   1.1. A Contract is formed if you accept a Quote in writing, by email or otherwise, you accept a Supply from us or we accept an Order from you for Goods. These terms:

      1.1.1. apply to each Contract;

      1.1.2. together with our Quote, your Order and/or any Credit Agreement (if any) are the sole terms of each Contract;

      1.1.3. do not apply to a Contract to the extent that an applicable Quote expressly amends these terms; and

      1.1.4. prevail over any terms put out by you including in any Order, unless our managing director expressly agrees in writing.

   1.2. Where these terms are attached to or form part of any Long Term Supply Agreement, the terms of the Long Term Supply Agreement prevail to the extent of any inconsistency with these terms. Where a Credit Agreement is in place, these terms prevail to the extent of any inconsistency between the Credit Agreement and these terms.

   1.3. None of our employees, agents or contractors may vary or add to these terms without the prior written authority of our managing director. Except as required by the mandatory operation of law, all implied terms and conditions are excluded. If you enter into a Contract as a trustee you agree that you enter into the Contract in both your own capacity and as trustee of the trust.

2. **Quotes and Orders**

   2.1. An Order you give us is subject to our acceptance and we may decline an Order without cause. You may not cancel a Contract, or delay delivery unless we agree in writing.

   2.2. Quotes are valid for the period specified in a Quote unless withdrawn or varied by us by notice prior to our receipt of your notice of acceptance. Where a Quote does not specify a validity period then the Quote will be valid for a period of 30 days.

   2.3. Where you make an Order with us by telephone we may email you to confirm details of the Order. We may refuse to supply the Goods until you confirm that the contents of our email properly record the details of your Order and our price for the same.

3. **Order Information and Conditions of Supply**

   3.1. You warrant that you will provide us with all applicable Order Information in making an Order and/or so we can properly prepare a Quote for you and that all Order Information you provide to us is true, accurate and complete.

   3.2. Subject to these terms or any written term in a Contract, you acknowledge and agree that (i) you have selected the Goods based on your own requirements and your investigations as to the suitability of the Goods, and (ii) we have not provided you with any advice as to the suitability of the Goods for your intended use or as to their fitness for purpose.

   3.3. Unless expressly set out in writing (including in a Quote or in a document signed by us) we give no warranty, advice or representation as to:

      3.3.1. the suitability of the Goods for your intended use; or

      3.3.2. whether the Goods will have the durability, other characteristics and performance you require including being fit for a particular purpose.

   3.4. You release us and indemnify us from any Liabilities in respect of the above matters unless we have provided such a warranty, advice or representation to you in writing.

4. **Prices and Payment**

   4.1. Unless stated otherwise, total prices Quoted are exclusive of GST.

   4.2. The price for the Goods will be calculated based on the volume of Goods supplied multiplied by the applicable Rate (which such Rate may be set out in the Order or Quote). The price may be included on the Delivery Docket. Unless a Quote expressly provides otherwise you must pay us as set out in this clause.

   4.3. We may invoice for the Goods before delivery and you must pay the same prior at or prior to delivery unless (i) you have a Credit Agreement in place with us, and (ii) the invoice (and any other outstanding amounts due to us) is within the credit limit under the same. In these circumstances you must pay our invoice within the period required under the Credit Agreement.

   4.4. All payments must be made in full. You may not deduct or set off from any amount due to us under a Contract any amount (including a Liability) you allege we owe you unless we agree in writing. An invoice is payable by you alone and under no circumstances may you withhold payment on the basis you are awaiting payment from any third party or request we seek payment directly from any third party. You must pay GST on an invoice as and when you are required to pay the invoice.

   4.5. If you pay an invoice by credit card you must also pay us a credit card administration fee as notified by us from time to time which will be an amount equal to any credit card merchant fees we incur as a result of you paying by credit card.

   4.6. We may set off any amount we owe you under or in respect of any Contract against any or all amounts you owe us under or in respect of any Contract.

   4.7. If payment is overdue, we may charge you interest at the Reserve Bank of Australia's cash rate plus 5% from the date of the default until we receive payment in full. We may apportion any part payments you make against any outstanding interest or principal as we may decide. We may also apportion any payments you make under one Contract to amounts due under another Contract.

4.8. If payment is overdue under any Contract we may in respect of any Contract cancel or suspend the delivery or performance of any Supply. You must still pay us for any Supply (or part thereof) delivered or performed under any such Contracts.

4.9. Payment is not deemed to be received until we receive cleared funds. A cheque is not deemed to be payment until it is accepted and cleared. Deposits, progress payments and upfront payments must be paid in accordance with a Quote.

5. **Delivery and Instructions**

5.1. Where the Delivery Site is stated to be our premises you (a) will at your cost collect the Goods from our premises as and when notified by us, (b) ensure that your vehicle and equipment used to collect the Goods is safe, complied will applicable laws and is insured for third party property damage, and (c) you will ensure all of your staff and contractors comply with rules, procedures and directions in respect of operational and safety issues while on our premises. Without limiting the above, you must ensure that (a) drivers of the vehicle, the vehicle and the operation of the vehicle comply with all Road Transport and Safety Legislation, and (b) any directions or information about the vehicle used to collect the Goods, or directions as to loading the vehicle with the Goods, are accurate and comply with all Road Transport and Safety Legislation. We will only load your vehicle with the Goods in accordance with applicable Road Transport and Safety Legislation and may refuse to do so where your directions are contrary to the same. It remains your responsibility to secure the Goods on the vehicle after we have loaded the Goods on the same. We may rely on information or directions you give us in respect of the carrying capacity of a vehicle you use to collect the Goods.

5.2. This clause 5.2 applies where the Delivery Site is not our premises. The Goods will be delivered by us (or our agent or contractors) to the Delivery Site. You must ensure that we have unrestricted and adequate rights and room to make that delivery and you indemnify us from any Claims arising from our access to such private property unless solely caused by our negligence. You are responsible for traffic management associated with our delivery of Goods to the Delivery Site including obtaining any approvals in respect of the same. If you are in breach of your obligations under this clause we may refuse to deliver the Goods and you must indemnify us for any loss we incur in respect of having to reschedule the delivery of the Goods. You must ensure that you have authorised staff present at the Delivery Site on the Delivery Date to meet your obligations and exercise your rights as set out in this clause.

5.3. We will use reasonable efforts to make available for collection or deliver the Goods to the Delivery Site by the Delivery Date however we will not have any Liability to you where despite using reasonable efforts we are unable to do so (in such circumstances we will, acting reasonably, seek to agree a revised Delivery Date with you).

5.4. We will provide you with a Delivery Docket immediately prior to Delivery. You must check the Delivery Docket and the Goods (including any labels on packaged Goods as to the type of Goods) to confirm the same are as ordered by you. You must sign the Delivery Docket unless the Goods do not comply with those ordered under the Contract. Within 24 hours of delivery of the Goods you must issue us with a notice where, acting reasonably, you determine there is a defect in the Goods ordered (being the Goods do not comply with the quantity or type with the Goods ordered) and you must include with such notice all supporting materials in respect of your claim (**Defect Notice**). Where you issue a Defect Notice you must (a) allow us to inspect those Goods, and (b) where applicable you must provide us with tests of the Goods which support your assertion that the Goods do not comply with the requirements of the Contract. Where we accept a Default Notice at our option we will replace the Goods or refund the amount you have paid for such Goods and this will be your sole remedy in respect of the same. Where you accept the delivery of the Goods and have not issued a Defect Notice within 24 hours of delivery, then the following will apply regardless of whether or not you have signed the Delivery Docket (a) you will be deemed to have accepted the Goods and that the details in the Delivery Docket are true and correct (including as to the type of Goods delivered and the quantity of the same); and (b) you release us in respect of any Claim in respect of the type of Goods delivered and the quantity of the same (other than any defects in the Goods which could not reasonably be identified by you via the inspection).

5.5. Title to the Goods does not pass to you until we receive payment for the Goods in full. Risk in the Goods passes from us to you on the Goods, as applicable, being loaded on to your vehicle at our premises or us unloading the Goods at the Delivery Site. Where we are delivering the Goods to you, you must ensure that your Delivery Site has proper and adequate delivery facilities including to allow delivery by bulk pneumatic truck.

5.6. Unless you give us notice to the contrary, we will assume that all of your employees, directors and officers who give us instructions or sign any document (including a Delivery Docket) are authorised to do so and that we may act on oral instructions or accept their signature is authorised by you. We are not liable to you for any damage or loss suffered by you which results from us following your directions or instructions including in respect of the delivery of the Goods.

6. **Warranty, Claims and Liability**

6.1. We warrant that the Goods will materially confirm with the description of the Goods ordered (including in any specifications for the Goods maintained or published by us).

6.2. Except as provided in these Terms, a Contract or as prohibited by law, we disclaim and exclude all conditions and warranties, expressed or implied (including any rights and remedies) imposed or conferred by statute, common law, equity, trade custom or usage.

6.3. We have no Liability to you under or in connection with a Contract (including under a Claim made under statute) for any loss of profit or reputation, economic loss, indirect, consequential or special loss, cost, damage or expense including in respect of a Supply. Where by law we are liable to you as a manufacturer (including under section 274 of the *Australian Consumer Law* (being Schedule 2 of the *Competition and Consumer Act 2010*) our Liability is limited to paying an amount equal to the costs of the Goods or obtaining equivalent Goods (noting that repairing the Goods is not practical).

6.4. Unless the Contract expressly states otherwise, you warrant that you will acquire the Goods from us for the purposes or re-supply or transforming them in trade or commerce.

6.5. This clause 6.5, applies where the warranty in clause 6.4 is not provided and we provide you with any warranty in respect of the Supply and you are a "consumer" within the meaning of section 3(1) of the *Australian Consumer Law* (being

Schedule 2 of the *Competition and Consumer Act 2010*). Where we provide you with a warranty, you may give us notice for a claim under the warranty by post or email - the details of which are set out below: 26 Pentland Road, SALISBURY SOUTH SA 5106, phone 82813111, email admin@premix.net.au. Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with service, you are entitled to (a) cancel your service contract with us; and (b) to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

6.6. If Goods or services we supply are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then our Liability for a breach of a condition, warranty or guarantee of supply (including any imposed or implied under Schedule 2 (The Australian Consumer Law) of the *Competition and Consumer Act 2010*, is limited to (as we may decide):

6.6.1. in the case of goods (i) the replacement of the goods or the supply of equivalent goods, or (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods (you acknowledge that the goods are not of the type which are capable of being repaired); and

6.6.2. in the case of services (i) the supplying of the services again, or (ii) or the payment of the cost of having the services supplied again.

6.7. Our Liability to you for all Claims not caught by other provisions in this clause 6 is limited to a maximum amount equal to the total amount you have paid to us for the applicable Goods or services to which the Claim relates. You agree that:

6.7.1. this is a genuine pre-estimate of your likely Liability arising from a breach by us of a Contract, our acts or omissions or negligence; and

6.7.2. if this clause was not included then either the terms of the Contract on which we would have agreed to provide the Supply would have been substantially different (including an increase in price).

7. **Hazardous Goods**

7.1. If the Goods are at law or applicable standards classed as a hazardous substance you acknowledge you have received and read information in respect of the same provided by us.

7.2. If the Goods contain free crystalline silica (quartz) you (a) acknowledge that prolonged inhalation of airborne silica contained in silica sand or other silica-containing materials may cause respiratory disease including silicosis (which is a serious disease of the lungs) and cancer in humans, (b) agree to ensure that appropriate health and safety risk assessments and operational practices are in place when handling and using silica Goods to avoid such health risks.

8. **Confidential Information**

A party (**recipient**) must use or disclose confidential information provided by or about the other party (**discloser**) only (a) to perform its obligations under a Contract, (b) as required by the mandatory operation of law, (c) to its professional advisors (bankers, accountants, lawyers) for a proper purpose, or (d) with the other party's prior written consent. The obligations imposed under this clause survive the termination of a Contract. In this clause **confidential information** means any confidential or proprietary information (in any form including copies and notes) obtained in connection with a Contract (including in negotiating a Contract). It however excludes: (i) information which is or becomes a matter of public record other than by a breach of this clause; (ii) information which the discloser certifies in writing as not being confidential information; and (iii) information which the recipient proves it lawfully possessed before obtaining it in connection with a Contract.

9. **Indemnity and Costs**

You indemnify us against any Liability (including reasonable legal fees on a solicitor/client basis) which we may incur arising out of any breach by you of the Contract or any negligence or wrongful act or omission by you.

10. **Termination**

10.1. We may terminate all or any Contracts by notice to you if:

10.1.1. you fail to pay any amount in full within 30 days of the due date under a Contract;

10.1.2. you breach any term or condition in a Contract and fail to remedy that breach within 14 days of notice from us or the breach cannot be remedied;

10.1.3. you are a company and you are subject to a change in *control* from that existing on the date you entered into your first Contract with us (*control* in this clause has the meaning given in section 50AA of the *Corporations Act 2001*);

10.1.4. you are a natural person and you commit an act of bankruptcy under the *Bankruptcy Act 1966* or become an *insolvent under administration* within the meaning of section 9 of the *Corporations Act 2001*;

10.1.5. you become *a Chapter 5 body corporate* (within the meaning of section 9 of the *Corporations Act 2001*) or a party takes action to make you *a Chapter 5 body corporate* but only if and when allowed by the *Corporations Act 2001*;

10.1.6. a party seeks to enforce a security against the whole or substantial part of your assets; and/or

10.1.7. there is, in our opinion (acting reasonably), a material adverse change in your financial position that gives us reasonable grounds for believing that you may be unable to fully and promptly perform your obligations under a Contract.

10.2. You may terminate a Contract by notice to us if:

10.2.1. we breach any term or condition in a Contract and fail to remedy that breach within 14 days of notice from you or the breach cannot be remedied; and/or

10.2.2. we become *a Chapter 5 body corporate* (within the meaning of section 9 of the *Corporations Act 2001*) or a party takes action to make us an *externally-administered body corporate* (within the meaning of section 9 of the *Corporations Act 2001*) but only if and when allowed by the *Corporations Act 2001*.

10.3. Where under applicable law, we are not entitled to terminate under 10.1.3 or 10.1.5, we may suspend any obligation we

have to deliver or supply Goods to you unless and until we have received from the administrator or controller an undertaking satisfactory to us that you will be able to fully perform your obligations under that Contract.

10.4. Termination does not affect any of our rights or remedies existing before termination or arising from termination.

11. **Force Majeure**

11.1. We will not be liable for delay or failure to perform any of our obligations under a Contract to the extent that such delay or failure is caused by a force majeure event.

11.2. A **force majeure event** means any circumstance not within our direct or reasonable control including pandemics, epidemics, labour disputes, obtaining labour, materials or goods, destruction or damage to our premises or a relevant work site, malfunction, breakdown or damage to our plant or equipment, breach of contract, default or insolvency of any third party, an act of government or governmental authority, terrorism, disruption to the supply of power, gas, water, electronic or telecommunication services, civil disorder, the weather or other natural events.

11.3. We may terminate a Contract 30 days after the occurrence of a force majeure event if in our opinion we are unable to perform the Contract or can only perform the Contract at a loss due to the effects of the force majeure event.

12. **Assignments and Amendments**

You may not assign your rights under a Contract with us without our prior written consent (which such consent we will not unreasonably withhold). We may assign our rights under a Contract by notice to you so long as the assignee is reputable and solvent. We may use subcontractors to perform any part of the work without notifying you or obtaining your consent (however, in such circumstances, we remain contractually responsible for the carrying out of our obligations under the Contract). No sub-contractor has authority to agree to any variation of the Contract or any Supply under it on our behalf. A Contract can only be amended by agreement in writing. We can only waive any of our rights under a Contract by written notice to you.

13. **Notice**

Notice can only be in writing and be given to a party either: (i) by post to the addressee's last known principal place of business. Notice by post is deemed to be received at the time at which the letter would be delivered in the ordinary course of post, and (ii) by email. Notice by email is deemed to be received 48 hours after sending unless the sender receives a delivery delay or failure message.

14. **Law and Jurisdiction**

These terms and each Contract are governed by South Australia law and subject to clause 16 any dispute arising in connection with a Contract or these terms is subject to the exclusive jurisdiction of the courts of South Australia (and the Federal Court of Australia (Adelaide Registry)).

15. **Special Conditions for Quarry Goods**

15.1. Where the Contract for Quarry Goods specifies the same are sold by volume rather than weight, the volume will be determined by the loose uncompacted volume as measured by us at the time of loading of the Quarry Goods.

15.2. On request, we will allow you to inspect and sample the Quarry Goods prior to delivery to you. If, in our sole discretion, we agree to you returning any Quarry Goods you must pay all of our costs for transporting, handling and disposal of such Quarry Goods.

15.3. Unless a Contract states otherwise, we agree that any Quarry Goods specified in Australian Standards AS2758 will comply with the requirements in AS2758.

16. **Meanings**

In these terms:

Claim means, a demand, claim, action or proceeding against a party, however arising (including in contract, negligence or under a right under statute) and whether present, unascertained, immediate, future or contingent.

Contract means any contract for a supply from us to you.

Credit Agreement means any credit and security agreement between us and you in respect of the supply of Goods.

Delivery Date means the date in a Contract on which we will deliver the Goods to you as varied under these terms.

Delivery Docket means a docket prepared by us and provided to you which records details of the Goods we deliver to you.

Delivery Site means as applicable, our premises where you are to collect the Goods or the site we are to deliver the Goods as set out in a Contract.

Goods means goods we supply to you under a Contract.

Liabilities means a Claim, losses, liabilities, costs or expenses of any kind and however arising, including penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

Long Term Supply Agreement means an agreement of that name under which we agree to supply and you agree to purchase Goods from us.

notice means written notice by post or email.

Order means any order for Goods you place with us by any means including by email or telephone.

Order Information means all information about the Supply including delivery of the Goods which you make known to us in writing as part of an Order or Contract.

Quarry Goods means quarry goods other than sand.

Quote means any written quote or written offer from us to you.

Rate means (i) the rate or fee for the Goods on a volume basis agreed for the Contract (including in the Order or Quote), or if not so stated (ii) as set out in our schedule of rates as at the date of the Contract for such Goods on a volume basis.

Road Transport and Safety Legislation means all statutes, acts, regulation and mandatory codes of practice or conduct in respect of the safe loading, operation and transport of goods by vehicles including chain of responsibility obligations including under the *Heavy Vehicle National Law (South Australia) Act 2013* and regulations under the same an like acts and regulations in Australia.

Supply means our supply of good and/or services to you.

we or **us** means Clinton Sands Pty Ltd (ACN 627 081 921).

you means the person or entity described as the customer in the Order or Quote.

17. **Interpretation**

In these terms:

17.1. a reference to "$" or "dollars" is to Australian dollars;

17.2. singular includes plural and vice versa;

17.3. reference to a person includes a corporation and partnership and vice versa;

17.4. headings do not affect interpretation;

17.5. no rule of construction applies to the disadvantage of a party because that party put forward a Contract or any portion of it; and

17.6. if any part of a Contract would be unenforceable, the provision must be read down to the extent necessary to avoid that result, and if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of the Contract.

CLINTON SANDS PTY LTD (ACN 627 081 921)

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