

## CONDITIONS OF SUPPLY

**Gippsland Premium Quarries Pty Ltd,**

**ACN 126 268 782**

**ABN 221 26 268 782**

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### **1. DEFINITIONS**

In these conditions:

“Credit Application” means the Supplier’s Credit Application as varied from time, a copy of which has been completed by the Customer.

“Condition” means these Conditions of Supply;

“Contract” means a contract between the Supplier and the Customer for the supply of goods upon terms set out herein;

“Customer” means a person, firm or corporation or company directors, seeking to acquire goods from the supplier;

“Goods” means goods supplied by the Supplier to the Customer;

“GST” means a tax, levy duty charge or deduction together with any related additional tax, interest, penalty fine or other charge imposed by or under GST act.

“GST Act” means a New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended.

“Guarantee” means the Supplier’s Guarantee and Indemnity; and

“Supplier” means GIPPSLAND PREMIUM QUARRIES PTY LTD  
ACN 126 268 782 ABN 22 126 268 782.

### **2. APPLICATION OF THE CONDITIONS**

Unless otherwise agreed in writing, the Conditions will form part of every contract for the sale of goods by the Supplier to the Customer and cannot be varied or supplanted by any other condition(s) without the prior written consent of the supplier.

### **3. EXTENSION OF CREDIT**

Upon completion by the Customer and its directors of a Credit Application and Guarantee, the Supplier may, at its sole discretion, approve the extension of a credit to the Customer. The Customer is not entitled to any extension of credit until it receives written notice from the Supplier stating that credit facilities have been granted.

### **4. PAYMENT**

4.1 Unless the Supplier otherwise notifies the Customer, payment for goods will be due within 30 days of the date of the Supplier’s invoices.

4.2 If any amount is outstanding after 30 days, the supplier may charge interest on such amount at the rate of the then current rate pursuant to the Penalty Interest Rates Act 1983 plus 4 per cent from the due date until the date of payment in full.

- 4.3 All payments made by the Customer to the Supplier will be applied as follows:- a) firstly in or towards payment of any costs (including legal on a solicitor-own client basis), charges, expenses, or outgoing incurred or paid by the Supplier; in relation to any dishonoured cheque fees, collection costs or any action taken by the Supplier for the recovery of any amounts owing by the Customer to the Supplier;
- b) Secondly, in or towards payment of any interest due or payable hereunder;  
And
- c) Thirdly, in or towards payment of the Customer's oldest debt owing the Supplier.
- 4.4 If the Customer defaults in payment of any account on the due date all moneys which would become owing by Customer to the Supplier at a later date for the supply of goods shall be immediately due and payable without the requirement and or any notice to the Customer.
- 4.5 The Supplier reserves the right to require the Customer to provide further security as a condition precedent to the continuation of supply and further reserves the right to alter the terms of payment at any time without notice and substitute cash with order or cash on delivery or any other items.
- 4.6 The Supplier may, at its opinion, cease to supply any further goods if the Customer fails to make any payment by any date.
- 4.7 The Supplier reserves the right to require the Customer to pay at any time prior to delivery of the goods such part of whole of the contract price as the Supplier considers appropriate.
- 4.8 The Customer will pay for the whole of the value of the goods as invoiced when the same is due for payment notwithstanding that the Customer may have directed that delivery of the goods be staggered over different times, to different addresses or that the Customer may not have signed a receipt for the whole or any part of the goods.
- 4.9 In the even of a dispute, the Customer acknowledges that it will not be entitled to withhold payment of any undisputed balance then due to the Supplier.
- 4.10 To the extent that goods and or services provided by the Supplier on or after 1<sup>st</sup> July 2000 are a taxable supply under the GST Act, the Suppliers Charges shall be adjusted to fully account for the GST liability arising in respect of those goods and or services.
- 4.11 If the Supplier determines on reasonable grounds that the amount of GST referable to any goods and or services performed by it pursuant to these conditions differs for any reason from the amount of GST included in the original invoiced price, the amount of GST payable by the Customer shall be adjusted accordingly and recovered from the Customer.

## **5 PAYMENT DEFAULT**

- 5.1 For the purpose of clause 5.2, "Default event" means each of the following:
- a) The Customer defaults in payment by the due date of any amount payable to the supplier.
  - b) The Customer defaults under any of the Conditions or any other contract with the Supplier and does not remedy such default within 7 days of being served with written notice of default;
  - c) The Customer or any guarantor of the Customer compounds with or negotiates for any composition with its creditors generally;
  - d) Being an individual the Customer dies, becomes permanently incapacitated or is declared bankrupt;
  - e) Being a body corporate or other legal person, the Customer or any guarantor of the Customer calls any meeting of its creditors or has a liquidator, provisional liquidator,

official manager, mortgagee, mortgagee's agent, receiver or administrator of all or any of its assets appointed or enters any liquidation or commits any other act of insolvency as defined in section 95A (2) of the Corporation Law; or

- f) The Supplier serves written notice on the Customer that, in the reasonable opinion of the Supplier whether based upon the financial position of the Customer or some other fact or circumstance, the Customer is likely to materially fail to complete its obligation under any contract with the Supplier.

5.2 If a Default Event occurs then, without prejudice to any other remedy available to the supplier:

- a) All moneys which would come payable by the Customer to the Supplier at a later date on any account will be immediately due and payable on demand without the requirement of any notice to the Customer.
- b) The Supplier may, without the requirement of any notice to the Customer, charge interest on all outstanding monies together with those monies referred to in clause 5.2(a) ("the other monies") at the rate prescribed in clause 4.2 from the due date described in clause 4.2 from the due date or in the case of the other monies the date of the default event until the date of payment in full;
- c) The Supplier may suspend, for such period as the Supplier thinks fit, supply of any further goods to be direct or consequential nature sustained by the Customer;
- d) The Supplier reserves the right to require the Customer to provide further security as a condition precedent to the continuation of supply and further reserves the right to alter the terms of payment at any time without notice and substitute cash with order or cash on delivery or any other terms;
- e) The Supplier may, by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by the supplier forthwith.

5.3 Such termination will be without liability on the part of the Supplier for any and all direct or indirect loss or damage thereby caused to the Customer and shall not affect the accrued rights of the Supplier under any contract.

5.4.1 The will indemnify and keep indemnified the Supplier in respect of all reasonable costs (including legal costs on a solicitor-own client basis), charges, expenses, losses or outgoing incurred or paid by the Supplier in relation to any Default Event, dishonoured cheque fee, collection costs or any action taken by the Supplier for the recovery of any amounts owing by the Customer to the Supplier.

## **6 PASSING OF PROPERTY**

6.1 Until full payment is cleared funds is received by the Supplier for all goods sold and supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer:

- a) Titled and property in all goods supplied by the Supplier will remain vested in the Supplier and will not pass to the Customer;
- b) The Customer will hold the goods as fiduciary bailee and agent for the Supplier the goods as fiduciary bailee and agent for the Supplier
- c) The Customer will keep the goods separate from its other property, and in a manner to enable the goods to be identified as the property of the Supplier;
- d) Pending the sale of goods, the goods must be stored at the Customer's usual place of business (or such other storage premises notified to the Supplier) and will not be

removed, except in accordance with clause 6.2, without the prior written consent of the Supplier.

## 6.2

- a) Subject to clause 6.1 and unless otherwise notified in writing, the Customer is authorised to sell the goods, as the Supplier's agent in the fiduciary capacity and for the account of the Supplier, if it is in the ordinary course of the Customer's business to do so. The Customer will, upon demand, assign to the Supplier the legal title of any right against any third party arising out of such a sale. The Customer will be entitled to receive from the Supplier by way of commission the excess of the proceeds of such sale over the total amount due to the Supplier from the Customer.
- b) The Customer irrevocably appoints the Supplier and each of its directors and executive officers as the Customer's true and lawful attorney to recover any proceeds from and third party and/or to exercise the Customer's rights under any contract between the Customer and such third party including rights of repossession and resale of goods.

6.3 If the Customer does sell, dispose of or use the goods before full payment in cleared funds is made to the Supplier, until such full payment is made, all moneys resulting from such sale, disposal or use shall be held on trust for the Supplier and shall be kept in a separate account, shall not be mixed with the Customer's or any other monies and further shall be specifically designated in the accounts of the Customer as the property of the Supplier (although the failure to so treat the said monies will not effect the trust upon which the Customer holds the monies).

6.4 The Customer will deliver up all goods to the Supplier upon service of a written demand. If the Customer does not comply with the demand within 1 (one) business day of service of the demand, the Supplier will be entitled to enter upon the Customer's premises at any time to do all things necessary in order to take possession of the goods.

6.5 For the purpose of repossessing the goods, the Customer hereby grants an irrevocable licence to the Supplier, its employees or agents, to enter upon such premises as the Supplier reasonably suspects the goods may be situated, using such reasonable force as is necessary and the Customer will identify the Supplier from and against any proceedings, claims, demands, costs, damages and expenses of the Customer or any third party howsoever arising.

6.6 Notwithstanding for foregoing, the Supplier will be entitled to bring an action against the Customer for the price of the goods in the event of non payment by the Customer by the due date as if the property in the goods had already passed to the Customer and will also have the right by notice in writing to the Customer at any time after the agreed delivery date to pass the property in the goods to the Customer as from the date stipulated in such notice.

## **7 PRICING**

7.1 Unless otherwise stated all prices include the cost and delivery of the goods provided by the Supplier but exclude any taxes, duties or imposts imposed on or in relation to the goods by the Australian Federal Government or any State or Territory Government and delivery insurance. Each of the items so excluded will be borne by the Customer unless otherwise agreed in writing by the Supplier.

7.2.1 The Supplier reserves the right to vary upwards or downwards any quoted prices without notice to the Customer provided that such variation will not affect the price of any order placed by the Customer which has been accepted by the Supplier.

## **8 PLACING AND ACCEPTANCE OF ORDERS**

8.1 The Customer will comply with the procedure (if any) prescribed by the Supplier for the placing of orders.

- 8.2 The Supplier will not be deemed to have accepted an order unless it has communicated acceptance to the Customer in writing or by electronic transmission or has complied with its delivery obligations in respect of the order.
- 8.3 If the Customer places an order otherwise than in writing or by electronic transmission then:
- a) The Supplier or its employee or representative is authorised to act as the agent of the Customer in completing and signing the order form on behalf of the Customer:
  - b) Acceptance by the Customer of possession and/or delivery of the goods will constitute acceptance or confirmation of previous acceptance of the Conditions to the exclusion of all other terms or provisions.
- 8.4 If, through circumstances beyond the control of the Supplier, the Supplier is unable to fill an order or effect delivery of goods then the Supplier may cancel the order (even if it has already been accepted) by notice in writing to the Customer. The Supplier will be under no liability to the Customer for any damages or losses, direct or indirect, resulting from such cancellation.

## **9 DELIVERY AND RETURNS**

- 9.1 Any period or date for delivery stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier will use its best endeavours to meet any estimated delivery dates but will in no circumstances whatsoever be liable for any loss or damage suffered by the Customer or any other person for failure to meet an estimated delivery date.
- 9.2 Unless otherwise agreed between the Supplier and the Customer, all costs of Freight, delivery and unloading the goods on their arrival at the agreed delivery address shall be borne by the Customer and the Customer shall reimburse the Supplier for all such costs which it incurs on the Customer's behalf.
- 9.3 Delivery will be made by such mode of transport and with such carrier as the Supplier determines but the Supplier will generally adhere to any reasonable direction of the Customer unless the Supplier considers such direction to be impracticable or inconvenient to the Supplier.
- 9.4 The Customer is deemed to accept delivery of the goods when the goods are placed at the Customer's disposal.
- 9.5 If the Customer is unable or fails to accept the delivery of the goods, the Supplier may deliver the goods to a place of storage nominated by the Customer and failing such nomination to a place determined by the supplier. Such delivery will be deemed to be delivered to the Customer at the agreed delivery address. The Customer will be liable for all costs incurred by the Supplier due to storage, detention, double cartage or similar causes if these costs are caused by the Customer's inability or failure to accept delivery of the goods when delivered or ready for delivery by the Supplier.
- 9.6 The Customer shall examine the goods upon receipt. Within forty-eight (48) hours thereof the Customer shall notify the Supplier of any defects in the goods together with full particulars describing the defects. Within the said time the Customer shall thereafter provide the Supplier with all necessary access, facilities and information to enable the Supplier to ascertain or verify the nature and cause of any defect.

## **10 RISK AND INSURANCE**

The risk in the goods and all its insurance responsibility for theft, damage or otherwise in respect of the goods will, unless agreed in writing the contrary, pass to the Customer immediately upon dispatch of the goods from the Supplier's premises or provision of the services to the Customer.

## **11 CANCELLATION**

- 11.1 No purported cancellation or suspension of any order or any part thereof by the Customer will be binding on the Supplier after that order has been accepted by the Supplier.
- 11.2 Notwithstanding clause 11.1, the Supplier may agree to suspend or cancel any order or any part thereof subject to that agreement being in writing and the Customer paying to the Supplier what the Supplier considers to be fair and reasonable amount to fully compensate it for any costs, expenses, loss of profit and consequential damage that it has or may suffer in relation to such a suspension or cancellation.

## **12 MISTAKE**

Any mistake on any quotation, invoice, delivery docket or other document issued by the Supplier will not be binding on the Supplier and the Supplier may in its discretion issue such amended document as is required to rectify such mistake. The Customer will comply with the Suppliers amended document.

## **13 LIABILITY**

- 13.1 The Supplier makes no warranties other than those stated specifically in writing by the Supplier whatsoever concerning the quality, fitness for purpose or merchantability of the goods in so far as is permissible at law or by statute. However, provided that the Customer gives the Supplier written notice of any alleged defect in the goods within 48 hours from the date of delivery thereof, the Supplier may in its sole discretion replace the defective goods in question at its own cost and expenses including the cost of re-delivery to the Customer of any of the goods so replaced, provided however that this obligation shall not apply if the goods have been used or handled by the Customer in the manner contrary to the Supplier's instructions, warnings or other information supplied by the Supplier of have been used, stored or placed in detrimental conditions or have otherwise been negligently or in any way improperly used or handled by the Customer or any third party.
- 13.2 Such replacement is the absolute limit of the Supplier's liability howsoever arising under or in connection with the supply of the goods to the Customer and or alternatively the sale use of any dealings with the goods by the Customer or a third party and the Supplier will not be liable to the Customer for any loss, damage, costs (including without limitation legal costs professional or other expenses of whatever kind) howsoever incurred or suffered by the by the Customer or by a third party whether direct or consequential (including but without limitation any economic loss or other loss of turn over, profits, business or goodwill) arising out of any dispute for breach of contract, negligence, breach of statutory duty or for any other contractual or tortious claims or proceedings made by or brought against the Customer in connection with the relating to the supply of the goods to the Customer or the sale, use, state, condition, performance, merchantability, fitness for purpose of our any other dealing with the goods by the Customer or a third party subject always to any rights arising under application non-excludable statutory warranties or conditions.
- 13.3 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to the goods supplied by it or their use or application is given in good faith, is believed by the Supplier to be appropriate and reliable, however, it is provided with a disclaimer for any liability or responsibility on the part of the Supplier.

**14 APPLICABLE LAW**

The Conditions and every contract connected therewith will be governed by the laws of Victoria and the parties hereby submit to the jurisdiction of the Victorian Courts.

**15 NOTICES**

Any notice required or authorised to be given or served under the Conditions will be in writing and be deemed duly given or made if delivered or sent by pre-paid mail or by telegram or facsimile communication as follows;

- a) To the Supplier at its aforesaid address;
- b) To the Customer at its principal business or the address in the Customer's credit application; or such other address as may be notified by one third party to the other and where served by post will be deemed served 48 hours following its posting.

**16 SEVERANCE**

If any provision or part of a provision of the Conditions shall be unenforceable or in conflict with the law of any relevant jurisdiction, any part so held unenforceable, or invalid shall be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down it shall be severed from the remainder of the conditions which shall not be affected by such severance.

**17 NON WAIVER**

The rights of the Supplier will not be prejudiced or restricted by any indulgence or forbearance extended to the Customer and no waiver of any breach shall operate as a waiver of any subsequent breach.