

Part C. Terms and Conditions of Credit (Credit Terms)

1. Interpretation

1.1 Definitions

- (a) **"Applicant"** means the party or parties seeking credit and is also referred to as the **"Customer"**.
- (b) **"Application"** or **"Commercial Credit Application"** means the application entitled 'Application for Commercial Credit and Terms and Conditions of Sale for Langwarrin Quarries Operations Pty Ltd ACN 664 474 177' contained available on [LQO's website](#) as updated from time to time.
- (c) **"Bankruptcy Act"** means *Bankruptcy Act 1966* (Cth).
- (d) **"Corporations Act"** means the *Corporations Act 2001* (Cth).
- (e) **"Goods"** means any goods and other items (in each case as described in any Order which LQO has supplied (or has agreed to supply) to the Applicant, including (without limitation):
 - (i) soft rock fill;
 - (ii) crushed rock;
 - (iii) non-descript crushed rock;
 - (iv) packing sand;
 - (v) top soil;
 - (vi) turf,
 and other materials as supplied by LQO to the Customer in accordance with these Credit Terms and the Terms and Conditions of Sale.
- (f) **"Guarantee"** shall mean the guarantee and indemnity provided as part of this Commercial Credit Application (if any).
- (g) **"Guarantor"** shall mean each of the guarantors identified in the section entitled "Executed by the Guarantor".
- (h) **"Insolvency Event"** means any of the following events concerning the Applicant, unless the events take place as part of a solvent reconstruction, amalgamation, merger, or consolidation on terms approved by LQO before it takes place and the implementation of the reconstruction, amalgamation, merger or consolidation complies with the terms of the approval:
 - (i) if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to, or over, any of the property or undertaking of the Applicant;
 - (ii) if the Applicant becomes bankrupt;
 - (iii) if a controlling trustee is appointed to, or over, any of the property or undertaking of the Applicant;
 - (iv) if the Applicant's property or undertaking becomes subject to a personal insolvency arrangement under part X of the *Bankruptcy Act* or a debt agreement under part IX of the *Bankruptcy Act*;
 - (v) the Applicant is unable to pay its debts when they become due and payable;
 - (vi) if the Applicant ceases to carry on business; or
 - (vii) if any event happens in Australia or any other country or territory in respect of the Applicant that is similar to any of the events or circumstances referred to in this definition.
- (i) **"Order"** has the meaning given in the Terms and Conditions of Sale;
- (j) **"PMSI"** means any "purchase money security interest" and has the meaning given to it by the *PPSA*.
- (k) **"PPSA"** means *Personal Property Securities Act 2009* (Cth).
- (l) **"Services"** means any service provided by LQO, including the provision of:
 - (i) weighbridge services;
 - (ii) personnel and machinery for the loading of Goods into the Customer's or its agent's vehicles at the Site; and
 - (iii) all ancillary or other services in connection with the provision of the Goods.
- (m) **"Site"** means Gate 1, 165 Quarry Rd, Langwarrin VIC 3910.
- (n) **"LQO"** means Langwarrin Quarries Operations Pty Ltd ACN 664 474 177 of 59 Queen Street, Bendigo VIC 3550, in the State of Victoria, Australia and any of its "related bodies corporate" (as defined in section 50 of the *Corporations Act*).
- (o) **"Terms and Conditions of Credit"** or **"Credit Terms"** means the terms and conditions set out in this Commercial Credit Application, as amended, varied, supplemented or replaced from time to time and which are published on the [LQO Website](#), where the current terms are included within this *Part C. Terms and Conditions of Credit* of this Application.
- (p) **"Terms and Conditions of Sale"** means the terms and conditions of supply or trade as amended, varied, supplemented or replaced from time to time and which are published on the [LQO Website](#) where the current terms are included within *Part F. Terms and Conditions of Sale* of this Application.

1.2 Interpretation principles

- (a) Unless the contrary intention appears, a reference to:
 - (i) these Credit Terms, or another document includes any variation or replacement of it, notwithstanding any change in the identity of the

parties;

- (ii) the singular includes the plural and vice versa;
- (iii) a person includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority or agency, or other entity;
- (iv) a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a party by novation) and assigns; and
- (v) any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them;
- (b) Where two or more persons are defined as a party in these Credit Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.
- (c) An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.
- (d) Unless specified otherwise, all reference to sums of money is in terms of Australian currency (AUD), and all documents and correspondence between the Parties must be in the English language.
- (e) These Credit Terms are not to be interpreted against the interests of a party because that party proposed these terms or some provisions of it or because that party relies on a provision of these Credit Terms to protect itself.

1.3 Conflict between terms – priority of terms

These Credit Terms, together with each of Parts *B. Privacy Information*, *D. Deed of Guarantee and Indemnity*, *E. National Credit Code Declaration*, and *F. Terms and Conditions of Sale*, form the agreement between the Applicant and LQO. If there is any conflict, ambiguity, or inconsistency between any of the documents / parts which comprise this agreement, it is expressly agreed that to the extent of the inconsistency, the order of precedence will be (highest to lowest):

- (a) Part B. Privacy consent and acknowledgement;
- (b) Part F. Terms and Conditions of Sale;
- (c) Part C. Terms and Conditions of Credit; and
- (d) Part D. Deed of Guarantee and Indemnity.

1.4 Term

These Credit Terms commence on the date we accept your completed Commercial Credit Application in writing and notify you of your credit limit and continues until such time as it is terminated in accordance with these Credit Terms.

2. General provisions

2.1 The Applicant agrees and acknowledges that:

- (a) if LQO agrees to supply any Goods or provide any Services to the Applicant, that supply or provision will (at all times) be subject to:
 - (i) the Terms and Conditions of Sale and the Applicant shall be bound by (and will comply with) those Terms and Conditions of Sale as if set out (in full) herein; and
 - (ii) these Terms and Conditions of Credit.
- (b) LQO may, in its sole discretion, vary the Terms and Conditions of Sale, at any time, without notice to the Applicant and each such variation shall be binding on the Applicant.

3. Commercial credit

Where the Applicant is a natural person, the Applicant warrants that it has signed a declaration in the form contained in *Part E. National Credit Code Declaration* in favour of LQO that any credit provided to the Applicant by LQO will be applied wholly or predominately for business purposes and not for personal, domestic or household purposes.

4. Notification of change to Applicant entity

4.1 The Applicant will immediately advise LQO of any detrimental changes to the Applicant's financial position, or any Insolvency Event or change of structure, or a change in the - directors, shareholders or identity of the persons who own or control the Applicant, or change to the Applicant's constitution – being a change of the entity or natural person described in this Commercial Credit Application, including any Guarantor, or any change to its name or details including, if the Applicant or Guarantor is a trustee, the ABN of the relevant trust.

4.2 In the case of a change of directors or shareholders, LQO may ask the Applicant's directors to sign a guarantee and indemnity.

5. Payment

- 5.1 The Applicant will pay the amount shown on each invoice for Goods supplied and Services provided by LQO before the due date for payment.
- 5.2 The Applicant is liable to pay all amounts due to LQO, regardless of whether the Applicant has exceeded its credit limit.
- 5.3 Until LQO notifies the Applicant that the Applicant has been granted a credit facility, all Goods and Services supplied to the Applicant must be paid for on a 'cash on delivery' (i.e. in immediately cleared funds such as EFTPOS, Visa or MasterCard) or performance basis.
- 5.4 If payment is not made when due, LQO may charge interest on all moneys outstanding from the Applicant and interest shall accrue and be calculated on a daily basis at the rate of 10% per annum.
- 5.5 Any sums owed by the Applicant to LQO under these Credit Terms will be made free of any set off, or counterclaim, and without deduction or withholding (including by way of cash retention).

5.6 LQO may deduct any amount that LQO owes the Applicant from any amount the Applicant is liable to pay LQO.

5.7 The Applicant is liable for all purchases made using the credit facility. LQO is not responsible for confirming the authority of persons using the Applicant's account. The Applicant is solely responsible for ensuring there is no unauthorised use of its account.

6. Credit terms

6.1 If any amount due and payable by the Applicant to LQO is not paid on time, all amounts actually or contingently owing under this Commercial Credit Application, whether or not due and payable become immediately due and payable.

6.2 Should an Insolvency Event occur in respect of the Applicant, LQO may, in addition to any other course of action available to it, elect to terminate or rescind this Commercial Credit Application.

7. Credit approval

7.1 LQO will advise the Applicant by email if, subject to these Terms and Conditions of Credit and the Terms and Conditions of Sale, it agrees to extend credit to the Applicant from time to time and the terms of that credit (including the credit limit that will apply) (the **Credit Approval**).

7.2 Unless LQO stated otherwise within the Credit Approval, where LQO grants the Applicant a credit facility, the terms of payment are strictly thirty (30) days from the date of invoice.

7.3 If LQO has granted any Credit Approval under clause 7.1, it may, in its sole discretion, withdraw, reduce, suspend or otherwise vary that Credit Approval (or any terms of that Credit Approval) at any time.

7.4 LQO may, in its sole discretion, vary these Terms and Conditions of Credit from time to time, at any time and without prior notice to the Applicant or a Guarantor.

7.5 LQO reserves the right to close the Applicant's account without notice to the Applicant if the Applicant does not use its credit facility for a period of twelve (12) months.

8. Credit reporting information

8.1 The Applicant signing this Commercial Credit Application acknowledges that LQO may give credit information about the Applicant to a credit reporting body.

8.2 The Applicant acknowledges and agrees that LQO may seek and obtain credit reporting information about the Applicant from a credit reporting body for the purposes of:

- (a) assessing the Applicant's application for and the continuation of commercial credit;
- (b) assessing whether to accept the Applicant's obligations under this Commercial Credit Application; or
- (c) collecting overdue payments in respect of commercial credit provided to the Applicant.

8.3 The Applicant acknowledges and agrees that LQO may give credit eligibility information to a person who is currently a Guarantor, or who has requested to be or is considering becoming a Guarantor of credit that LQO has either provided to the Applicant or the Applicant has applied for to LQO.

8.4 The Applicant acknowledges and agrees that LQO may exchange credit eligibility information about the Applicant with another credit provider for the purposes of any one or more of the following:

- (a) assessing the Applicant's Commercial Credit Application;
- (b) to notify other credit providers of a default by the Applicant; and
- (c) to exchange information with other credit providers as to the status of the Applicant's credit agreement with LQO where the Applicant is in default with one or more other credit providers.

8.5 The Applicant agrees to comply with any reasonable written requests made by LQO from time to time to provide LQO with further information for the purpose of assessing the Applicant's creditworthiness.

9. Application of funds

The Applicant agrees that any funds received by LQO in respect to Goods supplied or Services provided by LQO to the Applicant shall be applied against any debt owed by the Applicant to LQO in the following order:

- 9.1 firstly to any unsecured portion of that debt; and
- 9.2 secondly to any secured non-PMSI liability,

and thereafter against any PMSI or in any other order that LQO may direct from time to time.

10. General

10.1 Severance

The invalidity or unenforceability of any provision of these Credit Terms (or any provision of the Terms and Conditions of Sale) shall not affect the validity or enforceability of the remaining provisions of these Credit Terms and any clerical errors are subject to correction do not bind LQO.

10.2 Jurisdiction

These Credit Terms shall be construed according to the laws that apply in the State of Victoria, Australia and any proceedings in respect of any cause or matter arising hereunder may be instituted heard and determined by a Court of competent jurisdiction at Melbourne.

10.3 Costs

- (a) The Applicant is responsible for its own legal, accounting, and business costs in connection with the execution of these Credit Terms. The Applicant must also pay for all stamp duty and other taxes payable on these Credit

Terms (if any).

- (b) The Applicant will pay any of LQO's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

10.4 Indemnity

- (a) The Applicant is liable for and indemnifies LQO from and against any liability, claims, damages, losses, costs, and expenses whatsoever (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that LQO may suffer or incur at any time, directly or indirectly, arising out of, or in connection with, any default by the Applicant in the performance or observance of the Applicant's obligations under these Credit Terms.

- (b) The Applicant's indemnity is a continuing obligation separate and independent from the Applicant's other obligations and survives termination of these Credit Terms.

- (c) LQO need not incur any expense or make any payment before enforcing its rights of indemnity conferred upon LQO by these Credit Terms.

10.5 Trustees

Where the Applicant is a trustee of a trust, the Applicant warrants to LQO that:

- (a) it enters into these Credit Terms in both the Applicant's capacity as trustee and in its personal capacity;
- (b) it has the right to be reasonably indemnified out of trust assets;
- (c) it has the power under the trust deed to sign and enter into these Credit Terms;
- (d) it will not retire as trustee of the trust or appoint any new or additional trustee without advising LQO and having the new or additional trustee sign an agreement on substantially the same terms as these Credit Terms; and
- (e) it must provide LQO a copy of the trust deed upon request.

10.6 Notices

A notice or other communication connected with these Credit Terms has no legal effect unless it is in writing. In addition to any other method of service provided by law, a notice or other communication may be sent by pre-paid post to the address of the addressee or sent by email to the email of the addressee, in each case as set out in the header (top of each page) of these Credit Terms or Part A. Customer Details, as applicable.

10.7 Assignment

The Applicant Party may not assign, transfer, or novate its rights or obligations under these Credit Terms without LQO's prior written consent (which consent must not be unreasonably withheld).

10.8 Waiver

A waiver of any provision or breach of these Credit Terms will only be effective if made by the affected party in writing. If a party elects not to enforce its rights arising as a result of a breach of these Credit Terms, that will not constitute a waiver of any rights in relation to any subsequent or other breach.

10.9 Variation of Credit Terms

Any proposed variation to these Credit Terms by the Applicant must be requested in writing and LQO may refuse any such request without providing reasons to you for doing so.