

TERMS AND CONDITIONS OF SALE

Industrial Sands and Gravels Pty Ltd trading as Palladium Quarries

Timing

1. These Terms apply whenever Goods or Services are quoted for, sold, supplied or Delivered by the Company to any Customer. Requesting or accepting a Quotation from, placing an Order with or accepting a supply or Delivery of Goods or Services from the Company by a Customer constitutes acceptance by the Customer of these Terms.
2. Where the Company and a Customer enter into a subsequent supply agreement for Goods or Services, these Terms shall continue to apply to the extent that they are not inconsistent with the terms of the subsequent supply agreement.

Customer Warranties

3. The Customer warrants that:
 - a. the Customer will provide all Relevant Information to the Company when seeking any Quotation or placing an Order for Goods or Services from the Company;
 - b. any Relevant Information supplied by the Customer to the Company is accurate and complete, and the Company may rely upon it;
 - c. subject to any Law to the contrary, unless the Company makes an express representation to the contrary in writing, the Customer will not allege or in any circumstances maintain:
 - i. that the Company had, or should be taken to have, approved or represented any specification (whether supplied by the Customer, by the Company or by a third party) as being suitable for any particular purpose; or
 - ii. that the Company is liable for any Loss to the extent that the Loss results from or is attributable to any defects in, or unsuitability of, the specification;
 - d. the Customer has formed its own opinion as to the accuracy or otherwise of any information or advice provided by or any representation made by the Company; and
 - e. unless the Customer notifies the Company to the contrary prior to or when placing an Order for the Goods the Customer is, and has held itself out to be, acquiring the Goods for either the purpose of re-supply (in an altered form or condition or to be incorporated into other goods) or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.
4. Testing of Aggregates or other technical Services will not be carried out or provided, unless ordered by the Customer.

Delivery of Goods

5. The Customer shall take full responsibility for assessing any requirements for traffic management associated with a Delivery to the Customer and for putting in place all traffic management measures which the Customer ought reasonably to know are required in all the circumstances of the Delivery.
6. Unless the Customer otherwise requires, Delivery will be made to the kerbside nearest the Delivery address. If the Customer requires the Delivery vehicle to leave a public road to gain access to the discharge or unloading location, the Customer shall:
 - a. ensure that the vehicle has a safe, suitable and unrestricted route between the kerbside nearest to the Delivery address and the discharge or unloading location; and
 - b. indemnify the Company against any Loss arising from events occurring while gaining such access unless solely caused by the Company's negligent act or omission.
7. The Company may refuse to deliver if it believes the Customer has failed to perform its obligations under Clauses 5 or 6(a) and will be indemnified by the Customer against any Loss arising from the refusal.
8. Subject to Clause 11, the Customer shall, before the Delivery of any Goods, check for any difference between the Goods as delivered, the description or quantity of the Goods appearing on the Delivery Docket and the Customer Order placed with the Company.
9. If the Customer disagrees with any of the details on the Delivery Docket or if there is a difference between the Goods as delivered, the description or quantity of the Goods appearing on the Delivery Docket or the Goods Ordered, then the Customer must elect whether to accept or reject the Goods in whole or not at all, and, thereafter:
 - a. if the Customer accepts the Goods, the Customer will be taken to have Ordered what is delivered; and
 - b. if the Customer rejects the Goods, the Customer shall record in writing on the Delivery Docket details sufficient to accurately identify the nature of such disagreement or difference before the Delivery vehicle departs from the Delivery address.
10. If the Customer accepts the Goods then:
 - a. before delivering the Goods, the Company shall complete the then relevant Delivery Details on the Delivery Docket and the Customer shall sign the Delivery Docket;
 - b. after Delivery, the Company shall complete the Delivery Details and enter the quantity of any returned Goods on the Delivery Docket and give a copy of the completed signed Delivery Docket to the Customer.
11. If the Customer is not present at the Delivery location at the time of Delivery, or being so present, fails or refuses to sign as required by Clause 10, the Company may, in its absolute discretion, elect to refuse to deliver the Goods but, in those circumstances, the Customer will none the less be liable to pay for those Goods as if they had been delivered.
12. Notwithstanding any other provisions of these Terms, if the Customer is not present at the Delivery location at the time of Delivery, or the Customer is present but does not sign the Delivery Docket in accordance with Clause 10(a) or, having so signed, recorded details of any disagreement or difference on the Delivery Docket in accordance with Clause 9 and the Goods are discharged then, to the extent permitted by Law:
 - a. the Customer shall be deemed to have unreservedly accepted both the Delivery and the accuracy of the Delivery Details;
 - b. the Company shall have no Liability to the Customer for Loss in respect of any difference between the description and quantity of the Goods appearing on the Delivery Docket and the Customer's Order;

- c. the Customer irrevocably waives all its rights to reject the Goods referred to in the Delivery Docket; and
13. the Delivery Docket shall be prima facie evidence of all matters recorded thereon including the Delivery Details and the application of Delivery related surcharges. Clause 12(c) shall not apply in relation to any defect, non-conformity or failure which would not have been apparent upon reasonably diligent inspection at the time of Delivery.

Payment

14. The amount payable by the Customer to the Company shall be calculated by reference to the quantities of Goods and Services shown on the relevant Delivery Docket, at the Applicable Rate, plus any applicable delivery fee.
15. The Customer shall pay the amount payable to the Company prior to Delivery or within any agreed credit period.
16. The Company is entitled to charge the Customer interest on amounts not paid at the time they are payable under Clause 15 at the interest rate payable from time to time on unsatisfied judgement debts under the Governing Law from invoice date until payment and the Customer shall be liable to the Company for all Costs.
17. The Customer hereby irrevocably agrees that it is not entitled to withhold payment of the whole or any part of an amount payable to the Company under these Terms by the way of retention or set-off for any reason whatsoever.
18. In the event of any dispute arising between the Company and the Customer as to whether an amount is payable, the Customer shall, within the relevant period under Clause 15, pay to the Company the amount claimed by the Company to be payable (including any amount charged by the Company under Clause 16), to be held by the Company until settlement of the dispute.
19. A statement signed by the Company certifying any amount payable by the Customer to the Company, including any Costs, interests or other claims whether under these Terms or otherwise, shall, in the absence of manifest error, be prima facie evidence of the amount payable.
20. Each amount payable by the Customer under these Terms in respect of a Taxable Supply is exclusive of GST and the Customer must, in addition to that amount and at the same time and manner, pay the GST payable in respect of that supply upon receipt of a tax invoice. "Taxable Supply" and "GST" have the meanings set out in the A New Tax System (Goods and Services) Act 1999.

Limitations on the Company's liabilities

21. Notwithstanding any other provision of these Terms, for sales or deliveries to the Customers who are Consumers, the Company's Liability for a breach of a guarantee arising by operation of Division 1 of Part 3-2 of Schedule 2 of the Act (other than Sections 51, 52 or 53 of that Schedule) is limited to one of the following, at the Company's election:
- a. in the case of Goods other than Goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the replacement of the Goods or the supply of equivalent Goods, repair or payment of the cost of replacement or repair of the Goods or of acquiring equivalent Goods; and
 - b. in the case of Services other than Services of a kind ordinarily acquired for personal, domestic or household use or consumption, supplying the Services again or payment of the cost of having the Services supplied again.
22. Notwithstanding any other provision of these Terms, for deliveries to the Customers who are not Consumers:
- a. All conditions or warranties which would be implied into these Terms by Law are excluded unless such exclusion is forbidden or made void by Law.
 - b. Subject to Sub-Clause 22(c), the Company's maximum aggregate Liability to the Customer in respect of any claim for Loss in relation to defective or non-conforming or non-complying Goods or Services is limited to one of the following, at the Company's election:
 - i. in relation to defective or non-complying Goods, the replacement of the Goods or the supply of equivalent Goods, repair or payment of the cost of replacement or repair of the Goods or of acquiring equivalent Goods; and
 - ii. in relation to defective or non-complying Services, supplying the Services again or payment of the cost of having the Services supplied again.
 - c. Notwithstanding Sub-Clause 22 (b), the Company shall not in any circumstances be liable for any Loss, arising directly or indirectly from delays in Delivery or failure to deliver for any cause or reason including traffic delays, equipment breakdown, unavailability of raw materials, inclement weather and labour disputes.
 - d. If the Customer agrees (whether before or after any agreed rectification) to accept defective, non-conforming or non-complying Goods or Services the Company will have no further Liability in relation to those Goods or Services and the Customer releases the Company and indemnifies the Company against any further Liability in relation to those Goods or Services.
 - e. The Customer hereby irrevocably indemnifies the Company in respect of that part of any damages the Company may be ordered to pay to a third party:
 - i. under Division 2 of Part 5-4 of Schedule 2 of the Act which arise from the supply of Goods or Services other than Goods or Services of a kind ordinarily acquired for personal, domestic or household use or consumption to the Customer; or
 - ii. in any other case - which exceeds the lowest of the cost of replacing the Goods, supplying the Services again, obtaining equivalent Goods or Services or having the Goods repaired.
 - f. The Company's Liability under s274 of Schedule 2 of the Act is limited to paying an amount equal to the cost of replacing the Goods concerned, obtaining equivalent Goods or having them repaired.
23. Where Goods or Services are Ordered by the Customer in reliance upon a Quotation issued by the Company to the Customer for work to be undertaken by the Customer in respect of a project or in an area nominated by the Customer, all of the Goods and Services Ordered for that project or area shall be deemed to constitute a single acquisition and the total amount payable for all such Goods and Services shall be taken to be the amount payable for the Goods or Services so acquired for all purposes including the purposes of the Act.
24. Notwithstanding anything else contained in these Terms or in any Law, to the extent not prohibited by Law, the Company shall not in any circumstances be liable to the Customer for Consequential Loss.

Claims

25. To the extent permitted by Law, the Company shall not be liable for any claim by the Customer alleging a Loss arising out of the Quotation, sale, supply or Delivery of Goods or Services under these Terms unless:
- The Company is notified by the Customer in writing of any alleged defect, non-conformity or failure giving rise to the claim within 14 days of the Delivery or such later date as the Customer became, or ought reasonably to have become, aware of the events or circumstances on which the claim is based;
 - the Customer allows the Company reasonable facilities to investigate any such defect, non-conformity or failure promptly, to advise the Customer of any appropriate remedial action and follows any such reasonable advice;
 - a fully particularised claim is lodged in writing with the Company not later than 2 months after the Customer became or ought reasonably to have become aware of the events or circumstances on which the claim is based.
26. In pursuing a claim against the Company, a Customer may only rely upon test results if they have been arrived at by a NATA certified laboratory using tests carried out in accordance with all applicable Australian Standards, and must provide duplicate samples to the Company on request.

General

27. If the Customer fails to comply with any of these Terms, the Company shall have the right at its option to suspend further performance of its obligations to the Customer and/or to terminate any contract with the Customer without affecting any other right or remedy of the Company.
28. To the maximum extent permitted by Law, the Customer indemnifies the Company against any Loss to the extent the same was caused or contributed to by any negligent or wilful act or omission of, or any breach of or failure to comply with these Terms by, the Customer.
29. Property in the Goods shall not pass until the Customer has paid all moneys payable to the Company under these Terms in full. Risk in the Goods passes to the Customer at the time of Delivery. Until payment of all moneys payable by the Customer to the Company, the Goods are subject to the following terms:
- The Customer holds the Goods as fiduciary, bailee and agent for the Company and must keep the Goods physically separate from all other goods of the Customer, and clearly identified as owned by the Company.
 - If an Event of Default occurs, then without prejudice to the Company's other rights, the Company may without notice to the Customer enter any premises occupied by the Customer or any other place where the Goods may be and recover possession of them. If the Customer sells any of the Goods while money is owed to the Company, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
 - If the Customer uses the Goods in some manufacturing or construction process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to such Goods in trust for the Company. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to the Company and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Goods will be discharged.
 - If the Goods are resold, or products using the Goods are manufactured and resold by the Customer, the Customer holds the entire book debts owed in respect of such sales and proceeds of such sales in trust for the Company. Such part of the book debts and proceeds shall be deemed to equal in dollar terms the amount owed by the Customer to the Company at the time of the receipt of such book debts.
30. If there is failure to deliver or any time delay in Delivery due to any cause whatsoever beyond the Company's control including weather, fire, labour dispute, strike or due to the inability of the Company to obtain raw materials in a timely fashion from the Company's planned source (whether such source is known to the Customer):
- The Company will not be liable for any Loss sustained because of any such failure or delay; and
 - The Company will be entitled to suspend deliveries for such period as it may think fit or terminate the agreement immediately after suspending deliveries and shall not be liable for any Loss sustained because of such suspension or termination.
31. To the extent permitted by Law, the actions or signatures of any person appearing to have the Customer's authority shall bind the Customer.
32. If the whole or any part of a provision of these Terms are unenforceable, the provision (or part thereof) is to be read down so as to be enforceable, and if it cannot be so read down, severed to the extent necessary to make these Terms enforceable.
33. A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise or that of any other right, power or remedy. A party is not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising the right, power or remedy.
34. A right may only be waived in writing, signed by the party giving the waiver, and no other conduct of a party operates as a waiver of the right or otherwise prevents the exercise of the right.
35. A single or partial exercise or waiver of a right or a delay in the exercise of a right conferred on a party by these Terms or by Law does not prevent any other exercise of that or any other right.
36. These Terms are governed by and are to be construed in accordance with the Laws of:
- the State or Territory of Australia in which the Goods are delivered or the Services supplied; or
 - If they are delivered or supplied to a place outside of Australia, the State or Territory of Australia from which the Goods or Services were supplied - and the Customer irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that State or Territory and any courts that may hear appeals from those courts and waives any right to object to proceedings being brought in those courts in respect of any proceedings arising from or connected with a Delivery.
37. These Terms are not to be interpreted against the interests of a party because that party proposed these Terms or some provision of it or because that party relies on a provision of these Terms to protect itself.
38. The Customer consents to the Company recording and disclosing telephone conversations between the Customer and the Company.
39. The Company's Applicable Rates, Surcharge Schedules, Technical Charges and Privacy Policy are available on request.

Definitions and Interpretations

- "the Act" means the Competition & Consumer Act 2010.
- "Aggregates" includes quarry products and sand.
- "Applicable Rate" means:

- i. where a Quotation has been accepted, the quoted rate, charges and surcharges; and
- ii. where no Quotation has been given, or if given accepted, either:
 - 1. the relevant rate, charges and surcharges shown in a Rate Schedule; or
 - 2. if no such rate is shown, a rate determined by the Company or as otherwise advised by the Company.
- d. **"Customer"** means the person or company set out in the application for commercial credit and/or is the Purchaser of the Goods from the Company.
- e. **"Claim"** means any claim, demand, action or proceeding;
- f. **"Company"** means Industrial Sands & Gravels Pty Ltd (ACN: 072 258 158) and includes its employees, agents, contactors, subcontractors, successors, substitutes (including persons taking by novation), assigns and any person or entity claiming under or through;
- g. **"Consequential Loss"** includes:
 - i. any direct or indirect loss of overhead costs, administrative expenses, revenue, profits, anticipated savings, business, data and value of equipment (other than direct cost of repair);
 - ii. any direct or indirect loss of opportunity, expectation loss or delay loss;
 - iii. any form of consequential, special, punitive or exemplary loss or damages; and
 - iv. liquidated damages - howsoever it arises or is claimed (including as a result of negligence or by the operation of Law).
- h. **"Consumers"** means 'consumers' as defined by Section 4B or Section 3 of Schedule 2 of the Act.
- i. **"Contract"** means the contract between the Company and the Customer for or in relation to the sale and purchase of goods;
- j. **"the Debt"** means all monies now payable or which may become payable in the future or contingently by the Customer to the Company for any reason whether alone or jointly with another person including without limitation; money owed by the Customer for the supply of Goods; all money the Company pays or becomes liable to pay at the request of the Customer; all losses and expenses including legal costs on a solicitor/client basis however directly or indirectly arising from any dealing or default by the Customer under its contract with the Company or by the Guarantor under this Deed; all the costs incurred by the Company for recovering monies under any related security.
- k. **"Deed"** means any Deed of Guarantee, indemnity and Charge.
- l. In interpreting this Deed words incorporating the singular number denotes the plural and vice versa; any gender denotes the relevant gender; and a person denotes an individual, a body corporate, a partnership or any unincorporated association.
- m. **"Delivery"** includes a delivery or supply of Goods and Services in response to an Order of the Customer or which the Customer accepts whether or not the Company and the Customer have reached a concluded agreement about all of the terms of the delivery or supply including the price payable for the Goods or Services Ordered.
- n. **"Delivery Details"** includes, in respect of a Delivery, details of:
 - i. A number uniquely identifying a Delivery to be used as a reference
 - ii. Customer name and account number with delivery address and any specific instructions
 - iii. Date and times of loading and delivery stages (arrival and finish time)
 - iv. Description and system codes of Goods or Services that are being supplied
 - v. Quantity of Goods or Services
 - vi. For cash sales - the rate and value of Goods or Services supplied
- o. **"Delivery Docket"** means a document prepared by the Company that records Delivery Details in respect of a Delivery.
- p. **"Event of Default"** means any of the following events:
 - i. the Customer fails to pay for the Products;
 - ii. the Customer is in breach of these Terms;
 - iii. if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer;
 - 1. the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or administrator is appointed;
 - 2. the Customer goes into liquidation or makes an assignment or an arrangement or composition with its creditors; or
 - 3. the Customer stops payment or is deemed unable to pay its debts within the meaning of the Corporations Act 2001; and
 - iv. if the Customer is a natural person, an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or hers affairs or an order is applied for or made to place the assets and affairs of the Customer under administration; the Customer ceases or threatens to cease carrying on the business.
- q. **"Guarantor"** means the person or company set out in any Deed of Guarantee or any other persons signing a Deed as Guarantor and that person's personal representative in respect of the Debt of the Customer.
- r. **"Goods"** mean all goods, merchandise and services supplied, or which may be supplied in the future at the Customer's request, or credit extended by the Company to the Customer.
- s. **"Governing Law"** means the laws from time to time in force in the State of Victoria and the parties hereto irrevocably submit to the exclusive jurisdiction of the Courts of that State and any Courts competent to hear appeals therefrom.
- t. **"Law"** includes the common law of Australia, rules of equity and the provisions of any relevant statute or statutory instrument including a by-law.
- u. **"Loss"** means any Liability incurred or alleged to have been incurred by the Company, the Customer or a third party in respect of, arising from or connected with any supply of Goods or Services by the Company or by the Company's failure to supply any Goods or Services or of a breach of these Terms, whether arising in Law or otherwise.
- v. **"Liability"** includes any demand or claim (including a demand or claim for direct or indirect Consequential Loss) in respect of any damage, cost, expense, harm, injury or death or any fine or penalty imposed by or under a Law or by any authority.
- w. **"Order"** means any order of Goods or Services placed by an Customer by any means which includes, but is not limited to, orders via telephone, in person, facsimile or email.
- x. **"Prescribed Terms"** means any terms, conditions, guarantees and warranties which the Act and any other law expressly provides may not in respect of the Contract be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent;
- y. **"PPSA"** means the Personal Property Securities Act 2009 as amended;
- z. **"PPS Register"** means the personal property securities registered established under section 146 of the PPSA;



- aa. **"Quotation"** includes any quotation for Goods provided by the Company to the Customer.
- bb. **"Relevant Information"** includes all specifications relating to the Goods or Services, the application of the Goods or Services, Site Details and other matters that may affect the Company's ability to supply the Goods or Services in a manner that conforms to the Customer's requirements as to performance or compliance with a standard communicated to the Company by the Customer or with which the Customer ought reasonably to be aware that the Company will be bound by contract, Law, custom or usage to conform.
- cc. **"Services"** includes:
 - i. the testing of concrete, Aggregates, additives or admixtures whether in respect of compliance with a relevant standard or otherwise;
 - ii. the provision of other technical or design services or advice;
 - iii. the provision of vehicles and drivers to Customers on a temporary basis;
 - iv. weighbridge services.
- dd. **"Site Details"** includes all relevant details concerning gradients, substructures, surface conditions, and obstructions (including gates), width of access ways, footpath and pavement strengths at on or under the delivery site and any Laws that regulate or affect the time or manner of safe, timely and lawful delivery to the site.
- ee. **"Terms"** means these Terms and Conditions of Sale
- ff. Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa; and
- gg. The headings in these terms and conditions are provided for convenience only.
- hh. where the expression 'including' or 'includes' is used it means 'including but not limited to' or 'including without limitation'