

1. DEFINITIONS AND INTERPRETATION

“Australian Consumer Law” means Schedules 1 and 2 of the Competition and Consumer Act 2010 (Cth) and any other relevant provisions contained in that Act.

“Consequential Loss” means loss of revenue, loss of profits, loss of anticipated savings or business, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity and any form of consequential, special, indirect, punitive or exemplary loss or damages however it arises including as a result of negligence.

“Collection Expenses” means any legal and/or other expenses incurred by Us including debt collection agency expenses in obtaining or attempting to obtain payment of any amount due by You to Us.

“Consumer” has the meaning in the Australian Consumer Law.

“Goods” means the materials to be supplied by Us as described on the Quotation or delivery docket.

“Intellectual Property” means all registered and unregistered rights in relation to present and future copyright, trademarks, designs, know-how, patents, confidential information, moral rights and all other intellectual property.

“Loss” means any liability however it arises (including as a result of negligence) and includes any loss, claim, damage, demand, injury or death and any fine or penalty imposed by a statutory or other authority.

“PPS and PPSA Act” means the Personal Property Securities Act 2009 (Cth) (as amended).

“Quotation” means the document provided by Us to You outlining information concerning the supply of the Goods but not limited to a description of the Goods, charge rates, additional associated charges, the address for supply of the Goods or in the event that there is no such document the oral terms agreed between You and Us for the supply of Goods.

“Rates” means the unit rate shown on the face of the Quotation or otherwise used to calculate the price for the Goods.

“Site” means the site at Pottery Road Somerville or such other location for the supply specified on the Quotation and/or delivery docket.

“Terms and Conditions” means these terms and conditions and any additional matters agreed in writing between the parties.

“We/Us/Our” means Peninsula Quarries (Vic) Pty Ltd (ACN 619 476 345).

“You/Your” refers to the person, partnership, corporation, trust or other entity to whom We are Supplying the Goods as named in the Quotation and/or delivery docket. The reference to “You” includes any of Your employees, agents and contractors.

2. SUPPLY AGREEMENT

The supply agreement (“Supply Agreement”) between You and Us is comprised of these Terms and Conditions of Supply together with:

- a) the Quotation;
- b) the delivery docket;
- c) any credit application or credit guarantee; and
- d) any specifications provided by Us to You.

It is important that You read and understand all of the Terms and Conditions of the Supply Agreement prior to supply of the Goods by Us.

3. AGREEMENT

Except to the extent otherwise explicitly agreed in writing between the parties these Terms and Conditions (and any credit application or credit guarantees, if applicable) govern the relationship between You and Us in connection with the Goods and will prevail over any other document. To the extent of any inconsistency between the credit application, the credit guarantees and these Terms and Conditions, these Terms and Conditions prevail. You acknowledge that You have not relied on any representation, inducement, warranty or promise which is not set out below. These Terms and Conditions may only be varied by agreement in writing by both parties.

4. VALIDITY

The Quotation is an offer open for acceptance by You within 30 days from the date on the Quotation. The offer is made subject to You meeting Our credit approval requirements.

Your written order to commence the supply of the Goods or your collection or receipt of the Goods shall be deemed an acceptance by You of the Supply Agreement.

5. POINT OF SUPPLY

The Quotation is based on all materials being available from the Site.

6. EXTENT OF GOODS

The Quotation is based on supply of the Goods at the Site. Should the quantities to be supplied or location of the Site vary from the Quotation We reserve the right to adjust the Rate. You acknowledge that the Goods shall be supplied in accordance with industry standards and statutory requirements (where applicable) unless otherwise stated on the face of the Quotation.

7. BASIS OF PAYMENT

The Goods will be paid for by You at the Rates according to the actual quantities supplied as shown on the delivery docket. You acknowledge that unless otherwise specifically stated on the face of the Quotation or delivery docket the Rates are subject to additional charges pursuant to the Fees and Charges Sheet provided to you or published on our Website from time to time. You acknowledge that the Goods will be paid for in full without any retention or set-off.

8. LIMITATION OF LIABILITY AND INDEMNITY

If You are not a Consumer, We shall not be liable in any circumstances:

- a) for any damages to any property of whatsoever kind resulting from Goods supplied in accordance with these Terms and Conditions;
- b) for any defects in the Goods unless You notify Us within 7 days
- c) of the date of delivery specifying the defect, which notice shall be a condition precedent to any right to recovery by You;
- d) for any Loss arising from delay;
- e) for any Consequential Loss;

and, subject to clause 9, Our total aggregate liability in all circumstances is limited (to the extent permitted by law) to the amount paid by You for the Goods.

To the maximum extent permitted by law, You hereby indemnify and forever holds Us harmless from all Losses caused or contributed to by any negligent and/or willful act or omission or any breach of these

Terms and Conditions by You arising from supplying the Goods in accordance with these Terms and Conditions.

9. LIMITATION OF LIABILITY – AUSTRALIAN CONSUMER LAW GUARANTEES

Unless You indicate otherwise below, You acknowledge that the Goods You will acquire from Us will be obtained for either the purpose of resupply (in an altered form or condition or to be incorporated into other goods) or for the purpose of using them 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.

By ticking this box, You notify Us that You are acquiring the Goods for a purpose other than that stated immediately above, in which event the provisions below may apply.

If You are a Consumer and any of the Goods supplied by Us are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, You agree that Our liability for a failure to comply with a consumer guarantee in relation to those Goods (other than a guarantee under sections 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities) of the Australian Consumer Law, is limited, at Our option, to one or more of the following:

- i. the replacement of the Goods or the supply of equivalent goods;
- ii. the repair of the Goods;
- iii. the payment of the cost of replacing the Goods or of acquiring equivalent goods; or If You are a Consumer and any of the Goods supplied by Us are not services of a kind ordinarily acquired for personal, domestic or household use or consumption, Our liability for a failure to comply with a consumer guarantee under the Australian Consumer Law in relation to those Goods is limited to, at Our option:
- iv. the supply of the Goods again; or
- v. the payment of the cost of having the Goods supplied again.

10. SITE ACCESS

We will deliver and You will receive the Goods at the Site where the Site is other than Our Site.

You will be responsible for providing adequate and timely access to the Site for Our personnel and equipment.

You will ensure that all personnel and equipment sent to our Site by you are suitable for purpose and in the case of personnel, suitably qualified and experienced to undertake the task of collecting the Goods.

You will indemnify Us for all Loss incurred by Us as a result of your failure to provide access or your failure to provide suitable equipment and/or personnel. If We or Our agents enter the Site for the purposes of delivering the Goods, You shall indemnify Us for any Loss incurred by Us arising out of or in connection with such. Where the Site is other than our Site and We leave equipment on the Site in connection with the supply of the Goods, You shall take all reasonable precautions to secure the Site to prevent loss or damage to the equipment or any injury to persons entering upon the Site.

11. DELIVERY

We will use reasonable endeavours to supply Goods in accordance with Your nominated timeframe. However, should supply of the Goods be delayed for any reason beyond Our control or as a result of any cause which You are or should reasonably have been aware of all Loss arising therefrom will be Your responsibility and You shall indemnify Us in respect of such Loss. Please refer to our website(www.peninsulaquarriesvic.com.au) for more information, including our Fees and Charges Sheet. Prior to delivery You shall check that the Goods and quantity on the delivery docket conforms with Your requirements and You must record any discrepancies in writing on the delivery docket including discrepancies in quantity or specification. Failure to make such notations on the copy of the

docket retained Us is deemed to be conclusive evidence that the delivery docket is accurate, and You accepted the Goods.

12. SITE VISITS AND HOURS

Unless otherwise stated on the Quotation, the Quotation is based on:

- a) the whole of the Goods being available for collection.
- b) the whole of the supply of the Goods being conducted during our normal business hours.

13. VARIATIONS

We are not obliged to carry out any variation to the supply of the Goods. Any variation that We do carry out shall be subject to these Terms and Conditions and shall be charged to You and paid for by You at an agreed rate or failing agreement at the rate determined Us.

14. TERMS OF PAYMENT

You must pay for the Goods in immediately available funds prior to the deliver of the Goods unless We agree otherwise in writing.

- a) If We agree to provide Goods on credit terms You acknowledge and agree that if You breach the credit terms You will pay Us any Collection Expenses and interest charges that may apply.
- b) You hereby agree to and do hereby charge in Our favour all Your estate and interest in any land and in any other assets whether tangible or intangible in which You now have any legal or beneficial interest or in which You later acquire any such interest with payment of all monies owed by You and consent to the lodging by Us of a caveat or caveats which note Our interest in that real
- c) property.

15. TAXES AND OTHER CHARGES

- a) The prices quoted do not include any statutory or Government charges. Should any such charges or any other tax become applicable to the materials the subject of the Quotation such tax or charge shall be charged to and paid for by You in addition to the price otherwise payable under the Quotation.
- b) Notwithstanding anything else in these Terms and Conditions where We have any liability to pay the Goods and Services Tax ("**GST**") on any Goods supplied herein to You, You shall pay to Us the amount of such GST at the same time as all other amounts otherwise payable to Us.

16. FORCE MAJEURE

We shall not be liable in any way for any delay in the supply of Goods where such delay occurs by reason of any cause whatsoever beyond Our reasonable control including without limiting the generality thereof, restrictions of Government or other statutory authorities, wars, fires, epidemics, failure or fluctuation in any electrical power supply, storm, flood, earthquake or other climatic event or occurrence, accident, labour dispute, plant breakdown, materials or labour shortage, the change or introduction of any law or regulation or an action or omission of any supplier or other third party or any failure of any equipment owned or operated by them.

17. TESTING

We will, at Your request, use reasonable endeavours to arrange testing of the Goods priced in accordance with our then prevailing Fees and Charges Sheet. Any testing conducted or arranged by You will be carried out by an accredited laboratory acceptable to Us. You will provide Us with copies of the results of any such third party testing conducted.

18. INFORMATION

- a) You acknowledge and agree that:
 - i. You must provide all relevant information (including all specifications) and other matters that may affect Our ability to complete the supply and or delivery of the Goods; and
 - ii. In giving the Quotation We have relied upon the accuracy and completeness of such information and You hereby warrant to Us the accuracy and completeness of all information supplied.
- b) If We have provided You with any information in connection with the Goods You acknowledge that You have formed Your own opinion as to the correctness or otherwise of the information and have not and will not rely on Us in respect of such information.

19. RISK

Upon delivery of the Goods to you at the Site all risk in relation to the Goods shall pass to You. Title in the Goods shall not pass to You until We have been paid in full. Where Goods are sold ex-bin risk passes to You when the material is loaded on Your vehicle.

20. SAFETY

Where the Site is other than Our Site:

- a) You are responsible for ensuring safe and adequate access to the Site for delivery and all other aspects of Site safety.
- b) You shall notify Us prior to delivery of any obstacles or peculiarities in relation to the Site.
- c) The driver making any delivery may refuse to complete the delivery if not satisfied with Your compliance with (a) and (b) above, however, making a delivery shall not constitute an assessment of the safety of the Site and in no way relieves You of Your obligations under these Terms and Conditions, including those relating to safety.

Where the Site is our Site:

- a) You are responsible for ensuring the competency of your personnel and the suitability and safety of your equipment.
- b) You will ensure that your personnel comply with all directives and traffic management requirements at our Site.
- c) You will indemnify Us for all loss and damage incurred by Us as a result of the actions and negligence of your personnel and/or the unsuitability of your equipment.

21. PPSA

- a) You agree that for the purpose of the PPSA, until we are paid in full, We have a security interest in the Goods and the proceeds ("Proceeds") from any dealings with the Goods by You ("Security Interest").
- b) You agree that the Security Interest:
 - i. where possible, will enable but not oblige Us to register a Purchase Money Security Interest ("PMSI"); and
 - ii. in any other case, will enable but not oblige Us to register the Security Interest on the PPS register in accordance with the provisions of the PPS Act.
- c) You undertake to do anything required by Us so that We:
 - i. acquire and maintain one or more perfected security interests under the PPSA in respect of the Goods and the Proceeds;
 - ii. can register a financing statement or financing change statement.
 - iii. not register a financing change statement in respect of the Security Interest without Our prior written consent; and
 - iv. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without Our prior written consent.
- d) You consent to Us effecting and maintaining a registration on the register (in any manner We consider appropriate) in relation to the Security Interest.



- e) Upon Our request You will execute any documents required by Us and do anything else required by Us to ensure that any security interest created and maintained under this Supply Agreement constitutes a first ranking perfected security interest over the Goods and the Proceeds.
- f) You waive the right to receive notice from Us of a verification statement in relation to any registration on the register of a security interest in respect of the Goods.
- g) You will immediately notify Us in writing of any change in your name or any other information We may need in order to complete a financing change statement.
- h) We may apply amounts received in connection with this Supply
- i) Agreement to satisfy obligations secured by a security interest contemplated or constituted by the Supply Agreement in any way We determine in Our absolute discretion.
- j) You agree to reimburse Us for all expenses incurred or payable by Us in registering, maintaining or releasing any financing statement or any other document in respect of any Security Interest under this Supply Agreement.

22. GENERAL

(Severance) Any provision of these Terms and Conditions which is unenforceable or partly unenforceable is where possible to be read down so as to be enforceable and if it cannot be read down, severed to the extent necessary to make these Terms and Conditions enforceable, unless this would materially change the intended effect of these Terms and Conditions.

(Waiver) A right may only be waived in writing, signed by the party giving the waiver, and no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.

(No Implied Terms) You may have the benefit of certain statutory guarantees relating to the Goods services pursuant to the Competition and Consumer Act 2010 (Cth). Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Conditions or in connection with the supply of the Goods by law, statute, custom or international convention (including those relating to quality or fitness for purpose) are excluded.

(Governing Law) These Terms and Conditions are governed by the laws of the State of Victoria.

Date	Author	Version	Change Reference
13/09/2017	Laylah Hutchinson	1.0	First Version Document
14/10/2019	Jo Murray	1.1	Format change