

Clay & Mineral Sales Pty Ltd

ABN 62 007 572 787

Lot 1 Hancock Road, Golden Grove SA 5125

P O Box 155, SURREY DOWNS SA 5126

Phone: (08) 8251 4000 Fax: (08) 8289 5279

Email: accounts@claymineral.com.au

CREDIT APPLICATION

Registered Company Name:					
Trading Name:					
ABN:					
Address:					
Postal Address:					
Please Indicate:		Company	Partnership	Sole Prop.	Trustee Co.
Telephone:		Facsimile:			
Mobile :		Contact Person :			
Email :					

Required Monthly Credit Limit \$

Full name and residential addresses of all the Directors/Partners/Proprietors:
(Please attach a separate page if insufficient space)

Name	Residential Address	Home Telephone

Bank Details:

Bank	Branch	BSB	Account No.
Account Name:			

Please provide a minimum of three Credit References:

Company Name	Contact Name	Telephone No	Fax No
1.			
2.			
3.			

TERMS OF SALE

July 2009

Definition and Inconsistency

1. In these Terms of Sale:
"Terms" means these Terms of Sales (including the Special Terms applicable to the type of goods being supplied).
"Company" means Clay and Mineral Sales Pty. Ltd, or any authorized subsidiary.
"Customer" means the customer placing an order and any agent or representative of that customer.
2. Placing of an order with the Company by the Customer for goods and/or services indicates acceptance by the Customer of these Terms for the provision of those goods and/or services. In the event of any inconsistency between these Terms and any terms and conditions on the Customer's order, the Customer agrees that these Terms shall prevail.

Quotations and Prices

3. Quotations are open for acceptance by the Customer for 30 days from the date of the quotation.
4. All prices quoted are strictly net of all discounts. Any goods and services tax (GST) or other similar government taxes, if applicable, are additional to the quoted price.

Delivery and Surcharges

5. All prices are for supply, delivery and/or installation, as applicable, during the Company's business hours, Monday to Friday, unless otherwise quoted in writing. Work by the Company outside of these hours may incur a surcharge. The Customer should contact their local Company sales office for surcharge schedules.
6. Unless the quoted price is inclusive of delivery to a nominated delivery site, the Customer will be charged for delivery.
7. A waiting time or hourly hire surcharge may apply when a delivery vehicle is unable to unload promptly and without delay upon arrival or exit due to mud at a delivery site.
8. A minimum load surcharge may apply for delivery of loads smaller than the minimum load size for delivery of each particular type of goods. The Customer should contact its local Company sales office for details and rates of all surcharges.
9. Goods will be delivered to the roadside adjacent to the delivery site. If at the Customer's request, the delivery vehicle leaves the road and enters the delivery site to unload, the Customer is responsible for providing suitable and safe access for the Company delivery vehicle and Company agents or contractors. In addition, the Customer agrees to indemnify the Company and its agents and contractors for all damage and injury to any person and to any public or private property which may result including any costs associated with enabling the delivery vehicle to leave the site, and the cost of any returned product as a result of the Customer failing to provide suitable and safe access to the delivery site.
10. The Customer must be present at the delivery site and must sign the Company delivery docket to acknowledge that the products and quantities described on the delivery docket have been delivered and comply with the Customer's order and that the Customer also accepts any applicable delivery surcharges.
11. Where the Customer does not sign or is not available to sign the delivery docket, the signature of the driver on the delivery docket shall be prima facie evidence of delivery to the Customer of the products and quantities described on the delivery docket including any applicable surcharges.
12. If the Customer is not present at the delivery site, the goods may be unloaded at that location, in which case the Company will no longer be responsible for loss or damage to the goods.

Payment

13. Unless prior arrangements for credit have been made, payment for goods and/or services is due in full before delivery. Where there is more than one load to be delivered, full payment must be made prior to the unloading of the first delivery vehicle. Payment for surcharges must be made at the time they are incurred.
14. Payment terms for all credit accounts are as advised to the Customer at the time the credit account is opened, being either "Net 30 days" (meaning the Company must receive payment in full on or before the last working day of the month following the date of supply) or "7 days from date of invoice" (meaning the Company must receive payment in full within 7 days of date of invoice). Any variation to these payment terms must be agreed in writing by the Company.
15. Acceptance by the Company of any late payment by the Customer or the Customer exceeding the credit limit set by the Company shall not amount to a waiver by the Company of its right to payment "Net 30 days" or "7 days from date of invoice" as applicable, nor is it an agreement to provide credit other than in accordance with these Terms.
16. The Company may require the Customer to provide security for payment in a form acceptable to the Company prior to the supply of goods and/or services.
17. The Customer is not entitled to withhold any payment by way of retention unless the terms and conditions of the retention are agreed to in writing by the Company prior to supply.
18. The Customer must pay the Company the cost of any bank fees arising from dishonoured cheques paid by the Customer to the Company, and must also pay an administrative charge and for any legal or other debt collection costs incurred by the Company.
19. The Customer must pay the company the cost of bank fees arising from payment by credit card if so enforced by the Company.
20. The Customer must notify the Company in writing within 7 days of any change in the beneficial ownership of the Customer.
21. The Company can vary or withdraw any credit arrangements at any time and without any liability whatsoever to the Customer or any party claiming through the Customer.
22. The Company may charge the Customer interest on overdue amounts at the prevailing overdraft rate of the Company's banking institution at the time the account fell overdue. Where interest is charged, it will be calculated monthly on amounts outstanding from the date on which they were due and payable, until the Company received full payment of the outstanding amounts.

Risk

23. The Customer will become responsible for loss of or damage to the goods immediately upon delivery of the goods to the nominated delivery site or to a carrier nominated by the Customer.

Title

24. Goods supplied to the Customer remain the property of the Company until payment in full is received by the Company. The Customer acknowledges that until full payment is made, the Customer holds the goods as bailee of the Company and that a fiduciary relationship exists between the Customer and the Company.
25. Until payment is made, the Customer shall hold the goods in such a manner that they are clearly identifiable as the property of the Company. The Customer acknowledges that if it sells any of the Company's goods, it sells the goods as a fiduciary agent of the Company provided that such sales shall not give rise to any obligations on the part of the Company.

Installation

26. For goods supplied to a Customer who is undertaking the installation of those goods, the Customer agrees to indemnify the Company against any liability the Company may incur as a result of the failure of the Customer to follow generally accepted good practice, or due to a lack of ability, expertise, or skill with the particular type of goods being installed.
27. If the Customer believes that the goods and/or services supplied do not conform with the order placed or that the price charged does not conform with the quotation given by the Company, the Customer shall notify the company in writing as soon as practicable, detailing the way in which the goods or price do not conform.

28. Failure to give such notification within seven days of the date of supply or date of invoice (as applicable) shall raise the inference against the Customer that the goods are in accordance with the order and quotation.
29. The Customer shall be deemed to have accepted the goods as supplied if it fails to keep the goods in the condition they were in when supplied or declines a reasonable request from the Company to inspect the goods.

Warranties

30. The Company warrants that the goods delivered are those specified in the delivery docket and the goods delivered are free from defects in material and workmanship except such defects as are normally regarded as being commercially acceptable.
31. All other warranties which would be imported into these Terms by statute are negated except to the extent that such negation is specifically forbidden by statute.

Limitation of Liability for Breach of a Condition or Warranty

32. Pursuant to section 68A of the Trade Practices Act 1974 the following clause applies in respect of any of the goods and/or services supplied under this contract which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this clause will not apply if the Customer establishes that reliance on it would not be fair and reasonable.
33. The Company's liability in respect of breaches of express or implied conditions and warranties, other than the warranty as to title, is limited to any one of the following as determined by the Company: the replacement of the goods or supply of equivalent goods; or the repair of the goods; or the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired. The Company will not be liable for any damage arising out of or in connection with, special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred as a result of such a breach unless such liability is imposed on the Company by the Trade Practices Act 1974.
34. In addition to Trade Practices Act 1974, the limitations of the Company's liability in respect of breaches of express or implied conditions and warranties as expressed in the previous clause shall be varied to the extent required to also limit the Company's liability to the extent permitted by relevant State and Territory legislation covering sale of goods and consumer protection.

Termination and Suspension

35. If the Company is not satisfied as to the Customer's ability to pay for the goods and/or services, it may suspend or terminate supply and shall not be liable in any way for any claim, damage, expense or cost arising therefrom and all monies then outstanding by the Customer shall immediately become due and payable.

Agreement

36. These Terms, the quotation (if any) and any other documents specified in the quotation, form the agreement between the Company and the Customer and any variations, alterations or additions must be acknowledged in writing by the Company.
37. The Company may make partial deliveries of the goods ordered and invoice the deliveries separately. The supply of goods and/or services in more than one delivery shall be subject to separate agreements for the sale of each delivery.

Severance

38. In the event that it is held that one or more of these Terms are not enforceable, the remaining Terms shall apply.

Force Majeure

39. Unless otherwise stated in the quotation, penalties for time delays by the Company will not apply. In the event that there is failure to deliver or any time delay in delivery, commencement of site works or completion of site works due to weather, fire, labour dispute, strike or other cause whatsoever beyond the Company's control or due to the inability of the Company to obtain raw materials from the source expected by the Company:
- a. The Company will not be liable for any loss or damage sustained by the Customer or by any other person by reason of any such delay or failure, and
 - b. 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 or damage sustained by the Customer or by any other person by reason of such suspension or termination.

Privacy Policy

40. Personal information provided by the Customer to the Company may be disclosed elsewhere within the Company.
- The Company will use this information to manage its business dealings with the Customer, for example:
- to provide the Customer with the products or services the Customer has requested;
 - to assess the Customer's credit worthiness, where relevant;
 - to manage the Customer's payments or accounts;
 - to inform the Customer of the Company's products and services including by electronic means;
 - to comply with the Company's legal obligations, and may supply the Customer's information to contractors and advisers that help the Company to do this.
- Individuals may access personal information held by the Company about them, subject to the Federal Privacy Act by contacting Clay & Mineral Sales Pty Ltd on phone 08 82514000 or fax 08 82895279.

Special Terms applying to the Sale and Delivery of Quarry Products

41. When quarry products are sold by volume rather than weight, the volume will be determined by the loose uncompacted volume as measured on the delivery vehicle at the time of loading at the quarry.
42. Upon request, the Company will make the relevant quarry product available for inspection and sampling by the Customer prior to supply.
43. If quarry products are returned at the Customer's request, the Company reserves the right to charge for return cartage, handling and disposal costs.
44. Unless otherwise agreed by the parties, quarry products covered by Australian Standard AS2758, will comply with this standard.

I/We acknowledge and accept the "Terms of Sale" provided and agree to abide by the terms. Furthermore, I/we certify the information given by me/us is true and complete.

**Signature and Name of Applicant
Or Authorised Representative**

Title **Date**

Witness Signature and Name

Witness Address

GUARANTEE AND INDEMNITY

TO: Clay & Mineral Sales Pty Ltd:

WE GUARANTEE payment to you of all monies and performance of all obligations including any past, present and future indebtedness or obligation by the Applicant or any of us arising from any past, present or future dealing with you and any GST applicable thereto.

WE IDEMNIFY you against all loss or damage arising from any past, present or future dealing with the Applicant or any of us.

WE AGREE:

- That this is a continuing guarantee and,
- That our liability under this guarantee is joint and several and will not be affected or discharged by the reason of any time or indulgences granted by you and,
- That this guarantee becomes binding on such of us that sign this guarantee irrespective of whether or not all members execute this guarantee and,
- That this guarantee may only be revoked as to future trading with the Applicant and any notice of revocation may only be given by pre-paid registered mail delivered to you at PO Box 155, Surrey Downs SA 5126, and shall not become effective until the expiration of 14 days from the date of posting.
- That any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid and,
- That we sign in both our personal capacity and as Trustee of every Trust of which we are Trustee and,
- To notify you of any change in the Applicant's structure or management including any sale or disposition of any part of the business of the Applicant, any change in directorships, shareholders or management or change in partnership or trusteeship within 7 days of the date of any such change.

WE HEREBY CHARGE in your favour all our estate and interest in any land and in any other assets, whether tangible or intangible, in which we now have any legal or beneficial interest or in which we later acquire any such interest, with payment of all monies owed by the Applicant or any of us and agree upon request, to execute a registrable instrument transferring to you our said estate and interest by way of security.

WE FURTHER AGREE that this agreement and any claim or dispute between the Company, the Applicant or any of us shall be governed by the law applicable in the State nominated by the Company and submit to the jurisdiction of the appropriate Court nearest the capital city of that State.

DEFINITIONS: "We " and "us" means each of the Guarantors and the Applicant jointly and severally. "You" and "your" means Clay & Mineral Sales Pty Ltd.

WE HAVE EACH READ AND UNDERSTOOD THIS DOCUMENT.

DATED this day of 2009

Signed (the Guarantor)

Full Name

Address

Witness' Signature

Witness' Name

Witness' Address

Signed (the Guarantor)

Full Name

Address

Witness' Signature

Witness' Name

Witness' Address