

Terms of Trade

1 Application of Terms

- 1.1 These Terms set out the contractual basis upon which we agree to supply you with Goods and apply whenever Goods are quoted for or supplied by us.
- 1.2 Any terms or conditions included in, attached to, or referenced in your Order, or any other document provided by you (including any purchase order terms subsequently given to us by you) deviating from, or inconsistent with, these Terms:
- (a) are rejected by us;
 - (b) do not vary or supplement these Terms; and
 - (c) do not form part of the Contract.
- 1.3 Each supply which we make in response to an Order will be regarded as a separate Contract, which is subject to these Terms.

2 Quotations

- 2.1 Quotations issued by us are estimates only and will not be construed as an offer or obligation to supply you with any Goods.
- 2.2 Unless stated otherwise, quotations issued by us:
- (a) are exclusive of GST;
 - (b) are exclusive of the costs of delivering the Goods or performing additional Services as requested or accepted by you; and
 - (c) remain valid for acceptance for a period of thirty (30) days from the date of quotation, unless withdrawn earlier.
- 2.3 Quotations issued by us may include additional terms or conditions which will supplement (and are intended to be read in conjunction with) these Terms.
- 2.4 Unless our quotation states otherwise, insofar as our quotation relates to the performance of Services, our quoted price will be based upon Services being performed during Business Hours on Business Days. If requested by you, we may from time to time agree to perform Services outside of Business Hours or Business Days, in which case such Services will be deemed a variation and additional charges will apply.
- 2.5 We reserve the right to vary, withdraw, or extend the time for acceptance in respect of any quotation issued by us at any time prior to a Contract coming into existence in accordance with clause 3.4.

3 Formation of Contract

- 3.1 If you, following receipt of these Terms:
- (a) acknowledge your acceptance of these Terms; or
 - (b) place an Order with us,
- you will be deemed to have accepted these Terms.
- 3.2 Any Order placed by you constitutes an irrevocable offer to purchase Goods from us.
- 3.3 We reserve the right to not accept your Order for any reason (and without any requirement to provide any reason). For clarity, nothing in these Terms obliges us to supply you with any Goods at any time until a Contract has come into existence in accordance with clause 3.4.
- 3.4 A binding Contract will only come into existence if:
- (a) we accept your Order in writing or by electronic means; or
 - (b) we supply you with any Goods following receipt of your Order.
- 3.5 A Contract will be formed at the location of ours where we accept your Order.
- 3.6 You may not cancel an Order (or any part of an Order) once a Contract has been formed, except with our agreement in writing and then only on terms that you indemnify us from and against any loss (including loss of profit) and all costs (including our costs incurred in fulfilment of your Order) suffered or incurred by us as a result of your cancellation.

4 Price

- 4.1 Subject to the remainder of this clause 4, the price payable for the Goods will be as agreed in writing, or, where the price has not been agreed prior, then the price will be in accordance with our then prevailing price list/rates as at the date of your Order.
- 4.2 If you request that any Goods be supplied that are not strictly in accordance with the Contract, then such Goods will constitute a variation and we will be entitled to vary our quoted price accordingly.
- 4.3 All variations must be agreed in writing prior to the Goods that are the subject of the variation being supplied.

- 4.4 Notwithstanding clause 4.3, you acknowledge and agree that where Goods ordered are based on weights or quantities (**Ordered Amount**), we may deliver to and charge you a weight or quantity of those Goods more or less than the Ordered Amount (provided it is no more or less than 10% of the Ordered Amount) which you must accept and pay for in full satisfaction of our obligations under the Contract for the supply and delivery of the Ordered Amount.
- 4.5 Where an amount payable by you for Goods is calculated on the weight or volume of the Goods to be supplied by us, the records of the weight or volume of the Goods we generate, or that generated by any government/public weighbridge, will be conclusive evidence of the weight or volume of the Goods supplied.
- 4.6 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.
- 4.7 Our prices may be found at <https://www.cordwells.au/additionalFees/>.

5 Payment terms

- 5.1 Unless we have granted you a Credit Facility or otherwise instructed:
- (a) all Goods must be paid for before they are despatched (in cash or cleared funds); and
 - (b) all Services must be paid for before we deliver the Services.
- 5.2 Payment may be made by cash, cheque, electronic funds transfer, Visa, or Mastercard credit cards. We reserve the right to change the payment methods that we accept at any time.
- 5.3 If we have agreed to accept payment by credit card, you agree to provide us with the credit card details necessary to effect payment.
- 5.4 We will be at liberty to charge a payment surcharge for applicable payment transactions equal to our reasonable cost of acceptance.
- 5.5 We reserve the right to require payment of a deposit. The amount of the deposit will be advised by us from time to time and will become immediately due and payable upon the formation of a Contract in accordance with clause 3.4 unless we advise you otherwise. For clarity:
- (a) where we require a deposit, we are under no obligation to supply any Goods until the deposit has been received by us (in cash or cleared funds); and
 - (b) the deposit will be refundable in circumstances where:
 - (I) you are entitled to a refund by operation of Law (including under the Australian Consumer Law); or
 - (II) you terminate a Contract because of our breach.
- 5.6 If GST is imposed on a taxable supply made by us to you under any Contract of which these Terms form part, the price of the taxable supply will be equal to the GST-exclusive consideration that you must pay to us for the taxable supply under the Contract increased by an amount (the **GST Amount**) equal to the amount of GST payable upon that taxable supply. The GST Amount is, subject to us issuing an invoice to you, payable at the same time and in the same manner as the consideration to which it relates. If we become liable to pay any tax, duty, excise, or levy in connection with any Contract of which these Terms form part, you must pay us these additional amounts upon written demand.
- 5.7 You must check all invoices and must notify us in writing of any errors or omissions within seven (7) days of the invoice date. If you do not notify us within this timeframe, the invoice will be deemed to be correct and accepted by you.
- 5.8 Any uncontested invoiced amount you are required to pay to us pursuant to any Contract of which these Terms form part must be paid free of any set off or counterclaim and without deduction or withholding.
- 5.9 Subject to clause 5.10, we will apply payments made by you or on your behalf as follows:
- (a) Firstly, in payment of any collection costs or legal costs we have incurred.
 - (b) Secondly, in payment of any interest charged by us in accordance with clause 6.1(a).
 - (c) Thirdly, in payment of any outstanding invoices (or part thereof) in an order determined by us in our sole discretion.
- 5.10 We may allocate (and re-allocate) any monies paid by you in a manner determined by us in our sole discretion. For clarity, monies allocated (or re-allocated) in this manner will be treated as though they were allocated (or re-allocated) in the manner determined by us on the date of receipt of payment.

6 Default

- 6.1 If you default in the payment of any invoice by the due date for payment, we are entitled to, without prejudice to any other rights we may have, do any or all of the following:

- (a) charge you interest on the outstanding debt (including, for the removal of doubt, any judgment debt) at the rate of 10% per annum (which interest will accrue and will be recoverable for each day or part thereof that the debt remains outstanding until we receive payment in full);
 - (b) require pre-payment for any Goods which have not yet been supplied; and
 - (c) suspend or cease the supply of any further Goods to you.
- 6.2 You agree to pay our costs and disbursements incurred in pursuing any recovery action, or any other Claim or remedy, against you, including mercantile agent costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

7 Delivery

- 7.1 You must promptly make all arrangements necessary to take delivery of the Goods when we tender them for delivery.
- 7.2 You acknowledge and agree that any timeframe or date for delivery advised by us is intended as an estimate only and is not a contractual commitment. We will not in any circumstances be liable for any loss or damage you or any third party suffer or incur as a result of our failure or that of our carrier to meet any estimated delivery date and/or time.
- 7.3 Delivery is deemed to occur at the time:
- (a) you or any third party on your behalf collects the Goods from us;
 - (b) the Goods are delivered to the delivery location you have specified in your Order (or to such other location as agreed in writing); or
 - (c) your nominated carrier takes possession of the Goods.
- 7.4 At our request, you or your duly authorised representative must sign our delivery docket, consignment note or other equivalent electronic docketing system that we may use from time to time, or that of our carrier as confirmation that the Goods have been received by you in apparent good order and condition in the quantity or volume you have ordered.
- 7.5 It is your responsibility to ensure suitable and clear access to the delivery site. If the site is deemed unsuitable (at the delivery driver's sole discretion), then the delivery driver may:
- (a) refuse to deliver the Goods and return the Goods to our premises (in which case an additional delivery fee will apply to any subsequent delivery attempt); or
 - (b) deliver the Goods to the location nearest to the site where delivery can be safely effected.
- 7.6 If you make available access to the Site, you warrant that the Site is safe and that it complies with all relevant work health and safety laws and standards.
- 7.7 Where you (or your representative) request for Goods to be placed at a specific location, we agree to take reasonable steps to ensure that the Goods are placed at that location.
- 7.8 If the Goods are delivered on Pallets, the Pallets remain our property. You may be charged for the use of such Pallets. On the return of the Pallets to us:
- (a) if the Pallets are returned to us in good condition (in our sole determination), we agree to give you a credit in an amount equal to the fee charged by us in respect of the Pallets; or
 - (b) if the Pallets are returned to us in a damaged condition (in our sole determination), you shall be liable to pay to us the cost to repair or replace the Pallets.
- 7.9 If delivery of the Goods is deferred:
- (a) at your request; or
 - (b) due to you being unable or unwilling to accept delivery of the Goods (other than as a result of the Goods delivered not being in accordance with the Contract);
- when:
- (c) (where a delivery date has not been agreed) we are ready to deliver the Goods; or
 - (d) (where a delivery date has been agreed) the Goods are due to be delivered,
- then we will be entitled to charge you, and you must pay to us:
- (e) reasonable daily storage charges (which will continue to accrue until such time as the Goods are delivered); and
 - (f) any costs associated with us or our carrier attempting to re-deliver the Goods (where we or our carrier has previously attempted to deliver the Goods).
- 7.10 You acknowledge and agree that:
- (a) we may deliver the Goods in one (1) or more lots and reserve the right to invoice you for pro rata progress in respect thereof; and
 - (b) you are not relieved from any obligation arising under these Terms or any Contract of which these Terms form part by reason of any delay in delivery, and delay in delivery will not entitle you to rescind the Contract.

- 7.11 You acknowledge and agree that we may charge you for additional Services that are reasonably required, necessary, or arise out of or are connected to delivery of the Goods or Services, including but not limited to removal of Goods.
- 7.12 You acknowledge and agree that you must:
- (a) inform us of any special on-Site requirements with respect to delivery or performance of Services (including, but not limited to, unusual Site access requirements, irregular terrain and on-Site safety requirements and regulations); and
 - (b) take all steps reasonably necessary to ensure that our personnel have the benefit of any safety protocols or protections where Site risks are not:
 - (I) insignificant; or
 - (II) improbable.
- 7.13 Where we have agreed that you will collect Goods from our Site, you must:
- (a) adhere to any safety standards or protocols that we have in place for you or your representative's protection; and
 - (b) agree to comply with any guidelines or directions that we give you or your representative insofar as it concerns Site safety and security.

8 Risk

- 8.1 Risk of loss, damage, or deterioration to the Goods passes to you or to your agent or to your nominated carrier upon delivery in accordance with clause 7.3.
- 8.2 Notwithstanding that we retain ownership of the Goods, if any of the Goods are damaged or destroyed following delivery to the Site, but prior to completion of any works or Services, you shall be liable for any costs that we reasonably incur in replacing or repairing the Goods.
- 8.3 You must insure the Goods for their full replacement value before delivery against all losses which may be sustained as a result of the loss, damage, or destruction of the Goods (or any part thereof) by accident, theft, fire, explosion, flood, negligence, and such oturable causes as may be available (with our interest in the Goods noted on the policy).

9. Special terms apply to the sale and delivery of Quarry Products

- 9.1 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.
- 9.2 Upon request, we will make the relevant quarry product available for inspection and sampling by you prior to supply.
- 9.3 If quarry products are returned at your request, we reserve the right to charge for return carriage, handling, and disposal costs.
- 9.4 Unless otherwise agreed in writing, quarry products covered by Australian Standard AS2758, will comply with this standard.

10 Claims and returns

- 10.1 You must, within seven (7) days of the date of delivery:
- (a) give us notice in writing, with particulars, of any Claim that the Goods delivered are not in accordance with the Contract (including any Claim for shortfall, incorrect supply, or damage to the Goods); and
 - (b) at our request, provide us with photographic evidence (to our satisfaction) of any alleged damage to the Goods.
- 10.2 You must notify us in writing of any Claim for non-delivery within seven (7) days of the date of the invoice which relates to the Goods the subject of your Claim.
- 10.3 If you fail to notify us in accordance with clause 10.1 or 10.2 (as the context requires), then, to the extent permitted by Law, the Goods are deemed to have been delivered in good condition and in accordance with the Contract.
- 10.4 You cannot return Goods to us without our prior written authorisation. To the extent permitted by Law, any Goods that have been specifically produced or procured at your request cannot be returned in any circumstances.
- 10.5 We will not accept the return of any Goods unless:
- (a) we agree that the Goods were incorrectly supplied or are defective;
 - (b) your returns Claim refers to the invoice number corresponding to the Goods to be returned;
 - (c) any Goods to be returned by freight are collected by us or our nominated carrier or we have pre-authorised any applicable charges; and
 - (d) the Goods are in substantially the same condition to that in which they were delivered.

- 10.6 Any return (except for Goods we have incorrectly supplied or we agree are defective) will, in our sole discretion, incur a handling and administration charge of 20% of the purchase price of the returned Goods or \$200, whichever is lesser.
- 10.7 If we authorise the return of any Goods, you must pay all costs incurred by us associated with the return of those Goods (except for Goods we have incorrectly supplied or we agree are defective).
- 10.8 We do not accept any liability for, and will not be responsible for, any damage that occurs to any Goods in return transit.
- 10.9 Notwithstanding the rest of this clause 10, if we are required by Law to accept the return of any Goods, we will accept such return in accordance with any conditions imposed on us by Law.
- (II) you waive your right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.
- 12.6 You must, at our request, sign any documents, provide us with any relevant information, or do anything else we request to ensure that any security interest contemplated or constituted by these Terms (or any Credit Agreement) is perfected in accordance with Part 2.2 of the PPS Act.
- 12.7 The Parties undertake to not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by Law.
- 12.8 Where we have rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

11 Retention of title

- 11.1 Until such time as you have made payment in full (in cleared funds) for any Goods supplied by us, and until such time as you have made payment in full (in cleared funds) of all other amounts owed to us by you (whether in respect of money payable under a specific Contract or on any other account whatsoever):
- title in the Goods does not pass to you and we retain the legal and equitable title in all Goods supplied and not yet sold;
 - you will hold the Goods as fiduciary and bailee for us and agree to store the Goods in such a manner as to enable them to be readily identifiable as our property;
 - you undertake to not mix the Goods with similar goods;
 - unless and until we notify you to the contrary, you will be entitled to sell the Goods in the ordinary course of your business (provided any such sale is at arm's length and on market terms) and will sell the Goods as our agent and bailee; and
 - you undertake to hold any proceeds derived from the sale of the Goods on trust for us absolutely.
- 11.2 You agree that while title in the Goods remains with us, we have the right to enter upon any premises occupied by you (or any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours) to inspect the Goods and, when you are in default of payment of any invoice, to repossess any Goods in your possession, custody, or control.
- 11.3 You will be responsible for our costs (including legal costs on a full indemnity basis) incurred in exercising our rights under clause 11.2.
- 11.4 Where we exercise our right of entry pursuant to clause 11.2, you agree that us doing so will not give rise to any Claim for trespass or similar action against us or our Personnel.
- 11.5 Where Goods have been retaken into our possession, we have the right to sell or deal with those Goods, and, if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell those Goods.
- 11.6 For the removal of doubt, our interest under this clause 10 constitutes a purchase money security interest for the purposes of the PPS Act.

12 Security interest

- 12.1 In this clause 12, words and phrases which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.
- 12.2 You acknowledge that by assenting to these Terms, you grant us a security interest in all Goods (and any proceeds derived from the sale of such Goods) now or in the future supplied by us to you.
- 12.3 You undertake to do anything required by us:
- to enable us to effect and maintain one or more perfected security interests under the PPS Act (whether contemplated or constituted by these Terms or any Credit Agreement);
 - to enable us to register a financing statement or financing change statement; and
 - to ensure that our security position and rights under the PPS Act are not adversely affected.
- 12.4 Unless you have obtained our prior written and fully informed consent, you undertake not to:
- register a financing change statement in respect of a security interest contemplated or constituted by these Terms (or any Credit Agreement); or
 - create, or purport to create, any security interest in the Goods (or any proceeds derived from the sale of such Goods), nor register, nor permit to be registered, a financing statement or financing change statement in relation to the Goods in favour of any third party.
- 12.5 You:
- waive your right to receive a copy of any verification statement in accordance with section 157 of the PPS Act;
 - agree that, to the extent permitted by the PPS Act:
 - sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and

13 Description of Goods

- 13.1 It is a condition of sale that any description or specification given by us or contained in our printed or electronic literature is for general indicative purposes only and does not render us responsible in any way, except to the extent that the Goods will comply with the standards set out in such description or specification and that such description or specification will not be taken as implying or giving any undertaking as to fitness for any particular purpose.
- 13.2 If you require any Goods for a particular purpose, you must advise us of that purpose prior to placing your Order and must obtain a written assurance from us that the Goods will meet your requirements. If you do not advise us of your requirements and we do not expressly warrant in writing that the Goods will be fit for your particular purpose, then you agree that you did not rely upon our skill or judgment in relation to the suitability of the Goods for that purpose.

14 Indemnity

- 14.1 You are liable for and indemnify us in respect of all Claims, damage, loss, and costs (including collection costs, bank dishonour fees, and legal costs on a full indemnity basis) that we may suffer or incur at any time, directly or indirectly, arising out of or in connection with any default by you in the performance or observance of your obligations under any Contract of which these Terms form part.
- 14.2 Your liability to indemnify us will be reduced proportionally to the extent that:
- any negligent act or omission by us or a breach of our obligations under any Contract of which these Terms form part has contributed to the Claim, damage, loss, or cost which is the subject of the indemnity; or
 - these Terms make us specifically liable for any cost or expense or rectifying or repairing any defect in, or damage to, the Goods.
- 14.3 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any Contract of which these Terms form part.
- 14.4 It is not necessary for us to incur any expense or make any payment before enforcing our rights of indemnity conferred by these Terms.
- 14.5 This clause 14 does apply where the Contract is a Consumer Contract or a Small Business Contract.

15 Limitation of liability

- 15.1 We will not be liable for any loss or damage suffered or incurred by you in connection with any incorrect information contained in an Order or otherwise provided to us by you or on your behalf from time to time.
- 15.2 Subject to clauses 15.1, 15.3, 15.4, and 15.6, our liability for any loss or damage, however caused (including by our negligence), suffered or incurred by you arising out of or in connection with any Contract of which these Terms form part is limited to the sum paid to us by you in respect of that Contract prior to the date you first suffered loss or damage.
- 15.3 The limitation contemplated in clause 15.2 is an aggregate limit for all Claims, whenever made.
- 15.4 Subject to clause 15.6, we are not liable for any Consequential Loss, however caused (including by our negligence), suffered or incurred by you arising out of or in connection with any Contract of which these Terms form part.
- 15.5 For clarity, and without limiting clauses 15.1 to 15.4, the Parties agree that clauses 15.1 to 15.4 apply in connection with breach of a Contract, the anticipated breach of a Contract, and other conduct regardless of the seriousness or nature of that breach, anticipated breach, or other conduct.
- 15.6 If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in respect of any Goods or Services supplied in connection with any Contract of which these Terms form part and our liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 15.1 to 15.4 do not apply to that liability and instead our liability for such failure is limited to, in the case of a supply of Goods, us replacing the Goods or supplying equivalent Goods, or in the case of a supply of Services, us supplying the Services again or paying the cost of having the Services supplied again.

15.7 You acknowledge and agree that the exclusions and limitations contemplated by this clause 15 are both fair and reasonable.

16 Intellectual Property Rights

- 16.1 All right, title, and interest in the Intellectual Property Rights in and to all Goods supplied by us are, and will at all times remain, our property or that of the relevant manufacturer.
- 16.2 All improvements, derivatives, and modifications to the Intellectual Property Rights in and to the Goods (**Improvements**) vest in us immediately upon creation. You agree to assign to us all right, title, and interest in the Improvements as soon as they are created and undertake to do all things necessary to give effect to this clause 16.2.
- 16.3 You acknowledge and agree you have no right to use our Intellectual Property Rights, unless otherwise agreed in writing.

17 Privacy

- 17.1 You must comply with all Privacy Laws, and any reasonable direction of ours, in handling any Personal Information disclosed to or accessed by you in connection with any Contract of which these Terms form part, whether or not you are an organisation bound by the Privacy Laws.
- 17.2 Without limiting your obligations under clause 17.1, you must:
- (a) not use or disclose Personal Information other than for the purpose of performing your obligations under any Contract of which these Terms form part, unless required or authorised by Law;
 - (b) upon request, promptly return any Personal Information to us upon termination or performance of any Contract of which these Terms form part; and
 - (c) immediately notify us:
 - (i) upon becoming aware of any breach of clauses 17.1 or 17.2; and
 - (ii) of any data breach affecting, or unauthorised access to or loss of, Personal Information held by you or your personnel.
- 17.3 Clauses 17.1 and 17.2 survive the termination or performance of a Contract.

18 Confidentiality

- 18.1 You agree to keep confidential, and not use or disclose, other than for your internal business purposes, any Confidential Information provided to or obtained by you before or after your entry into a Contract.
- 18.2 The obligations of confidence imposed on you by clause 18.1 do not apply to Confidential Information that is required to be disclosed by any applicable Law or under compulsion of a court, Government Authority, or the rules of any securities exchange (as long as you disclose the minimum amount required to satisfy the Law or rules, provide us with prior notice in writing, and take reasonable steps to maintain the confidence of such Confidential Information) or that is in the public domain otherwise than as a result of a breach of these Terms or other obligation of confidence.
- 18.3 Clauses 18.1 and 18.2 survive the termination or performance of a Contract.

19 Termination

- 19.1 We may, with immediate effect, terminate any Contract of which these Terms form part by notice in writing to you, if:
- (a) you commit a material or persistent breach of these Terms and do not remedy that breach (if capable of remedy) within seven (7) days of the date of a notice identifying the breach and requiring its remedy;
 - (b) we are no longer able to, for whatever reason, supply you with the Goods the subject of a Contract (or any part of those Goods); or
 - (c) you enter into liquidation, or if you are an individual, become bankrupt.
- 19.2 For clarity, upon termination, a Contract is at an end as to its future operation, except for:
- (a) any Claim or enforcing any other right which arises upon, or has arisen before, the date of termination; and
 - (b) any clause which is expressed to survive the Contract or impliedly does so.

20 Force majeure

- 20.1 If a Party is wholly or partly unable to carry out any obligation under a Contract (other than a payment obligation) because of a Force Majeure Event and the affected Party:
- (a) gives the non-affected Party prompt notice of that Force Majeure Event including particulars of the event relied upon and so far as known the probable extent to which it will be unable to perform or be delayed in performing that obligation; and

(b) uses all reasonable diligence to remove or remedy that Force Majeure Event as quickly as possible,

that obligation is suspended to the extent that it is affected by the continuation of the Force Majeure Event.

- 20.2 Despite clause 20.1(a), the non-affected Party may terminate the Contract immediately by giving notice to the affected Party if the suspension of the affected Party's obligation continues under clause 20.1(a) for more than one (1) month.

21 Nature of relationship

Nothing in these Terms, or any Contract of which these Terms form part, is to be construed as creating a relationship of agency, joint venture, partnership, or other relationship with duties or incidents different from those of parties to an arm's length contract.

22 Variation

- 22.1 No proposed variation of these Terms will be binding upon us unless varied in writing and agreed by an authorised officer of ours. We may correct clerical errors (such as spelling mistakes, grammatical errors, or numerical errors) with or without notice to you.
- 22.2 We may amend these Terms at any time by notifying you in writing. The Terms (as amended) will apply to any Order placed by you following us notifying you of the amendments.

23 Assignment

Neither Party may assign its rights or obligations under any Contract of which these Terms form part without the prior written and fully informed consent of the other Party (which consent must not be unreasonably withheld).

24 Subcontracting

- 24.1 You acknowledge that we reserve the right to subcontract:
- (a) the manufacturing and supply of any part of the Goods to be supplied; and
 - (b) the Services to be performed (or any part of those Services), however, any subcontracting of the Goods or Services to be supplied will not relieve us of any of our obligations to you.

25 Waiver

- 25.1 A waiver of any provision or breach of any Contract of which these Terms form part will only be effective if made by the affected Party in writing.
- 25.2 If a Party elects not to enforce its rights arising as a result of a breach of the Contract, that will not constitute a waiver of any rights in relation to any subsequent or other breach.

26 Severance

If any part of these Terms, or any Contract of which these Terms form part, is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the Contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

27 Entire agreement

- 27.1 The Contract, together with the terms of any Credit Agreement (where applicable):
- (a) constitutes the entire agreement and understanding between the Parties;
 - (b) excludes all implied terms; and
 - (c) supersedes all previous negotiations, understandings, representations, warranties, memoranda, or commitments.
- 27.2 For the removal of doubt, all terms, conditions, warranties, indemnities, and statements (whether express, implied, written, oral, collateral, statutory or otherwise) which are not expressly set out in these Terms, or any Contract of which these Terms form part, are hereby expressly excluded and, to the extent they cannot be excluded, we disclaim all liability in relation to them.

28 Governing Law and jurisdiction

- 28.1 These Terms, and any Contract of which these Terms form part, is governed by and must be construed according to the Law applying in the State of Queensland.
- 28.2 The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to the Terms or any Contract of which these Terms form part.

29 Definitions

In these Terms, unless the context otherwise requires:

Australian Consumer Law means the Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Business Day means a day that is not a Saturday, Sunday, or gazetted public holiday in the place where the Goods are supplied.

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a Party to a Contract.

Confidential Information includes:

- (a) any information relating to our business and affairs;
- (b) any information that is by its nature confidential;
- (c) any information which is designated by us as confidential;
- (d) any information that you know, or ought to know, is confidential; and
- (e) all financial information, pricing information, and commercially valuable information of ours.

Consequential Loss means any:

- (a) consequential loss;
- (b) loss of anticipated or actual profits or revenue;
- (c) loss of production or use;
- (d) financial or holding costs;
- (e) loss or failure to realise any anticipated savings;
- (f) loss of business or business interruption;
- (g) loss or denial of business or commercial opportunity;
- (h) loss of or damage to goodwill, business reputation, future reputation or publicity;
- (i) loss or corruption of data;
- (j) downtime costs or wasted overheads; or
- (k) special, punitive, or exemplary damages.

Consumer Contract has the meaning given to this term in the Australian Consumer Law.

Contract means a contract for the supply of Goods, as constituted by our quotation (if any), your Order, and these Terms.

Cordwell Resources, we, us means Cordwell Resources Pty. Ltd. ACN 066 294 773.

Credit Agreement means an agreement between us and you for the provision of commercial credit.

Credit Facility has the meaning given to this expression in our Credit Facility Terms.

Credit Facility Terms means our credit facility terms contained in our Credit Agreement.

Customer, you means the person placing an Order with us (or on whose behalf an Order is placed).

Force Majeure Event means any act of God, acts, decrees, or regulations of Government Authorities, casualty, fire, explosion, storm, flood, frost or snow, earthquake, embargo, industrial action, strike, lockout, civil commotion, riot, insurrection, war, epidemic or pandemic, damage to or destruction of facilities, equipment or mechanical breakdown, failure of a third-party supplier or service provider, or any other occurrence which is not in the reasonable control of the affected Party.

Goods means all goods supplied by us (and where the context so permits includes the performance of any Services), as described on our quotation, invoice, or any other form issued by us.

Government Authority means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental, or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a Law.

GST means the goods and services tax or similar value added tax levied or imposed in Australia under the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all industrial and intellectual property rights throughout the world, whether present or future, and whether protectable by statute, at common law or in equity, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents and patentable inventions, including the right to apply for registration of any such rights.

Order means a written or oral order placed by you or on your behalf requesting to purchase Goods from us.

Pallets means any pallets, drums, bearers, and any other containers supplied in conjunction with the Goods.

Party means a party to the Contract.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth).

Personnel means officers, employees, and agents engaged by each Party (but does not include the other Party) and, in the case of Cordwell Resources, includes its subcontractors (and any employee of those subcontractors).

PPS Act means the *Personal Property Securities Act 2009* (Cth).

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth);
- (b) any legislation (to the extent that such legislation applies to the Parties or any other recipient of Personal Information) from time to time in force in any:
 - (I) Australian jurisdiction (which includes the Commonwealth of Australia and any state or territory of Australia); or
 - (II) non-Australian jurisdiction (to the extent that the Customer, Cordwell Resources, or any Personal Information is subject to the Laws of that jurisdiction),

affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of data (including Personal Information); and any ancillary rules, guidelines, orders, directions, directives, codes of conduct, or other instruments having the force of Law, made or issued thereunder, as amended from time to time.

Site means the location where the Services are to be performed or Goods are to be delivered.

Services means all services performed by us (and where the context so permits includes any supply of Goods), as described on our quotation, invoice, or any other form issued by us.

Small Business Contract has the meaning given to this term in the Australian Consumer Law.

Terms means these terms of trade.

30 Interpretation

30.1 If there is any conflict or inconsistency between any of the documents which together govern the relationship between the Parties, it is agreed the order of precedence will be (highest to lowest):

- (a) any Credit Agreement;
- (b) any additional terms or conditions contained in our quotation;
- (c) these Terms; and
- (d) any other documents issued by us.

30.2 In these Terms, unless the context otherwise requires:

- (a) a reference to:
 - (I) a clause is a reference to a clause in these Terms;
 - (II) a time is a reference to Brisbane, Australia time unless otherwise specified;
 - (III) \$, dollar, or AUD is a reference to the lawful currency of Australia;
 - (IV) these Terms or another document includes any variation or replacement of them, notwithstanding any change in the identity of the Parties;
 - (V) a statute, regulation, code or provision of a statute, regulation, or code (**Law**) includes that Law as amended or re-enacted, a statute, regulation, code, or provision enacted in replacement of that Law, another regulation or other statutory instrument or determination or ruling made or issued under that Law and any amendment made to that Law as a consequence of another statute, regulation, code, or provision;
 - (VI) person includes a natural person, partnership, body corporate, association, joint venture, Government Authority, or other entity;
 - (VII) a Party includes a reference to that person's executors, administrators, successors, substitutes (including a person who becomes a Party by novation), assigns, and in the case of a trustee, includes any substituted or additional trustee;
 - (VI) a right includes a benefit, remedy, authority, discretion, or power;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) the words "in writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information;
- (d) if a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning;
- (e) words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation";

- (f) headings are inserted for convenience only and do not affect the interpretation of these Terms; and
 - (g) an agreement, covenant, obligation, representation, or warranty in favour of two (2) or more persons is for the benefit of them jointly and each of them separately.
- 30.3 Nothing in these Terms, or any Contract of which these Terms form part, is to be read or construed to exclude, restrict, or modify any right, or any guarantee, term, condition, warranty, undertaking, inducement, or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited.