

## Credit Application

### Business & Contact Information

Full Name of Applicant / Entity:

Trading Name (if applicable):

ABN:

ACN:

No. of Years Established:

Registered Address:

Postal Address:

Telephone:

Fax:

Email:

Type of Business (tick applicable box): Sole Trader  Partnership  Company  Trust

Accounts Payable Contact:

Phone:

Accounts Payable Email:

Credit Limit: \$

Order No's Required: Yes  No

### Proprietors / Directors (all Proprietors / Directors MUST be listed)

Full Name:

Residential Address:

Mobile:

D.O.B:

Drivers Licence No':

Full Name:

Residential Address:

Mobile:

D.O.B:

Drivers Licence No':

### Business / Trade References (3 current major supplies with whom you currently trade)

Name:

Email:

Phone:

Number of years account has been held for:

Name:

Email:

Phone:

Number of years account has been held for:

Name:

Email:

Phone:

Number of years account has been held for:

## Terms and Conditions

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this document:

**Account Application Form** means Newcastle Sand's application for 30 day account form.

**Business Day** means a day that is not a Sunday or public holiday in Newcastle, New South Wales.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Costs** means a cost, charge, expense, outgoing, payment, fee or other expenditure of any nature.

**Credit** means the line of credit extended to the Customer by Newcastle Sand governed by these terms and conditions.

**Credit Limit** means the maximum amount of credit Newcastle Sand extends to the Customer from time to time.

**Customer** means the party requesting the provision of Goods and making an application for Credit.

**Goods** means any goods supplied by Newcastle Sand.

**Guarantor** means any guarantor named in the Account Application Form and any director of the Customer from time to time.

**Insolvency Event** means any of the following events occurring in relation to the Customer:

- (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the *Corporations Act 2001* (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the Customer;
- (b) the Customer is, or becomes unable to, pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth), or is presumed to be **insolvent under the Corporations Act 2001** (Cth);
- (c) an application or order is made for the liquidation of the Customer or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the Customer,

- otherwise than for the purpose of an amalgamation or reconstruction;
- (d) the Customer ceases to carry on business;
- (e) the Customer or the Customer's property or undertaking becomes subject to a personal insolvency arrangement under Part X of the *Bankruptcy Act 1966* (Cth) or a debt agreement under Part IX of the *Bankruptcy Act 1966* (Cth); or
- (f) anything analogous to the events described in paragraphs (a) to (d) occur.

**Invoiced Amount** means the amount invoiced for an Order as set out in the relevant tax invoice.

**Law or law** includes:

- (a) any statute, regulation, rule, by-law, ordinance, proclamation, judgment, treaty, decree, convention, rule or principle of common law or equity, rule of any applicable stock exchange or requirement or approval (including any Government Agency);
- (b) any regulation, rule, by-law, ordinance, proclamation or judgment made under the law; and
- (c) the law as amended, consolidated, supplemented, re-enacted or replaced.

**Newcastle Sand** means Williamtown Sand Syndicate Pty Limited ACN 606 820 875 as trustee for Newcastle Sand Unit Trust.

**Order** includes any written, verbal or electronic request made by the Customer, its employees, agents and contractors or under the Customer's account number and/or account name for Goods.

**PPSA** means the *Personal Property Securities Act 2009* (Cth). In these terms and conditions, unless inconsistent with or contrary to the context, the following terms have the meanings given to them in the PPSA: **collateral, financing charge statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement.**

**PPSR** means the Personal Property Securities Register established under the PPSA.

## 2 Supply of Goods

The Customer will submit an Order and, if accepted, Newcastle Sand will supply the Goods to the Customer on the terms of Credit outlined in this document.

## 3 Orders

### 3.1 Authority

It is not the responsibility of Newcastle Sand to confirm authority of the person placing the Order. It is the sole responsibility of the Customer to ensure only authorised persons place Orders on behalf of the Customer.

### 3.2 Cancellation

Once accepted, Orders may only be cancelled with the express written consent of Newcastle Sand. If consent is given, and unless otherwise agreed, the Customer must:

- (a) pay Newcastle Sand for Goods supplied prior to the date of cancellation of that Order;
- (b) if Goods have been prepared but not delivered at the time of cancellation, accept the Goods when delivered and pay the Invoiced Amount for those Goods;
- (c) reimburse Newcastle Sand, as a debt immediately due and payable, for all Costs in connection with the cancellation of that Order; and
- (d) despite the above, if Newcastle Sand accepts cancellation of an Order within 3 Business Days of the proposed delivery date, the total Invoiced Amount for the Order remains payable by the Customer.

## 4 Payment

### 4.1 Payment terms

The Customer must pay, without any deduction or set-off:

- (a) the Invoiced Amount for Goods supplied within 30 days of a tax invoice being issued;
- (b) bank charges or merchant fees levied on Newcastle Sand by the Customer's financial institution;
- (c) dishonoured cheque fees;
- (d) any application or registration costs and expenses incurred by Newcastle Sand in granting Credit including any

- security documents signed by the Customer or any guarantor; and
- (e) expenses incurred in connection with the enforcement of, or any litigation in relation to Orders or the supply of Goods, including legal costs on an indemnity basis.

## 4.2 Overdue accounts

- (a) Late payments will incur interest at a rate of 10% as at the due date, calculated daily and compounded monthly.
- (b) The Customer agrees to pay all Costs incurred by Newcastle Sand in connection with the recovery of outstanding amounts.

## 5 Credit

### 5.1 Withdrawal of Credit

Any Credit extended to a Customer for the supply of Goods may be revoked or varied by Newcastle Sand at any time. Any approved Credit Limit noted in the Account Application Form or otherwise is not a promise or warranty to extend any level of Credit to the Customer.

## 6 Title and risk

### 6.1 Title

Newcastle Sand retains legal and equitable title in Goods supplied to the Customer until the Invoiced Amount is paid in full. This clause applies whether or not Goods have been altered from their supplied form.

### 6.2 Risk

Risk in the Goods passes to the Customer on delivery. Delivery is deemed to have taken place upon collection or loading at the quarry at 398 Cabbage Tree Road Williamstown.

## 7 Security interest

### 7.1 Security Interest

Newcastle Sand may register a security interest over the Customer or any Guarantor on any appropriate register, including the PPSR, to protect its interests in connection with the granting of Credit or otherwise under these terms and conditions.

### 7.2 Customer's obligations

The Customer and each Guarantor must take all steps, as may be required to:

- (a) ensure that any security interest arising under or in respect of these terms and conditions is enforceable, perfected and otherwise effective under the PPSA;
- (b) enable Newcastle Sand to gain first priority for the security interest; and
- (c) enable Newcastle Sand to exercise its rights in connection with the security interest.

### 7.3 Additional rights

- (a) Newcastle Sand's rights under this document are in addition to and not in substitution for Newcastle Sand's rights under other law (including the PPSA) and Newcastle Sand may choose whether to exercise its rights under this document and / or under such other law in its sole discretion.
- (b) The Customer acknowledges and agrees that Newcastle Sand may, in addition to any rights conferred on it by the PPSA, have the rights to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods as additional and independent rights on default of these terms and conditions. Newcastle Sand may exercise these rights in any manner it sees fit.

### 7.4 Excluded provisions

To the extent that Chapter 4 of the PPSA applies to any security interest under these terms and conditions, the parties agree that the following provisions of the PPSA do not apply and, for the purposes of section 115 of the PPSA are 'contracted out of' in respect of all Goods to which that section can be applied: (section 95) – notice of removal of accession to the extent it requires Newcastle Sand to give a notice to the Customer; (section 96) – retention of accession; (section 121(4)) – notice to grantor; (section 125) – obligations to dispose of or retain collateral; (section 130) – notice of disposal to the extent it requires Newcastle Sand to give a notice to the Customer; (section 129(2)); (section 129(3)); (section 132(3)(d)) – contents of statement of account after disposal; (section 132(4)) – statement of account if no disposal; (section 135) – notice of retention; (section 142) – redemption of

collateral; and (section 143) – re-instatement of security interest.

### 7.5 Waiver

The Customer waives any right under section 157 of the PPSA to receive a copy of the verification statement relating to any security interest created under these terms and conditions.

### 7.6 Non-disclosure

- (a) The parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA.
- (b) The Customer must do everything necessary to ensure that section 275(6)(a) of the PPSA continues to apply.

## 8 Warranties

### 8.1 Warranties

The Customer warrants and represents:

- (a) all documentation required by Newcastle Sand has been accurately completed; and
- (b) they will advise Newcastle Sand in writing of the occurrence of:
  - (i) an Insolvency Event;
  - (ii) any variation to any of the information supplied by the Customer to Newcastle Sand; or
  - (iii) any material change to the structure or nature of the Customer's business,

within 2 Business Days of such event or change occurring.

### 8.2 Acknowledgement

The Customer acknowledges Newcastle Sand is relying on the representations made by the Customer and the Customer is liable for any inaccuracies, relevant omissions and misrepresentations.

## 9 Guarantee

### 9.1 Personal guarantees

Each Guarantor guarantees the Customer's obligations under this document including without limitation to:

- (a) pay all outstanding amounts to Newcastle Sand; and
- (b) pay Newcastle Sand's Costs in administering this guarantee.

## 9.2 No waiver

Newcastle Sand may release or discharge the Customer and make other arrangements for payment at any time without affecting Newcastle Sand's rights and remedies against the Guarantors.

## 10 Liability

### 10.1 Exclusion of liability

Subject to any law to the contrary:

- (a) Newcastle Sand will not be liable for any damages, losses or Costs (including indirect, special or consequential losses) from any cause; and
- (b) any condition or warranty which is otherwise implied by law or this document is expressly excluded.

### 10.2 Maximum liability

For any damage, loss or Cost that cannot be contracted out of, the maximum amount of Newcastle Sand's liability is the amount the Customer paid to Newcastle Sand for the relevant Goods supplied.

## 11 Privacy and consent

- (a) Newcastle Sand will comply with the Australian Privacy Principles. A copy of our Privacy Policy is available on our website.
- (b) The Customer consents to Newcastle Sand obtaining credit information from any bank or trade referee disclosed in the Account Application Form and from any other credit

provider or reporting agency for the purpose of assessing the Credit application.

## 12 General

### 12.1 Exclusion of your terms

These terms and conditions prevail in all circumstances and any alternate terms proposed by you (in a purchase order or otherwise) are expressly excluded, unless specifically accepted by Newcastle Sand in writing.

### 12.2 Amendments

Newcastle Sand may change these terms and conditions from time to time and the Customer will be deemed to have been given notice of the change if the amended terms are published on Newcastle Sand's website.

### 12.3 Relationship

Except where this document expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

### 12.4 Entire agreement

These terms and conditions are the entire agreement between the parties.

### 12.5 Governing law and jurisdiction

New South Wales governs the law of this document.

By signing this application and/or accepting a credit account with Newcastle Sand, you accept the attached terms and conditions of trade (if any, as varied from time to time) or otherwise our standard terms and conditions of trade from time to time.

**Guarantor Details**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

D.O.B: \_\_\_\_\_ Drivers Licence: \_\_\_\_\_ Expiry: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

D.O.B: \_\_\_\_\_ Drivers Licence: \_\_\_\_\_ Expiry: \_\_\_\_\_

**Guarantor(s)**

**Signed, sealed and delivered** by )  
 )  
 in the presence of: )

\_\_\_\_\_  
 Signature of Witness

\_\_\_\_\_  
 Signature of Guarantor

\_\_\_\_\_  
 Print name of Witness

**Guarantor(s)**

**Signed, sealed and delivered** by )  
 )  
 in the presence of: )

\_\_\_\_\_  
 Signature of Witness

\_\_\_\_\_  
 Signature of Guarantor

\_\_\_\_\_  
 Print name of Witness

**Applicant (if COMPANY, PARTNERSHIP or TRUST)**

Signed by \_\_\_\_\_ )  
by its duly authorised officer / partner \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Authorised Person

\_\_\_\_\_  
Print name of Witness

\_\_\_\_\_  
Print name of Authorised Person

**Applicant (if SOLE TRADER)**

**Signed, sealed and delivered** by \_\_\_\_\_ )  
in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Sole Trader

\_\_\_\_\_  
Print name of Witness