



Lofts Quarries Pty Ltd
(ABN 19 005 671 465)

APPLICATION FOR COMMERCIAL CREDIT

Please return your completed Credit Application to:
Suite 7, 20 Cato Street, Hawthorn East Vic 3123

Date of application: _____

APPLICANT'S DETAILS

Company/Business Name: _____

ABN: _____ Builders Licence Number: _____ Number of staff employed: _____

Trading as: _____

ABN: _____ ACN: _____

Business Address: _____ Postcode: _____

Postal Address: _____ Postcode: _____

Contact Details:

B/H: _____ A/H: _____

FAX: _____ Mobile: _____

Company Email Address:

Email Address for Invoices and Statements:

Will purchase order number be used? Yes No Credit limit required \$ _____ (Min \$5,000 per month)

OWNERSHIP

Public Company

Private Company

Partnership

Trust (Name of Trust): _____

Other

Date of incorporation/commencement: _____

Company registered office address: _____

_____ Postcode: _____

Year business/company began operation: _____ Annual turnover: \$ _____



1. Position: _____ Last Name: _____
First Name: _____ Home Phone No: _____
Driver's Licence No: _____ Date of Birth: _____
Private Address: _____
Address of any Real Property owned _____

2. Position: _____ Last Name: _____
First Name: _____ Home Phone No: _____
Driver's Licence No: _____ Date of Birth: _____
Private Address: _____
Address of any Real Property owned _____

3. Position: _____ Last Name: _____
First Name: _____ Home Phone No: _____
Driver's Licence No: _____ Date of Birth: _____
Private Address: _____
Address of any Real Property owned _____

4. Position: _____ Last Name: _____
First Name: _____ Home Phone No: _____
Driver's Licence No: _____ Date of Birth: _____
Private Address: _____
Address of any Real Property owned _____

5. Position: _____ Last Name: _____
First Name: _____ Home Phone No: _____
Driver's Licence No: _____ Date of Birth: _____
Private Address: _____
Address of any Real Property owned _____

Nature of Business: _____

Business Address: _____

Owned or Leased: _____

Value of Plant: \$ _____ Value of Property Owned: \$ _____

Trading Bank: _____ Branch: _____ Account No: _____



TRADE REFERENCES:

1. Company Name: _____
Phone: _____ Fax: _____

2. Company Name: _____
Phone: _____ Fax: _____

3. Company Name: _____
Phone: _____ Fax: _____

4. Company Name: _____
Phone: _____ Fax: _____

MAJOR QUARRY SUPPLIER REFERENCE:

1. Company Name: _____
Phone: _____ Fax: _____

2. Company Name: _____
Phone: _____ Fax: _____

3. Company Name: _____
Phone: _____ Fax: _____

4. Company Name: _____
Phone: _____ Fax: _____

EQUIPMENT ON LEASE OR HIRE PURCHASE:

Name of Bank/Finance Company: _____ Branch: _____

Please Note:

- A. "The Customer agrees that all the purchases made and credit provided will be subject to Lofts Quarries Pty Ltd's (A.B.N. 19 005 671 465) (the "Supplier") Terms and Conditions of Trade and Credit_

- B. The Customer represents and warrants that all information contained in the Application for Commercial Credit is true and correct and will be relied upon by the Supplier in order for the Supplier to grant credit to the Customer.

- C. I/We agree that the Supplier may obtain a commercial and/or consumer credit report on the Customer and/or any directors, principals or guarantors containing information about me/us from a credit reporting agency for the purposes of assessing my/our Application for Commercial Credit and to give information about the Customer and/or any directors, principals or guarantors to a credit reporting agency to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer and/or any directors, principals or guarantors."



Name: _____ Director/Partner/Proprietor

Signature: _____ Date: _____

Name: _____ Director/Partner/Proprietor

Signature: _____ Date: _____

Name: _____ Director/Partner/Proprietor

Signature: _____ Date: _____

Name: _____ Director/Partner/Proprietor

Signature: _____ Date: _____

GUARANTEE AND INDEMNITY:

TO: LOFTS QUARRIES PTY LTD - ACN 005 671 465 of Suite 7, 20 Cato Street, Hawthorn East, Victoria (the "Supplier")

1. In consideration of the Supplier entering into Terms and Conditions of Trade and Credit (the "Terms and Conditions") with the Customer described in the Schedule (the "Customer") at the request of the guarantor(s) described in the Schedule (the "Guarantors"), the Guarantors HEREBY JOINTLY AND SEVERALLY COVENANT with the Supplier that the Customer will duly perform and observe any and all of its obligations under this Guarantee and indemnity including the due and punctual payment of all monies payable by the Customer.
2. This Guarantee and Indemnity is an all monies guarantee to secure the payment of any monies owing now or at any time in the future owing to the Supplier by the Customer pursuant to the Terms and Conditions.
3. If the Customer defaults in any way on the payment of any monies owing to the Supplier, pursuant to the Terms and Conditions, and notice is given in writing to the Guarantors, the Guarantors will immediately pay to the Supplier all monies owing to the Supplier by the Customer.
4. The joint and several liability of the Guarantors under this Guarantee and indemnity will not be discharged or affected in any way by any indulgence or concession granted to the Customer by the Supplier, any amendment or variation of the Terms and Conditions or any act, matter or thing which but for this provision might operate to release the Customer from its obligations under the Terms and Conditions.
5. The obligations of the Guarantors will not be discharged or affected in any way by the bankruptcy, insolvency, liquidation, receivership or administration of the Customer.
6. This Guarantee and Indemnity is a continuing guarantee and will remain in force and effect until all obligations to the Supplier guaranteed under the Guarantee and Indemnity have been discharged in full. It is in addition to and will not prejudice nor be prejudiced by any other guarantee, indemnity or other security or right against any other person which the Supplier may have for due performance of the obligations of the Customer under the Terms and Conditions.
7. Without limiting the preceding clauses, the Guarantors will jointly and severally indemnify and keep indemnified the Supplier against any loss or damage suffered or incurred by the Supplier (including economic loss and legal costs and disbursements on an indemnity basis) arising from any breach whatsoever of the Terms and Conditions by the Customer.
8. In consideration of the Supplier having agreed or agreeing to sell Goods or provide services or to extend credit to the Customer and to further secure any amount owing to the Supplier, I/we jointly and severally charge (as beneficial owners) all freehold and leasehold interest in land that I/we or any of us now own or during the course of this Agreement may acquire, in favour of and for the benefit of the Supplier. I/We consent to the Supplier lodging a caveat or caveats noting its interest pursuant to such charge.
9. This Guarantee and Indemnity will inure for the benefit of the Supplier and its successors, assigns and representatives.

DATED this _____ **day of** _____ **2**

EXECUTED by the Guarantor(s) as a Deed

SIGNED by the GUARANTOR)
in the presence of:) Guarantor signature: _____
Print Name: _____
Witness signature: _____
Print Name: _____



**SIGNED by the GUARANTOR
in the presence of:**)
)

Guarantor signature: _____

Print Name: _____

Witness signature: _____

Print Name: _____

**SIGNED by the GUARANTOR
in the presence of:**)
)

Guarantor signature: _____

Print Name: _____

Witness signature: _____

Print Name: _____

**SIGNED by the GUARANTOR
in the presence of:**)
)

Guarantor signature: _____

Print Name: _____

Witness signature: _____

Print Name: _____

**SIGNED by the GUARANTOR
in the presence of:**)
)

Guarantor signature: _____

Print Name: _____

Witness signature: _____

Print Name: _____

**SIGNED by the GUARANTOR
in the presence of:**)
)

Guarantor signature: _____

Print Name: _____

Witness signature: _____

Print Name: _____

SCHEDULE:

Customer: _____

A.C.N: _____

Registered Office: _____

Guarantors: _____



TERMS AND CONDITIONS OF TRADE

1. Definitions

In this document being the Terms and Conditions of Trade ("Terms"), unless the contrary intention appears:

- (a) "**ACL**" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended;
- (b) "**Agreement**" means any agreement for the supply of Goods from the Supplier to the Customer;
- (c) "**Application for Credit**" means the application by which the Customer applies for a Credit Account;
- (d) "consumer" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;
- (e) "**Costs**" includes all costs incurred by the Supplier in supplying the Goods to the Customer or enforcing its rights under the Terms including without limitations all solicitors' fees (on an full indemnity basis), commercial agents' commission, freight, insurance, loss of profit and interest;
- (f) "**Credit Account**" means a facility, whereby monies owing from the Customer to the Supplier are due and payable in the manner set out in the Terms;
- (g) "**Customer**" means the person or corporation, jointly or severally, if more than one, acquiring Goods from the Supplier;
- (h) "**Date of the Invoice**" means the date upon which an invoice was given by the Supplier to the Customer in respect of monies owing for Goods supplied;
- (i) "**Event of Default**" means (if the Customer is a corporation) where the Customer ceases to trade or indicates that it is about to cease to trade, or any liquidation, receivership, administration, external management or any other act or event of insolvency (as defined in the *Corporations Act 2001*) of the Customer and (if the Customer is an individual) any act of bankruptcy (as defined in the *Bankruptcy Act 1966*) of the Customer;
- (j) "**Goods**" means goods ordinarily sold or supplied by the Supplier and includes any goods supplied by the Supplier to the Customer and includes any goods with which the goods have been mixed or commingled or which the goods have formed a component of as well as any device, fitted to any goods in compliance with all applicable laws, with the purpose of protecting, or attempting to protect any person from harm from those goods;
- (k) "**Invoice**" means any invoice for Goods supplied by the Supplier to the Customer;
- (l) "**Order**" means any order for Goods placed by the Customer with the Supplier;
- (m) "**Outstanding Amounts**" means all amounts due and payable by the Customer to the Supplier (including the Purchase Price) for any Goods supplied to it by the Supplier and all Costs and Taxes which the Customer is liable to pay to the Supplier;

- (n) "**Purchase Price**" means the price for Goods supplied by the Supplier to the Customer as stated on the Invoice to the Customer but not including Costs and Taxes;
- (o) "**Quote**" means any quote by the Supplier to the Customer in respect of any Goods;
- (p) "**Supplier**" means Lofts Quarries Pty Ltd ACN 005 671 465 and includes its servants, contractors, agents, successors and assigns; and
- (q) "**Taxes**" means all present and future government or semi-government Taxes, levies, imposts, deductions, charges, compulsory loans and withholdings together with any applicable interest, penalties and expenses for which the Supplier may be liable as a result of any Quote, Order and/or Invoice_

2. Conditions Applicable

2.1 Unless otherwise agreed in writing, these Terms apply exclusively to every Agreement and cannot be varied or replaced by other terms including the Customer's terms of purchase (if any)_

2.2 The Supplier may vary or amend these Terms by written notice to the Customer at any time_ Any variations or amendments will apply to Orders accepted after the notice date_

3. Quotes and Orders

3.1 Subject to clauses 4, 9 and 10, the Supplier agrees to supply Goods to the Customer upon receipt of an Order from the Customer and the Customer agrees to purchase the Goods upon placing the Order with the Supplier_

4. Retention of Title

4.1 The relationship between the parties is a fiduciary relationship and until such time as payment in full of any relevant Outstanding Amount is made by the Customer to the Supplier, the Customer will hold the Goods as bailee only_

4.2 Subject to this Clause 4, the property in the Goods and all legal and equitable rights in all Goods supplied by the Supplier to the Customer remains with the Supplier at all times_

4.3 Property in Goods supplied pursuant to these Terms passes to the Customer only when all Outstanding Amounts due to the Supplier for any Goods supplied to the Customer have been paid for in full by the Customer to the Supplier_

4.4 The Customer will:

4.4.1 Where there are Outstanding Amounts remaining unpaid to the Supplier, hold any proceeds received from third parties to which the Goods are supplied on trust for the Supplier_

4.4.2 If any Event of Default occurs:

4.4.2.1 to the extent possible, assist the Supplier to retake possession of the Goods which remain the property of the Supplier;

4.4.2.2 licence the Supplier to enter any premises under the control or ownership of the Customer to

- repossess the Goods where possible;
and
- 4.4.2.3 not sell, assign or let the Goods or any interest in them, or permit any charge, pledge, lien or other encumbrance to be created in relation to the Goods without the prior written consent of the Supplier_

4.5 In the circumstances referred to in this Clause 4, the Supplier is not liable for any loss, damage or liability suffered by the Customer and the Customer remains bound by its obligations to the Supplier pursuant to these Terms_

5. Provision of Credit

5.1 The Supplier, at its absolute discretion, may agree to provide the Customer with a Credit Account_

5.2 The Customer authorises the Supplier to open a Credit Account in the name of the Customer and to record transactions on the Credit Account and to debit the Customer with all amounts owing to the Supplier_

6. Credit Limit

6.1 The Supplier may impose a credit limit on the Credit Account_ The amount of such a limit is at the absolute discretion of the Supplier_

6.2 The Supplier, at its absolute discretion may supply goods to a value over and above the nominated credit limit_

7. Price and Payment

7.1 Prices are subject to change for any actual cost increases due to variations in customs, tariffs, insurance and freight costs, and any other duty between the date of the Order and the date of delivery of the Goods_

7.2 Any Purchase Price, Costs and/or Taxes payable by the Customer to the Supplier for any Goods will become payable by the Customer within 30 days from the Date of the Invoice_

7.3 The Customer authorises the Supplier at the Supplier's discretion to appropriate any money received from the Customer against whatever Outstanding Amounts are due by the Customer to the Supplier_

7.4 All payments made by the Customer to the Supplier must be made in cash, cheques or negotiable securities and any payments made by cheques or other negotiable securities will not have been deemed to have been paid until such time as those cheques or negotiable securities have been cleared_

8. Statements

The Supplier will send the Customer monthly statements detailing the monies then owing from the Customer to the Supplier_ However, no statements will be sent to the Customer if:

8.1 No amounts have been debited or credited to the Customer's account during that particular month; or

8.2 The Supplier has withdrawn the Credit Account from the Customer_

9. Right to Supply

9.1 The Supplier reserves the right to accept or decline in whole or in part any Order made by the Customer for the supply of Goods_

9.2 All orders are subject to the Supplier having the Goods available to fulfil the Order_

9.3 Time is not of the essence for delivery, however, time for payment of all Outstanding Amounts is of the essence_

10. Delivery and Risk

10.1 The Goods will be at the Customer's risk from the time the Customer takes possession of the Goods or immediately on the Goods being delivered to the Customer, whichever occurs first__

10.2 Any claims for loss and damage in respect of Goods supplied or sold by the Supplier to the Customer must be made by the Customer to the Supplier within seven (7) days of the supply of the Goods, unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL_

10.3 The Customer must allow the Supplier a reasonable opportunity to inspect the Goods in the same condition and place in which they were delivered_

10.4 Any claims for shortages in respect of the Goods supplied or sold by the Supplier to the Customer must be made to the Supplier or the Supplier's representative immediately upon the delivery of the Goods to the Customer after inspection of the Goods by the Customer_

10.5 The Supplier will not be bound to accept any return of Goods by the Customer unless the return is authorised by a representative of the Supplier, or unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL_

11. Guarantee, Indemnity and Limitation of Liability

11.1 The Customer acknowledges that:

11.1.1 The Supplier gives no express warranty in relation to the supply of the Goods and the Customer acknowledges that no warranties and/or representations have been made by the Supplier in relation to the capacity, use, performance, adequacy or suitability of any use for the Goods or otherwise other than any representations made in writing by any third party (such as quarries) and that it has relied upon its own inspections and own independent enquiries in making the decision to purchase the Goods; and

11.1.2 the Customer has not made known, either expressly or by implication, to the Supplier any purpose for which it requires the Goods or services and it has the sole responsibility of satisfying itself that the Goods or services are suitable for the use of the Customer_

11.2 Except as these terms specifically state, or as contained in any express warranty provided in relation to the Goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose,

- condition, description, assembly, manufacture, design or performance of the Goods or services or any contractual remedy for their failure_
- 11.3 Weights and dimensions given by the Supplier in the Quote or otherwise are approximate only and are provided for the assistance only of the Customer_ No warranty is given by the Supplier in respect of any weights or dimensions_
- 11.4 If the Customer is a consumer, nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against the Supplier for failure of a statutory guarantee under the ACL_
- 11.5 If the Customer on-supplies the Goods to consumer:
- 11_5_1 if the Goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption then the amount specified in section 276A(1) of the ACL is the absolute limit of the Supplier's liability to the Customer;
- 11_5_2 if the Goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of the Supplier's liability to the Customer,
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or services by the Customer or any third party_
- 11.6 If clause 11_4 or 11_5 does not apply, then other than as stated in the Terms or any written warranty statement the Supplier is not liable to the Customer in any way howsoever arising under or in connection with the sale, use of, storage or any other dealings with the Goods or services by the Customer or any third party_
- 11.7 The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL_
- 11.8 Nothing in these Terms is to be interpreted as excluding restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply or services which cannot be so excluded, restricted or modified_
- 12. Cancellation**
- 12.1 If the Supplier is unable to deliver or provide the Goods, then it may cancel the Customer's Order (even if it has been accepted) by written notice to the Customer_
- 12.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on the Supplier once the order has been accepted_
- 13. When Credit May Be Withdrawn**

13.1 The Supplier may, at its absolute discretion, withdraw the Customer's Credit Account or amend the credit limit on the Credit Account at any time_

14. Default

14.1 If the Customer defaults or breaches these Terms, it shall remedy any default or breach within seven (7) days of receipt of oral or written notice by the Supplier requesting the Customer to immediately rectify such default or breach_

14.2 If the Customer breaches these Terms the Customer will indemnify and continue to indemnify the Supplier for all Outstanding Amounts and Costs associated with remedying the Customer's breach of these Terms_

14.3 If the Customer fails to make payments in accordance with Clause 7, the Supplier has the right to commence proceedings in a Court of competent jurisdiction for all Outstanding Amounts owing by the Customer to the Supplier (including interest and legal costs on an indemnity basis), without any notice to the Customer_

15. Interest

As a result of any breach by the Customer of these Terms, interest will accrue on all such Outstanding Amounts at the rate of 2% above the rate set in section 2 of the *Penalty Interest Rates Act* 1983 from time to time per annum, compounded monthly from the date of the relevant invoice_

16. Costs and Enforcement Expenses

The Customer must pay all costs (including legal costs on a full indemnity basis) of the Supplier and State Government or Federal Government taxes, fees and charges imposed on the Supplier, in association with the following events:

16.1 The entering into this agreement by the Customer and the Supplier;

16.2 Any default or breach of any of these Terms; and

16.3 The failure of the Customer to make payments to the Supplier in accordance with Clause 7_

17. Financial information

17.1 The Customer irrevocably authorises the Supplier to seek and use any reports from a credit reporting agency of its choosing containing personal information about the Customer in relation to the collection of any Outstanding Amounts from the Customer_

17.2 The Customer agrees and consents to the Supplier giving any information relating to the collection of any Outstanding Amounts to any credit reporting agency to the extent allowed by the *Privacy Act* 1988 (Cth) or any other applicable law_

17.3 The Customer will provide any and all necessary instructions and/or authorities required by the Supplier's accountants, debtor insurers, and bankers to enable the Supplier to make investigations from time to time into the Customer's trading and financial position_

18. General

18.1 These Terms are governed by the laws of the State of Victoria and the Supplier and the Customer irrevocably

- submit to the jurisdiction of the courts of the State of Victoria and all Courts of Appeal from those courts_
- 18.2 If the Customer is a trustee of any trust then the Customer will be liable both in its own capacity and in its capacity as trustee of the trust for performance of all of its obligations to the Supplier_
- 18.3 A reference to a party to these Terms includes that party's successors and permitted assigns_
- 18.4 The Terms shall remain in full force and shall not be abrogated, prejudiced or affected by the Supplier:
- 18.4.1 granting the Customer time, credit or other indulgence or concession; or
 - 18.4.2 compounding or compromising, releasing, abandoning, waving, varying, relinquishing or renewing any of its rights_

- 18.5 Any of the above provisions which are illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions_
- 18.6 The Customer confirms that these Terms are not subject to finance being obtained by the Customer_
- 18.7 Headings in these Terms are for ease of reference only and do not constitute any part of these Terms_

19. Charge

In consideration of the Supplier having agreed or agreeing to sell Goods or provide services or to extend credit to the Customer and to further secure any amount owing to the Supplier, I/we jointly and severally charge (as beneficial owners) all freehold and leasehold interest in land that I/we or any of us now own or during the course of these Terms may acquire, in favour of and for the benefit of the Supplier. I/we consent to the Supplier lodging a caveat or caveats noting its interest pursuant to such charge.

