



TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

"Company means Grafil Pty Ltd Trading as Macka's Sand & Soil Supplies ABN 83 002 240 922 (and its successors and assigns and its agents). "goods" means all products and services agreed to be sold or supplied by the Company to the Customer under any agreement or arrangement between the Company and the Customer.

2. GENERAL

If the Company approves and accepts the Customer's application for a trading account (and other related documentation such as, where the Customer is a company, a trade account guarantee), then the agreement between the Company and the Customer resulting from such acceptance and each agreement made between the Company and the Customer for the sale or supply of goods to the Customer by the Company is governed by these terms of agreement. If there is any inconsistency between these terms and conditions, the terms and conditions stipulated or referred to by the Customer or any provision contained in any materials or literature prepared by the Company, the terms and conditions disclosed in this document shall prevail.

3. PRICE

All prices quoted by the Company or stated in the Company's price list are effective as at the date on which the price is quoted and are subject to alteration without notice to the Customer. All prices are exclusive of any delivery costs (including freight, loading and insurance) and government charges (including GST) which, if applicable will be for the Customer's account. Unless otherwise agreed in writing by the Company the price payable by the Customer will be the price prevailing at the time of despatch of the goods by the Company to the Customer which price shall be due and payable in full by the payment date being end of month following month of despatch.

4. PAYMENT

The purchase price for the goods is due and payable to the Company by the Customer on the payment date calculated. The Customer shall be in default if payment in full is not made by the date and, without limiting any other rights of the Company, the Customer shall pay to the Company, by way of liquidated damages, interest on the amount outstanding or on so much thereof as remains outstanding calculated from the due date of payment until payment is made in full. The rate of interest shall be 18% per annum (or such other rates as the Company may publish from time to time in lieu of that rate), calculated daily. Any costs of collecting including, but not limited to, legal costs incurred by the Company in respect of any overdue amount are recoverable from the Customer by the Company as a debt immediately due, owing and payable to the Company by the Customer on a full indemnity or solicitor-client basis at the Company's election.

5. CLAIMS

It is the responsibility of the Customer to verify for itself at the time of supply that the quantity, quality and type of goods supplied in in accordance with the Customer's order. Any claim for short or wrongful supply of goods must be notified by the Customer to the Company at the time of supply of the goods. Within 14 days thereafter full particulars and substantiation of the claim shall be made by the Customer in writing to the Company. Any claim which the Customer does not notify or substantiate within the time aforesaid (time being of the essence) shall be deemed to have been absolutely waived.

6. DESCRIPTION

Any description of the goods is given by way of identification only and the use of such description shall not constitute this or any agreement between the Company and the Customer a contract for sale by description.

7. IMPLIED TERMS

All conditions and warranties howsoever expressed or implied are hereby expressly excluded to the full extent permitted by law. Where so permitted the liability of the Company for a breach of a condition or warranty that cannot be excluded is limited at the Company's option to the replacement or rectification of the goods or supply of equivalent goods or the cost of replacing or rectifying the goods or of acquiring equivalent goods.

8. INDIRECT LOSS

So far as the law permits the Company shall not be liable in any way whatsoever for any indirect or consequential loss or loss of profit including in particular, but not limited to, any loss by reason of delay, defective or faulty ingredients or workmanship, negligence or any act, matter or thing done, permitted or omitted to be done by the Company.

9. DELIVERY

Unless otherwise expressly agreed by the Company in writing all goods will be supplied ex plant. Any time or date quoted by the Company for availability of goods ex plant is an estimate only and the Company shall not be liable for any loss or damage howsoever arising as a result or consequence of any failure to supply all or part of the goods on a particular date or at a particular time. If the Company determines that it is or may be unable to supply within a reasonable time or at all, the agreement may be cancelled by it. In the event of cancellation the Customer shall have no claim against the Company for any damage, loss, cost or expense whatsoever. The Customer shall not be relieved of any obligation to accept or pay for the goods by reason of any delay in supply.

10. PROPERTY AND OWNERSHIP OF THE GOODS

Property and ownership of the goods does not pass to the Customer, and remains with the Company until payment to the Company by the Customer of the whole of the purchase price of the goods and all other amounts unpaid to the Company by the Customer. Until property and ownership of the goods passes to the Customer the Customer has no right, title or interest to or in any of the goods and holds the goods as fiduciary, bailee and agent for the Company.

11. RISK

Unless otherwise agreed in writing, all risk in and to the goods purchased shall pass to the Customer upon despatch of the goods to the Customer or its agent or to a carrier commissioned by the Customer. Without in any way limiting the operation of the foregoing, upon delivery of the goods to the Customer or its agent or to a carrier commissioned by the Customer, the Customer covenants and warrants to the Company that, in the storage and handling of the goods, the Customer and his agents and carriers shall comply with all relevant environmental laws and all relevant permits and licenses, and the Customer shall ensure that the Customer and his agents and carriers are familiar with, and adhere to, all the necessary and appropriate precautions and safety measures relating to the storing and handling of the goods (including, but not limited to, the Company's policies and procedures for handling the goods at the Company's or its agents' premises).

12. PERFORMANCE AND REPRESENTATIONS

The Customer acknowledges that neither the Company nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing either in respect of the fitness of the goods for any particular purpose or any other matter.

13. WAIVER

Any waiver by the Company under this agreement must be in writing and signed by the Company. Failure by the Company to insist upon strict performance of any term, warranty or condition of this agreement shall not be deemed a waiver thereof or of any right the Company may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

14. NOTICES

Any notices given by the Customer to the Company shall be sent in writing to the Company by prepaid mail to, delivered at, or transmitted electronically (including by facsimile) to the Company's address above or as otherwise specified by the Company. No such notice served on the Company shall be deemed to have been given until it is actually received at such address and, if received after 4pm on any business day or a non-business day, on the next following business day. Any notice given by the Company to the Customer shall be sent in writing to the Customer by prepaid mail to, delivered at or transmitted electronically (including by facsimile) to the last address provided by the Customer to the Company as its postal, facsimile or other electronic address, and shall be deemed to have been received by the Customer if sent by post, on the second business day after its posting; if sent by facsimile, on the day of transmission if a business day (otherwise on the next following business day) and on receipt of a complete transmission report; or if sent electronically otherwise than by facsimile, upon receipt by the Company of acknowledgement of receipt by the Customer.

15. GOVERNING LAW

This and any other agreement between the Customer and the Company for the sale or supply of goods is made in New South Wales, and is governed by, takes effect and must be construed in accordance with the laws of New South Wales. The Customer and the Company irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales in respect of the hearing and determination of any action or other proceeding concerning the same.