

# APPLICATION FOR COMMERCIAL CREDIT



## HOW TO COMPLETE YOUR APPLICATION

1. Complete the Credit Application and Personal Guarantee and Indemnity forms
2. Sign the attached Terms and Conditions
3. Send the forms back via email (debtors@benedict.com.au) or fax (02 9986 3555) then **mail all original documents** to PO Box 431, Frenchs Forest NSW 1640. Please note accounts will not be opened until all original documents have been received.

PLEASE TICK WHICH ENTITY/ENTITIES YOU WISH TO TRADE WITH	
<input type="checkbox"/> <b>BENEDICT SAND &amp; GRAVEL</b> ABN 99 073 763 292	<input type="checkbox"/> <b>BENEDICT RECYCLING</b> ABN 71 123 156 507
<input type="checkbox"/> <b>BENEDICT INDUSTRIES PTY LTD</b> ABN 46 001 926 503	<input type="checkbox"/> <b>APPIN SANDS</b> ABN 29 001 526 718

CUSTOMER DETAILS	
Trading Name	
Name of company, trust, person(s) or partnership operating business	
Tick which applies to you:	<input type="checkbox"/> Sole Trader <input type="checkbox"/> Partnership <input type="checkbox"/> Trust <input type="checkbox"/> Private Company <input type="checkbox"/> Public Company <input type="checkbox"/> Sole Director <input type="checkbox"/> Government
ACN	ABN
Business Street Address	
Business Postal Address	
Contact Name	Tel (b/h)
Email	

DETAILS OF PRINCIPAL/DIRECTORS/PARTNERS/SOLE TRADER			
1.	Name		DOB
	Residential Address		Drivers Licence
	Do you own your own home?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Mobile
2.	Name		DOB
	Residential Address		Drivers Licence
	Do you own your own home?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Mobile
3.	Name		DOB
	Residential Address		Drivers Licence
	Do you own your own home?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Mobile
4.	Name		DOB
	Residential Address		Drivers Licence
	Do you own your own home?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Mobile

BUSINESS	
Premises	<input type="checkbox"/> Owned <input type="checkbox"/> Rent <input type="checkbox"/> Leased
Industry Type	Date Business Commenced
Sales/Purchasing Contact Name	Phone
Email	
Accounts Contact Name	Phone
Email	
Purchase Order Required?	Monthly Payment via EFTPOS?
Email Invoices/Statements?	Please provide an Email for Invoices / Statements to be sent to below:

Benedict\_CreditAppForm2022\_v5

## BUSINESS CONTINUED

Contact Name for Price Increase Notices

Phone

Email

### SIGN UP TO RECEIVE EXCLUSIVE DISCOUNTS RELEVANT TO YOU

Email:

How did you hear about us?

Website  Web Search  Industry Magazine  Social Media  Google places  Signage  Word of mouth  Yellow/White pages

Tradeshow

Sales Rep

Other

Benedict will be using MailChimp to send out important price increase information. To ensure you receive these notices please take note of the following actions:

1. Please ensure the correct email address to which price increase information should be sent, is supplied, and regularly updated.
2. Add [pricinginbox@benedict.com.au](mailto:pricinginbox@benedict.com.au) and [salesinbox@benedict.com.au](mailto:salesinbox@benedict.com.au) to your safe list.
3. Share these email addresses with your IT department so that they can manage them accordingly for your company's spam filtration

As the responsibility of keeping this contact information updated lies with our customers, Benedict would like to advise that no credits will be considered if we have proof that our price increase notices have been sent to our customers email addresses that we have on file. Please note that it is our policy to only communicate price increase information with the address supplied for this purpose.

## CREDIT TERMS AND CONDITIONS

**"Customer"** means the above sole trader, partnership or company, whichever is applicable.

**"Supplier"** means Benedict Recycling Pty Ltd ACN 123 156 507, Benedict Industries Pty Limited ACN 001 926 503 trading as Benedict Sand & Gravel and Benedict Sands, Benedict Pty Limited ACN 073 763 292 trading as Benedict Sand & Gravel, Joe Taylor Sand Pty Limited ACN 001 526 718 trading as Appin Sands jointly and severally.

1. The Customer makes an application for credit account with Supplier and agrees to pay all amounts due to Supplier from time to time promptly and in accordance with its standard trading terms and conditions ("Terms").
2. The Customer warrants to Supplier the accuracy of the information provided in this form. The Customer acknowledges that Supplier will rely on the truth and accuracy of the information provided by the Customer herein in considering the Customer's credit application. In addition to any other remedies that may be available to Supplier, the Customer's credit sale account may be suspended or terminated and all amounts outstanding will become immediately repayable in the event the particulars provided by the Customer in this application are inaccurate or misleading in any significant respect.
3. The Customer agrees to allow Supplier to obtain information on the Customer's credit standing from whatever source Supplier deems appropriate, including any credit reference agency.
4. The Customer agrees that Supplier's Terms, as attached to this form, will govern all transactions between Supplier and the Customer and the terms and conditions referred to on any order forms that may be used by the Customer will not apply, unless agreed to in writing to the contrary by Supplier. The Customer agrees:
  - (a) it has been provided with a copy of Supplier's Terms;
  - (b) it has had the opportunity to read the Terms; and
  - (c) to be bound by the Terms set out in the document attached to this credit application form and as amended from time to time by Supplier.

5. The Customer authorises Supplier to provide its opinion with respect to the Customer's credit standing with Supplier to further credit providers of the Customer, if requested by Customer or such further credit provider.
6. Where the Customer is a company, and a Director's Deed of Guarantee is attached to this credit application, the Customer acknowledges that Supplier requires the Customer's director/s to sign such guarantee as a condition of the granting of credit to the Customer.
7. The Customer must advise the Supplier in writing of any changes in its business structure and such change must be accepted in writing by the Supplier.
8. The Customer agrees to settle purchases within 30 days of the close of the month of purchase. The Customer is liable for interest at the rate of 12% per annum calculated monthly on any amount not paid by the due date and further agrees to pay the Supplier any collection expenses incurred by the Supplier in attempting to recover or in recovery of such monies (including costs incurred by Supplier on a solicitor and client basis) and such interest and expenses may be recovered as a liquidated sum.
9. For the purpose of securing the obligations and liabilities entered into under this credit application, the Customer agrees to charge with the due and punctual payment and the complete performance of all those liabilities and obligations, all their legal or equitable interest (both present and future) of whatsoever nature held in any and all real property and the Customer hereby consents to the Supplier lodging a caveat or caveats noting its proprietary interest hereunder. The Customer agrees to execute any documents and do all such things that may be required by the Supplier to affix such security upon demand by the Supplier and shall indemnify the Supplier against any costs and expenses that it incurs as a result of carrying out any steps herein.
10. The Customer authorises the Supplier to use any personal information provided by the Customer to send the Customer product information and marketing communications. The Supplier will take all reasonable steps to maintain security of personal information.
11. I certify that I am authorised to sign this form for and on behalf of the Customer and that the information given above is correct.

TO COMPLY WITH THE PRIVACY ACT 1990. I/We the undersigned, acknowledge that the Company had informed me/us, in accordance with s.18E(8)(c) of the Privacy Act 1988, that certain items of personal information about me/us contained in/or relating to this application and permitted to be kept on a credit information file might be disclosed to a credit reporting agency. Furthermore, I/We agree, in accordance with the following section: s.18K(1)(b), s.18K(1)(c), s.18K(1)(h), s.18N(1)(b) that use by the Company of the relevant information referred to in those sections may occur for the purpose of assessing this application.

## TO BE SIGNED BY THE PRINCIPAL/DIRECTORS/PARTNERS/SOLE TRADER

PRINCIPAL/DIRECTOR/PARTNER/SOLE TRADER 1

Full Name	
Position	
Driver's License	State
Signature	Date

PRINCIPAL/DIRECTOR/PARTNER/SOLE TRADER 2

Full Name	
Position	
Driver's License	State
Signature	Date

**CONFIDENTIAL PERSONAL GUARANTEE AND INDEMNITY**

TO:

**BENEDICT SAND & GRAVEL** ABN 99 073 763 292  
**BENEDICT INDUSTRIES PTY LTD** ABN 46 001 926 503  
**BENEDICT RECYCLING** ABN 71 123 156 507  
**APPIN SANDS** ABN 29 001 526 718

(hereinafter referred to jointly and severally as "Supplier")

We, the directors' of  ACN   
 ("the Customer"), in consideration of Supplier agreeing to provide credit to the Customer, jointly and severally agree, as witnessed by our execution of this Guarantee:

1. I/We will indemnify the Supplier against any losses, costs, charges and expenses of any nature which it might incur as a result of any default of the Customer.
2. I/We will also be responsible to the Supplier for, and guarantee in favour of the Supplier, payment of all outstanding monies due now or at any time in the future for Goods which have been supplied or may have been supplied by it from time to time to the Customer.
3. Both my/our indemnity and my/our guarantee are continuing security and will not be affected;
  - a) If the Supplier:-
    - i) grants any extension of time or other indulgence to the Customer.
    - ii) refuses further credit to the Customer; or
    - iii) varies the terms of the Customer's account or the arrangements between the Supplier and the Customer are changed in any other way (even if this increases my/our liability under this guarantee and indemnity);
  - b) By the release of any of the Guarantors or if this guarantee is unenforceable against any one or more of the Guarantors; or
  - c) If any payment by the Customer is later avoided by law.
4. I/We agree that each application for credit made by the Customer you as Supplier shall be deemed to have been accepted from the date of your first invoice to the Customer and without further notice to me/us. This Agreement shall immediately have effect as an Agreement between me/us and each of you which becomes a Supplier.
5. This guarantee and indemnity extends to credit given to the Customer in the future by an entity which is not now, but at the time that such credit is extended has become a related body corporate of Supplier, and may in such case be enforced by Supplier.
6. This guarantee may only be withdrawn by giving you fourteen (14) days' notice in writing by certified mail, but will continue in force in respect of all debt incurred by the Customer up to the date of the withdrawal.
7. I/We agree that before providing credit to the Customer you may seek from a credit agency report containing personal information about me/us to assist in deciding whether to accept me as a guarantor for the Customer.
8. In this guarantee and indemnity:
  - a) "Goods" includes services.
  - b) Singular words include the plural and vice versa and where there is more than one guarantor they shall be bound jointly and severally.
9. For the purpose of securing the obligations and liabilities entered into by them under this guarantee, the Guarantors agree to charge with the due and punctual payment and the complete performance of all those liabilities and obligations, all their legal or equitable interest (both present and future) of whatsoever nature held in any and all real property and the Guarantors hereby consent to the Supplier lodging a caveat or caveats noting its proprietary interest hereunder. The Guarantors agree to execute any documents and do all such things that may be required by the Supplier to affix such security upon demand by the Supplier and shall indemnify the Supplier against any costs and expenses that it incurs as a result of carrying out any steps herein.

**SIGNED AND DELIVERED BY DIRECTOR I**

**CERTIFICATE**

Name of Guarantor	<input type="text"/>
Address of Guarantor	<input type="text"/>
Guarantor Signature	<input type="text"/>
In the presence of:	
Witness Signature	<input type="text"/>
Date	<input type="text"/>
Residential Address of Witness	<input type="text"/>
	<input type="text"/>

I, ..... certify that I have read the Personal Guarantee and Indemnity contained herein and understand its terms and that it is an important document. In particular, I understand that if (customer name) ..... fails to make any required payments to the Supplier, the Supplier may recover the amount of these payments from me personally. In this case the Supplier may, amongst other recovery rights, take a charge over any real property that I have a legal or equitable interest in. Further, I certify that prior to the execution of the Personal Guarantee and Indemnity I have had the opportunity of taking independent legal advice in respect to its meaning and effect.

Guarantor Signature	<input type="text"/>
Date	<input type="text"/>

**WARNING:** THIS IS AN IMPORTANT DOCUMENT. IF YOU DO NOT UNDERSTAND THIS DOCUMENT YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE

**SIGNED AND DELIVERED BY DIRECTOR 2****CERTIFICATE**

Name of Guarantor	
Address of Guarantor	
Guarantor Signature	
<b>In the presence of:</b>	
Witness Signature	
Date	
Residential Address of Witness	

I,..... certify that I have read the Personal Guarantee and Indemnity contained herein and understand its terms and that it is an important document. In particular, I understand that if (customer name)..... fails to make any required payments to the Supplier, the Supplier may recover the amount of these payments from me personally. In this case the Supplier may, amongst other recovery rights, take a charge over any real property that I have a legal or equitable interest in. Further, I certify that prior to the execution of the Personal Guarantee and Indemnity I have had the opportunity of taking independent legal advice in respect to its meaning and effect.

Guarantor Signature	
Date	

**SIGNED AND DELIVERED BY DIRECTOR 3****CERTIFICATE**

Name of Guarantor	
Address of Guarantor	
Guarantor Signature	
<b>In the presence of:</b>	
Witness Signature	
Date	
Residential Address of Witness	

I,..... certify that I have read the Personal Guarantee and Indemnity contained herein and understand its terms and that it is an important document. In particular, I understand that if (customer name)..... fails to make any required payments to the Supplier, the Supplier may recover the amount of these payments from me personally. In this case the Supplier may, amongst other recovery rights, take a charge over any real property that I have a legal or equitable interest in. Further, I certify that prior to the execution of the Personal Guarantee and Indemnity I have had the opportunity of taking independent legal advice in respect to its meaning and effect.

Guarantor Signature	
Date	

**SIGNED AND DELIVERED BY DIRECTOR 4****CERTIFICATE**

Name of Guarantor	
Address of Guarantor	
Guarantor Signature	
<b>In the presence of:</b>	
Witness Signature	
Date	
Residential Address of Witness	

I,..... certify that I have read the Personal Guarantee and Indemnity contained herein and understand its terms and that it is an important document. In particular, I understand that if (customer name)..... fails to make any required payments to the Supplier, the Supplier may recover the amount of these payments from me personally. In this case the Supplier may, amongst other recovery rights, take a charge over any real property that I have a legal or equitable interest in. Further, I certify that prior to the execution of the Personal Guarantee and Indemnity I have had the opportunity of taking independent legal advice in respect to its meaning and effect.

Guarantor Signature	
Date	

**WARNING:** THIS IS AN IMPORTANT DOCUMENT. IF YOU DO NOT UNDERSTAND THIS DOCUMENT YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE

**BENEDICT RECYCLING PTY LTD ACN 123 156 507, BENEDICT INDUSTRIES PTY LIMITED ACN 001 926 503 trading as BENEDICT SAND & GRAVEL AND BENEDICT SANDS, BENEDICT PTY LTD ACN 073 763 292 trading as BENEDICT SAND AND GRAVEL, JOE TAYLOR SAND PTY LTD ACN 001 526 718 trading as APPIN SANDS, MITTAGONG SANDS PTY LTD ACN 003 182 401 trading as COWRA QUARTZ and GLASS GRANULATES PTY LTD ACN 111 096 498 (herein after referred to jointly and severally as "Supplier")**

## GENERAL TERMS AND CONDITIONS

### DEFINITIONS

"Additional Charges" includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to Supplier arising out of the sale of the Goods and Services.

"Customer" means the person to or for whom the Goods and Services are to be supplied by the Supplier.

"Goods and Services" means the goods and/or the services provided to the Customer by the Supplier.

"Purchase Price" means the list price for the Goods and Services as charged by Supplier at the date of delivery or such other price as may be agreed by Supplier and the Customer prior to delivery of the Goods and Services.

"Terms and Conditions" means these general terms and conditions, as amended by Supplier from time to time.

### 1. CONTRACT

- 1.1 An order given to Supplier is binding on the Supplier and Customer, if
  - (a) a written acceptance is signed for or on behalf of the Supplier; or
  - (b) the Goods and Services are supplied by Supplier in accordance with the order.
- 1.2 An acceptance of the order by the Supplier is then to be an acceptance of these Terms and Conditions by the Supplier and the Customer and these Terms and Conditions will override any conditions contained in the Customer's order. The Supplier reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods and Services to the Customer. No order is binding on the Supplier until accepted by it.
- 1.3 Quotations and Purchase Price are exclusive of GST unless otherwise stated.

### 2. CANCELLATION

- 2.1 An order which has been accepted in whole or in part by the Supplier cannot be cancelled by the Customer without obtaining the prior written approval of the Supplier, which it may refuse in its absolute discretion.
- 2.2 Without prejudice to any other rights which the Supplier may have at law or under this contract, the Supplier may suspend delivery, cease manufacture or cancel any contract between the Customer and the Supplier if the Customer at any time:
  - (a) breaches the Terms and Conditions or any other contract with the Supplier.
  - (b) commits an act of bankruptcy, resolves to or goes into liquidation, has a receiver or manager appointed, enters into voluntary administration or enters into a scheme of arrangement or other composition with its creditors or otherwise becomes insolvent and unable to pay its debts; or
  - (c) refuses or neglects to take delivery of the Goods and Services.

### 3. PRICE VARIATION

- 3.1 Unless otherwise stated in this contract, the Supplier may vary the price stated in the contract to reflect any change in costs, taxes or duties incurred by the Supplier after the date of this contract.
- 3.2 Where a list price applies to products all prices listed:
  - (a) are subject to alteration without notice;
  - (b) are applicable to all deliveries on or after the effective day of any alteration;
  - (c) do not include tax or other government impost unless specifically stated.

### 4. VARIATIONS TO SCOPE OF CONTRACT

The price is based upon:

- (a) the scope of the work as detailed in the information provided by the Customer to the Supplier for the purpose of this contract including, where applicable, plans, specifications (including standards and finish), schedules, and nominated quantities; and
- (b) delivery arrangements in accordance with Clause 7 and any variations to the scope of the work or delivery arrangements shall be a variation of the contract entitling the Supplier to vary the price stated.

### 5. SPECIFICATIONS

- 5.1 Where the Customer requests that the Supplier provides the Goods and Services in accordance with the Customer's specifications and the Supplier agrees, the Purchase Price and Additional Charges are based on
  - (a) the scope of the work as detailed in the information provided by the Customer to the Supplier for the purpose of this contract including, where applicable, plans, specifications (including standards and finish), schedules, and nominated quantities; and
  - (b) delivery arrangements in accordance with these Terms and Conditions.
- 5.2 Where the Supplier manufactures or supplies Goods and Services according to the Customer's specifications;
  - (a) the Supplier, to the extent permissible by law, does not warrant the suitability or performance of the Goods and Services; and
  - (b) the Customer must provide the Supplier with accurate information sufficient to enable the Supplier to provide the Goods and Services in accordance with the specifications and the Customer warrants to the Supplier that the information and any such Goods and Services do not breach any copyright, registered design, patent or other right of any third party and the Customer will indemnify the Supplier in relation to any such breach.
- 5.3 Where the Supplier agrees to manufacture or supply Goods and Services according to the Customer's specifications, the Customer is not entitled to withdraw such order and will be liable for payment of the agreed Purchase Price and Additional Charges for such order and take delivery under the agreed delivery arrangement.

### 6. PAYMENT

- 6.1 Time of payment for the amount due to the Supplier is of the essence in this contract.
- 6.2 Where no credit arrangements have been previously agreed by the Supplier, but credit has been agreed by the Supplier as a condition of this particular contract, the Customer shall pay the amount due within the month following the month of invoice.

- 6.3 Where no credit arrangements have been agreed by the Supplier, the Customer shall pay the amount due before the first delivery of the Goods and Services.
- 6.4 Interest is payable at the rate of 12% per annum calculated monthly on any amount not paid by the Customer by the due date.
- 6.5 Where Purchase Price is stated on a volumetric basis, payment will be based on measurement of the volume of Goods and Services as loaded by the Supplier for delivery.
- 6.6 If the Customer is in default, the Customer agrees to pay Supplier all costs and disbursements including legal costs on a solicitor and own client basis incurred by Supplier in collecting or attempting to recover money outstanding.
- 6.7 A surcharge will be added to the total amount payable when you make a payment with a Visa, MasterCard and American Express. This is in accordance with Competition and Consumer Amendment (Payment Surcharges) Act 2016.

### 7. ORDERS AND DELIVERY

- 7.1 All orders for products are subject to acceptance from the Supplier.
- 7.2 The times quoted for delivery are estimates only and Supplier accepts no liability for failure or delay in delivery of Goods and Services. The Customer is not relieved of any obligation to accept or pay for Goods and Services by reason of any delay in delivery. Goods and Services may be delivered by instalments at the discretion of Supplier and failure to deliver any instalments shall not entitle the Customer to terminate the contract.
- 7.3 The Supplier shall not be liable for delay in delivery arising from any cause whatsoever.
- 7.4 Where the Customer refuses or denies delivery, the Customer's obligation to pay for products, as set out in Clause 6, remains unchanged. The Customer shall also pay any additional storage, freight, holding or handling charges incurred by the Supplier.
- 7.5 Delivery occurs:
  - (a) at the premises of Supplier if the Goods and Services are to be collected by the Customer or the Customer has made its own arrangements for a carrier or agent organised by the Customer to collect the Goods and Services; or
  - (b) at the address nominated at the time of the order if Supplier agreed to deliver the Goods and Services at the time of the order and at the Customer's costs.
- 7.6 Deliveries are subject to suitable access, firm standing, storage, unloading and manoeuvring space, as determined by the Supplier and the Supplier is not liable for, and the Customer will indemnify the Supplier against any claims for damage to access ways, storage areas, plant, equipment or works during delivery.
- 7.7 The Customer may incur Additional Charges due to:
  - (a) delivery or unloading of Goods and Services outside the hours of 7:30am to 4:00pm weekdays (excluding public holidays);
  - (b) delays at or unsuitability of the Customer's nominated site; or
  - (c) the quantity of Goods and Services ordered being less than full truckloads.
- 7.8 The Customer warrants that its receipt facilities and equipment are suitable for deliveries and meet all relevant standards, laws and regulations. The Customer will indemnify the Supplier against any breach of such standards, laws or regulations during delivery, and against any damage or loss caused by leakage, spillage, breakage or contamination during or caused by delivery.

### 8. RETENTION OF TITLE

- 8.1 Ownership in title and property to the Goods remains with Supplier until payment in full for the Goods and all sums due and owing by the Customer to Supplier on any account has been made. Until payment is made:
  - (a) the Customer has the right to sell the Goods in the ordinary course of business;
  - (b) until the Goods have been sold by the Customer in the ordinary course of the Customer's business, the Customer holds the Goods as bailee for Supplier;
  - (c) the Goods are always at the risk of the Customer.
- 8.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:
  - (a) if any payment to Supplier is not made promptly before the due date for payment;
  - (b) if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Supplier is dishonoured;
- 8.3 In the event of a default by the Customer, then without prejudice to any other rights that Supplier may have at law or under this contract:
  - (a) Supplier or its agents may without notice to the Customer enter the Customer's premises or other premises where the Customer has located the Goods and the Customer agrees to indemnify and keep indemnified Supplier from any claim whatsoever by any third party person or company in possession arising out of any action required by Supplier to recover such Goods;
  - (b) Supplier may recover and resell the Goods;
  - (c) if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Supplier may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Supplier and the Customer may be ascertained. Supplier must promptly return to the Customer any goods the property of the Customer and Supplier is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
  - (d) In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Supplier. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Supplier at the time of the receipt of such proceeds. The Customer will pay Supplier such funds held in trust upon the demand of Supplier.

### 9. PERSONAL PROPERTY SECURITIES ACT ("PPSA")

- 9.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 9.2 Supplier and Customer acknowledge that these Terms and Conditions constitute a Security Agreement and gives rise to a Purchase Money Security Interest ("PMSI") in favour of Supplier over the Goods supplied or to be supplied to the Customer as Grantor pursuant to the Terms and Conditions.
- 9.3 The Goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms and Conditions.
- 9.4 Supplier and the Customer acknowledge that Supplier, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer as Grantor under the Terms and Conditions on the PPS Register as Collateral.
- 9.5 To the extent permissible at law, the Customer:

- (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to Supplier.
- (b) agrees to indemnify Supplier on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
  - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of Supplier; and
  - (ii) enforcement or attempted enforcement of any Security Interest granted to Supplier by the Customer.
- (c) agrees that nothing in sections 130 to 143 of the PPSA will apply to the Terms and Conditions or the Security under the Terms and Conditions;
- (d) agrees to waive its right to do any of the following under the PPSA:
  - (i) receive notice of removal of an Accession under section 95;
  - (ii) receive notice of an intention to seize Collateral under section 123;
  - (iii) object to the purchase of the Collateral by the Secured Party under section 129;
  - (iv) receive notice of disposal of Collateral under section 130;
  - (v) receive a Statement of Account if there is no disposal under section 132(4);
  - (vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
  - (vii) receive notice of retention of Collateral under section 135;
  - (viii) redeem the Collateral under section 142; and
  - (ix) reinstate the Security Agreement under section 143.

**10. DEFECTS**

- 10.1 The Customer must ensure it has an authorised representative at the nominated delivery site to check that the information shown on the delivery docket corresponds with the Customer's order. Unless otherwise noted on the delivery docket, the signature of the Customer's representative on the delivery docket shall represent acknowledgement by the Customer that the Goods comply with its order and have been supplied in accordance with this contract.
- 10.2 Notice of any defects shall be given to the Supplier in writing on the delivery docket/receipt/ manifest signed by the Customer and immediately returned with the cartage contractor. Where the point of delivery or collection is unattended, the Customer shall give notice in writing to the Supplier, within 24 hours from the time of delivery or collection and prior to installation of the Goods.
- 10.3 If notice in accordance with this clause is not given, the Goods will be deemed to be in good order and condition and in accordance with the contract and the Customer shall accept the Goods accordingly.
- 10.4 The Customer agrees that the Supplier will have the right to inspect on site any Goods notified by the Customer as being defective and until such inspection is completed the Goods must not be installed.

**11. TESTING AND REPORTING**

- 11.1 Where the Customer requires the Goods and Services to be subject to special testing or inspection the Customer must pay for all costs associated with such testing or inspection.
- 11.2 Any inspector or other person attending the Supplier's premises on behalf of the Customer must be authorised in writing by the Customer.
- 11.3 The Customer must provide the Supplier with copies of all authorisations, test results, measurements and reports prepared by or for the Customer in relation to the Goods and Services.

**12. LIMITATION OF LIABILITY**

- 12.1 The liability of the Supplier in respect of a breach of a consumer guarantee or any warranty made under these Terms and Conditions for any Goods and Services not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permitted by law and at the option of Supplier to:
  - In relation to Goods, to:
    - (a) replacing the Goods or the supply of equivalent Goods;
    - (b) the repair of the Goods;
    - (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
    - (d) the payment of the cost of having the Goods repaired.;
  - In relation to Services, to:
    - (a) the supply of the Services again; and
    - (b) the payment of the cost of having the Services supplied again.
- 12.2 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and Supplier is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:
  - (a) any increased costs or expenses;
  - (b) any loss of profit, revenue, business, contracts or anticipated savings;
  - (c) any loss or expense resulting from a claim by a third party; or
  - (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by Supplier's failure to complete or delay in completing the order to deliver the Goods and Services.
- 12.3 Any claims to be made against Supplier for short delivery of Goods and Services must be lodged with Supplier in writing within 7 days of the delivery date.
- 12.4 Except as required by law, return of Goods and Services will not be accepted by Supplier except by prior agreement in writing with Supplier. Any Goods returned may, at the discretion of Supplier, be subject to a restocking fee of 10% of the Purchase Price of those Goods.

**13. RISK**

Risk in the Goods passes to the Customer upon delivery and, in the event of the nominated site being unattended, the delivery docket/manifest signed by the cartage contractor will be prima facie evidence of delivery of the Goods. Except as required by law, the Customer is responsible for ensuring the Goods are suitable for its own purpose and the Supplier is not liable for any loss or damage resulting from the use of the Goods.

- 13.1 Pursuant to Benedict Pty Ltd's existing Terms & Conditions and in accordance with the NSW Government mandate in relation to COVID-19 we will no longer require signed acceptance as acknowledgment of receipt of goods via delivery or collection, and instead treat receipt of goods as formal acceptance of delivery or collection in accordance with our terms and conditions.

**14. AMENDMENTS AND WAIVER**

The Supplier will not be taken to have agreed to any amendment or waiver of any provision of these Terms and Conditions or of the contract unless the amendment or waiver is in writing signed by the Supplier. Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement. No terms and conditions referred by the Customer after the date of this contract shall form part of this contract unless expressly agreed in writing by the Supplier.

**15. GOVERNING LAW**

The contract is governed by the laws of the State in which the Goods and Services are supplied.

**16. FORCE MAJEURE**

The Supplier is not liable for any delay, loss, damage or injury arising by reason of any event beyond its control and without limiting the generality of the foregoing such events include industrial disputes, the unavailability of equipment or materials, fire, flood, machinery breakdown, civil disturbance, acts of God or government action.

**17. SUBJECT TO STATUTE**

The contract is subject to the provisions of any statute applicable to it and which may not be varied by the terms of the contract. If any provision of the contract is void or unenforceable that provision shall be severed and the remaining provisions will continue with full force and effect.

**18. NOTICES**

All notices given under or in connection with this contract must be in writing and given or delivered to the recipient at its address specified in this contract or at its registered office or principal place of business.

**19. CONFIDENTIAL INFORMATION**

If at any time the Supplier discloses to the Customer or the Customer becomes aware of confidential information of the Supplier including confidential information relating to Goods and Services, material, procedures, tests or equipment, the Customer must not use the information for any purpose not approved by the Supplier and not disclose that confidential information to any other person unless expressly agreed in writing by the Supplier.

**20. ASSIGNMENT**

This contract is assignable by the Customer in whole or in part only with the Supplier's consent.

**21. RETURNABLE PACKAGING**

Unless otherwise stated, all pallets, stillages, timbers, dunnage, formers or similar packaging delivered with the Goods remain the property of the Supplier and must be returned in good order and condition to the Supplier within 30 days of the date of delivery. Any such packaging not returned by the due date must be paid for by the Customer at a reasonable price determined by the Supplier.

**22. SAMPLES AND BLENDING**

Any sample, product or sample colour is provided to indicate only the general nature of the Goods. To the extent permissible by law, the Supplier provides no warranty or guarantee that the Goods supplied will correspond in colour, texture or blend with any sample or any previous or future Goods supplied. The Supplier is not liable for any failure of the Customer or others to blend the Goods.

**23. NON-CONFORMING PRODUCT**

Where a product is supplied on the basis of a description or marking such as "nonconforming", "second", "reject" or similar, no warranty or undertaking (express or implied) whatsoever is given by the Supplier. Notwithstanding the preceding terms and conditions, the Supplier shall not be liable in any way for the performance or use of, or any defect in, such a product.

**24. FITTINGS**

Unless otherwise stated in this contract, cast in or similar fittings for handling the Goods are to be removed or finished by the Customer.

**25. PRESSURE APPLICATIONS**

Unless otherwise stated in this contract, the Goods are not warranted by the Supplier to be suitable for applications or use involving internal pressure.

**26. INSPECTION**

- 26.1 Supplier reserves the right to inspect any of the Customer's materials that is subject to the provision of Goods and Services. The Customer must provide the Supplier with reasonable access to such materials upon the Supplier's request for inspection and the Customer agrees to cooperate with the Supplier's reasonable directions during such inspection.
- 26.2 Upon inspection, if the Supplier determines that there are materials which fall outside of its operating licence or are contrary to its policies, the Supplier may refuse to provide Goods and Services to the Customer in relation to such materials.
- 26.3 Where the Customer's materials have been transported to the Supplier's premises and the Supplier, upon inspection, determines that there are materials which fall outside of its operating licence or are contrary to its policies, the Supplier may at its option and in its sole discretion, either return the rejected materials to the Customer or send the rejected materials to a licensed facility that is capable of dealing with the rejected materials. The Customer is liable for all costs and expenses incurred by the Supplier in dealing with the rejected materials including but not limited to loading, unloading, transport, testing and disposal costs.
- 26.4 The Customer indemnifies and agrees to indemnify the Supplier against all loss or damage resulting from the Supplier dealing with the rejected materials.

I am duly authorised to sign on behalf of

\_\_\_\_\_

(the Customer) and agree to the above terms and conditions.

ABN: \_\_\_\_\_ ACN: \_\_\_\_\_

Signed: \_\_\_\_\_

Name and Position: \_\_\_\_\_

Date: \_\_\_\_\_