

BATHGATE SILICA SAND LTD.

Arclid Quarry, Congleton Road, Sandbach, Cheshire, CW11 4SN. Fax No. 01270 759449

Application to Open a Credit Account

PLEASE ATTACH YOUR COMPANY LETTER HEADING TO THIS APPLICATION

Date:

Company Name:

Trading Name if different:

Address:

.....

..... **Post Code:**

Contact Name: **Position:**.....

Contact Email Address:

Company Registration No: **V.A.T. No.**

Type of Ownership (Limited Company, Partnership, Sole Trade etc.).....

If not a limited company, please give names and addresses of partners

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Telephone No:

Facsimile No:

Name of Bank:

Address of Bank:

Sort Code:

Account Number:

Total amount of credit required

I/We confirm that the information given in this Credit Account Application Form is in all respects true and accurate. I/We confirm that I/we have read and understood your terms and conditions of sale and unconditionally accept that those terms and conditions shall be the only ones that apply to all sale contracts which I/we may conclude with you.

Where I/we provide you with personal data, I/we understand that the data will be held securely in confidence and processed for the purpose of carrying out your business and associated activities. In considering my/our application, I/we accept that you may consult with and disclose the data to credit reference agencies, banks, credit insurers and other responsible organisations outside your business that you have nominated and that such third parties may process the data. I/we understand that under the Data Protection Act 1998 I/we have a right to know what data you hold on me/us if I/we apply to you in writing and pay the applicable fee.

Authorised signature of Applicant:.....**Printed Name**.....

BATHGATE SILICA SAND LIMITED
BUSINESS - STANDARD CONDITIONS OF TRADING

1. Definitions

"Company"	Bathgate Silica Sand Limited
"Contract"	any contract entered into between the Company and the Buyer for the supply of Goods by the Company to the Buyer in accordance with these conditions
"Buyer"	any person, firm or company that buys Goods from the Company
"Goods"	any goods forming the subject matter of any Contract
"Price"	the price of the Goods supplied by the Company as indicated on the Company's invoice (excluding VAT)

2. Contracts

- 2.1. These conditions shall govern all Contracts to the exclusion of any terms or conditions referred to by the Buyer. The Buyer's order shall be deemed to incorporate these conditions but no Contract shall come into existence until the order is acknowledged in writing by the Company. Acceptance of the delivery of the Goods by or on behalf of the Buyer shall in any event be conclusive evidence of the Buyer's acceptance of these conditions.
- 2.2. Each Contract supersedes all previous oral or written communications between the Company and the Buyer and no amendment of any Contract shall bind the Company unless confirmed by it in writing.

3. Prices and Payment

- 3.1. Unless otherwise stated by the Company in writing prices are ex the Company's works (but inclusive of carriage to destinations in the United Kingdom mainland) and may be adjusted at any time by written notice given by the Company to the Buyer for any increases howsoever arising in the cost to the Company of supplying the Goods (including, without limitation increases in the cost of materials, labour, insurance, packing, transportation, fuel, rates of duty and exchange rate fluctuations and/or increases to taxation, other fiscal levy or imposition) since the date of the Company's quotation or, if earlier, the date of the Company's last price review.
- 3.2. All amounts due to the Company shall be paid in pounds sterling plus VAT by the end of the month following the date of the Company's invoice without any set-off or other deductions whatsoever. Interest shall be payable on any overdue amount at the current rate as set by the Late Payment of Commercial Debts (Interest) Act 1998 (as amended, extended, consolidated or replaced from time to time and includes any order, regulation, instrument or other subordinate legislation made under it).

4. Delivery

- 4.1. Goods shall be delivered and risk in them shall pass to the Buyer when they are made available at the Company's premises or other delivery point agreed in writing by the Company.
- 4.2. Unless otherwise stated by the Company in writing bulk deliveries are by pressurised tanker in full loads and accordingly their Price (including delivery charges) is payable in full irrespective of the quantities taken by the Buyer.
- 4.3. In the case of bagged Goods the Buyer shall be responsible for offloading them promptly and in any event within one (1) hour of arrival at the Buyer's premises. In the event that the Company is unable to offload the Goods within one (1) hour it reserves the right to charge waiting time calculated at a rate of £10 per each fifteen (15) minutes in excess of one (1) hour.

- 4.4. The Buyer shall be responsible for and indemnify the Company against any damage, loss, liability or expenses of whatsoever kind and howsoever arising from any failure by the Buyer to provide adequate and unobstructed access for the Company's vehicles together with all instructions, facilities and assistance required for the delivery of the Goods. In case of any such failure the Company shall also be entitled, at its discretion, in addition to any other rights, to decline to effect, or to suspend or to discontinue the delivery of any Goods and in any such event to charge the Buyer all or any of the full Price (including delivery charges) of bulk Goods tendered for delivery and its charges from time to time in force for delay in the delivery of any bulk or bagged Goods.
- 4.5. The Company may deliver the Goods by instalments and each instalment shall be deemed the subject of a separate Contract. No failure by the Company in any one or more instalments shall entitle the Buyer to repudiate any Contract for Goods previously delivered or to refuse to accept any undelivered Goods.
- 4.6. All delivery times are approximate and unless the Company has agreed in writing to deliver orders on a time critical basis it shall not accept any liability arising out of it failing to deliver at the estimated time.

5. Title

- 5.1. Notwithstanding delivery and the passing of risk, title in the Goods shall remain with the Company and not pass to the Buyer until the Company has received in cash or cleared funds payment in full for such Goods and of all other debts owing on any grounds whatsoever to the Company from the Buyer who shall, nevertheless, subject to the conditions stated below, be entitled to resell the Goods as principal only in the ordinary course of business.
- 5.2. Until title passes:
 - 5.2.1. the Buyer shall hold the Goods as bailee for the Company and ensure that they are at all times clearly identified as the property of the Company which shall, without prejudice to any other remedy, be entitled to maintain an action for the Price of the Goods although title in them has not passed to the Buyer;
 - 5.2.2. the Buyer shall maintain the Goods in a dry and otherwise satisfactory condition and shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods.
 - 5.2.3. the Company shall be entitled at any time on demand to repossess and sell all or any of the Goods and thereby terminate (without any liability to the Buyer) the Buyer's right to sell them and for that purpose or for the purpose of determining what, if any, Goods are held by the Buyer and inspecting them to enter any premises where the Goods are stored;
 - 5.2.4. where any Goods not paid for in full by the Buyer are mixed with other goods of the same or a similar specification the Company shall be entitled to exercise its rights under condition 5.2.3 above in respect of the mixed goods in the proportion which the quantity of the Goods not paid for bears to the total quantity of the mixed goods.
- 5.3. Until the Company has been paid in full for the Goods any proceeds of sale or insurance from them (or the amount due to the Company, if less) shall, together with the Buyer's rights against its purchasers, be held on trust for the Company and, at the Company's request, such proceeds shall be forthwith paid to a separate bank account.

6. Warranty

- 6.1. The Company will, within a reasonable period, in its discretion, replace at the original point of delivery or allow the Buyer credit for the Price (or proportionate part thereof) of any Goods which the Buyer proves were at the time of delivery damaged, not in conformity with any then currently applicable specification published by the Company or otherwise not in accordance with the Contract or, to the extent that such Goods were supplied to the Company by a third party and in lieu of any liability on the part of the Company therefore, assign to the Company (so far as the Company is able to do so) any warranties given by the supplier of the Goods.

6.2. Claims by the Buyer will be considered only if:

- 6.2.1. the Goods are promptly inspected and any discrepancy reported and confirmed by the Buyer giving written notice of the claim to the Company:
 - 6.2.1.1. in the case of Goods alleged to be damaged or not to conform to their specification or otherwise not to be in accordance with the Contract within three (3) business days following the date of receipt; or
 - 6.2.1.2. in the case of Goods which are to be stored in their original packaging within three (3) business days following the opening of the packaging and in any event within not longer than twenty eight (28) days following delivery;
- 6.2.2. the Buyer has afforded the Company reasonable opportunity and facilities for the inspection of the claim and complied with any request by the Company for the return of any part of the Goods and any packaging for examination, the cost of carriage and insurance to be borne by the Buyer but reimbursed if the claim is accepted;
- 6.2.3. the Buyer satisfies the Company that the Goods were properly handled, carried, stored and maintained after receipt and, in the case of bulk Goods, that the same have not been contaminated with other material or mixed with goods not supplied by the Company or with goods supplied by the Company of a different specification; and
- 6.2.4. The Buyer has paid the full amount of all invoices due prior to the date of the claim.

6.3. The Company shall have no liability for any discrepancies in any original or replacement Goods which:

- 6.3.1. appear after the claims period applicable to the original Goods has expired;
- 6.3.2. Have been stored for a period exceeding the normally expected shelf life of such Goods.

7. Weight loss, shortages etc

- 7.1. Unless otherwise agreed in writing by the Company, all Goods are sold on the basis of the weight recorded at the Company's weighbridge at the time of despatch.
- 7.2. Where delivery is by pressurised tanker such record shall be conclusive as to the quantity of Goods delivered and accordingly no claim will be entertained as to weight loss or shortage.
- 7.3. In other cases the Company will, within a reasonable period, in its discretion, replace at the original point of delivery or allow the Buyer credit for the Price (or proportionate part thereof) of any Goods which the Buyer proves were at the time of delivery not of the contractual quantity provided that claims by the Company for lost or short delivered Goods will be considered only if promptly reported and confirmed by the Buyer giving written notice of the claim to the Company with such particulars as the Company reasonably requires within three (3) business days from the date of receipt or, if a whole consignment is missing, from the date of the Company's invoice, and to any carrier in accordance with the carrier's claims procedure.

8. Extent of liability

- 8.1. These conditions state the total liability of the Company in connection with any Goods supplied by it whether arising in contract, tort (including negligence) or otherwise howsoever, except only to the extent that, by statute, the Company may not exclude liability for:
 - 8.1.1. personal injury resulting from its negligence, or the negligence of its employees; or
 - 8.1.2. Fraud or misrepresentation, or fraud or fraudulent misrepresentation of its employees.

- 8.2. The Buyer is recommended to secure the testing of all goods prior to use to ascertain their suitability for the use for which they are required and in any event the Company shall in no circumstances have any liability for the quality, quantity or condition of any goods, except as stated in these conditions, or their fitness for any particular purpose of the Buyer
- 8.3. The Company shall in no circumstances have any liability for any economic loss (whether direct or indirect and including loss of profit) or for any indirect, special or consequential loss, damage, costs, expenses or other claims for compensation whatsoever of the Buyer arising out of, under or in connection with any goods supplied by the Company, including but not limited to wasted time or expenditure, loss of profits, production, business revenue or goodwill or any claims against the Buyer by any person and the Buyer shall be solely responsible for any such losses or claims.
- 8.4. The Company shall be discharged of all liability to which these conditions apply unless proceedings are begun within six (6) months after the Buyer became aware (or should reasonably have become aware) of the facts giving rise to such liability.
- 8.5. The Company's liability in connection with any goods shall in no circumstances exceed the invoice price payable for them.
- 8.6. Where the Company is liable under these conditions in respect of some only of any Goods forming the subject matter of any Contract the Contract shall remain in full force and effect in respect of the remaining Goods and the Buyer shall not reject or refuse to pay for them.

9. Specifications and Publicity Material etc

- 9.1. Save as otherwise agreed in writing between the Company and the Buyer, the Company reserves the right to vary the particulars of any specification or description of any Goods or discontinue their supply at any time without notice and to supply Goods in accordance with any such specifications or descriptions, as varied, in satisfaction of any Contract.
- 9.2. Any descriptions or particulars contained in the Company's leaflets or other material are intended merely to present a general idea of the Goods described in them and shall not form part of any Contract.
- 9.3. The Company shall have no liability in respect of any advice, opinion or information given on its behalf unless given in writing and signed by a director of the Company or its company secretary and in response to a written request by the Buyer in which case any such advice, opinion or information is given to assist the use of the Company's products on the basis that the Buyer will ensure its suitability for the application intended and (without prejudice to clause 8) in particular the Company does not accept liability for loss or damage which may arise from incorrect use of its products or from poor workmanship. The Company operates a continuous research and development program and reserves the right to update information without notice. Subject as aforesaid, no employee or agent of the Company has any authority to make representations or to provide advice, opinion or information on behalf of the Company.

10. Force Majeure

The Company shall not be liable for any delay or other failure to perform the whole or any part of the Contract resulting from any cause whatsoever beyond the Company's control existing at the date of the Company's acceptance of the Buyers request for the supply of Goods or arising thereafter including but not limited to fire, explosion, breakdown or failure of plant or machinery, lack or failure of transportation facilities, supply of labour, materials, power or supplies, strike, lockout or labour dispute (whether or not at the Company's works), illness, epidemic, flood, drought, war, civil commotion, or restriction of any authority or governmental agency.

11. General

- 11.1. If the Buyer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other agreement with the Company, becomes insolvent or bankrupt or has a receiver or administrator appointed for all or any part of its business, enters into liquidation, whether compulsory or voluntary, compounds with its creditors or

suffers any similar action in consequence of debt or the Company bona fide believes that any of such events may occur, the Company shall, without prejudice to any other remedy, be entitled at its discretion, by giving the Buyer written notice at any time, to forthwith suspend its performance of or terminate such Contract.

- 11.2. The acceptance of any cancellation requested by the Buyer shall be at the Company's discretion and take effect only when written confirmation of such acceptance has been given by the Company which reserves the right to charge for any costs or expenses which it incurs in connection with any such cancellation.
- 11.3. Any Goods replaced by the Company shall become the Company's property and shall not be sold or, except in accordance with the Company's written instructions, disposed of by the Buyer.
- 11.4. The Company may sub-contract all or any of its obligations to persons whose skills complement those of the Company but the Contract shall not be assigned by the Buyer without the Company's prior written consent.
- 11.5. The Company shall have a lien on any undelivered Goods in the Company's possession for all sums due at any time from the Buyer on any account and shall be entitled to, sell or dispose of the same as agent for and at the expense of the Buyer and apply the proceeds in and towards the payment of such sums on twenty eight (28) days written notice to the Buyer.
- 11.6. Credit may be given for pallets or returnable containers only if previously agreed in writing by the Company and in a condition acceptable to it.
- 11.7. In the event that any (or any part) of these terms, conditions or provisions shall be declared invalid, unlawful or unenforceable such terms (or parts), conditions or provisions shall be severed. The remaining terms (or parts); conditions or provisions shall continue to be valid and enforceable to the fullest extent permitted by law.

12. Contracts (Rights of Third Parties) Act 1999

A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to benefit or enforce any term of the Contract. This clause does not affect any right or remedy of a third party which exists or is available apart from that Act.

13. Credit Checks

The Buyer authorises the Company to carry out checks (including enquiries relating to directors or of the individuals) with credit reference agencies and to keep a record of that search and make available to such agencies information relating to the conduct of the Buyer's account and the Buyer acknowledges that the agencies concerned may keep and share the information supplied to them with other businesses in assessing applications for credit and/or fraud prevention.

14. Laws, Jurisdiction and Construction

- 14.1. The Contract shall be governed by English law and the Buyer consents to the jurisdiction of the English courts in all matters connected with the Contract.
- 14.2. The headings of conditions are for convenience of reference only and shall not affect their interpretation.

15. Notices

Any notice required or permitted to be given by either party to the other under these conditions shall be in writing and (a) if hand delivered to the receiving party at its business address last notified in writing to the other party it shall be deemed given on delivery, (b) if sent pre-paid registered or special delivery post to the receiving party at its business address last notified in writing to the other party it shall be deemed to have been given two (2) business days following the date of posting, (c) if sent by fax to the fax number last notified in writing to the other party be deemed to have been given at the time of transmission provided that a successful transmission report is received and a hard copy of the fax is sent by pre-

paid registered or special delivery post to the receiving party at its business address last notified in writing to the other party and (d) if sent by e-mail to the e-mail address last notified in writing to the other party be deemed to have been given at the time of receipt provided that a delivery receipt is obtained and a hard copy of the email is sent by pre-paid registered or special delivery post to the receiving party at its business address last notified in writing to the other party.

Registered office: c/o Langtons, The Plaza, 100 Old Hall Street, Liverpool L3 9QJ.

Registered in England company number 142987.

Issued: March 2012.