

AC MARINE AGGREGATES LTD TERMS AND CONDITIONS OF SALE AND DELIVERY

1. DEFINITIONS

In these Terms and Conditions:

- 1.1 "The Company" means AC Aggregates Limited registered number 6758630.
"The Goods" means aggregates, minerals, waste and/or by products to be supplied by the Company to the Customer subject to these terms as described in the relevant quotation, order acknowledgement, delivery note, advice note or invoice issued by the Company.
"The Customer" means the person, firm or Company who purchases the Goods from the Company.
"The Contract" means the contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these terms.
- 1.2 Words in the singular include the plural and in the plural include the singular.

2. APPLICATION OF TERMS AND CONDITIONS

- 2.1 Subject to any variation under clause 2.2 all sales of goods made by the Company to the Customer shall be made under these terms and conditions (AKA The Contract), to the exclusion of any other terms, conditions, warranties or representations, written or oral, express or implied, which the Customer purports to apply under any purchase order, confirmation of order, specification or other document. No director, employee or agent of the Company has authority to agree to any variations of these terms and conditions unless such variation be in writing and signed on behalf of the Company.
- 2.2 No variation to these terms and conditions is binding on the Company unless agreed in writing and signed by a director of the Company.

3. QUOTATIONS

- 3.1 Any quotation, howsoever issued by the Company, shall be revocable at any time prior to acceptance by the Customer and, if not so accepted, shall lapse 30 days after the date on which it is issued.

4. ACCEPTANCE

- 4.1 The terms and conditions of this contract shall be deemed to have been accepted if the Customer places an order, howsoever that order is received, on the Company for the Goods that form part of the quotation.
- 4.2 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company confirming the price or (if earlier) the Company delivers the Goods to the Customer with a delivery note or the Customer collects the Goods from the Company and is issued an advice note by the Company.

5. PRICES

- 5.1 The prices stated in any quotation exclude Value Added Tax and are based on costs prevailing at the time the quotation is issued. In the event of the cost to the Company of supplying and delivering the goods being increased by any later increase in the cost or raw materials, labour or haulage, or other items which are outwith the control of the Company, the Company reserves the right to make a corresponding increase in the prices quoted.

6. PAYMENT

- 6.1 Unless otherwise agreed in writing by the Company all invoices for the Goods supplied must be paid without retention, no later than the last day of the month which next follows the month appearing in the date of the invoice.
- 6.2 The Customer shall not, without the prior written permission of the Company, be entitled to make any deductions or set-off from any money or monies being due to the Company in respect of any claims for loss or expense alleged to have been incurred by the Customer through any default whatsoever of the Company.
- 6.3 If the Customer's credit rating is not satisfactory or is less than the amount applied for by the customer the Company reserves the right to insist upon payment for goods before delivery.
- 6.4 If the customer fails to make payment on the due date, the Company may:
- 6.4.1 Cancel the contract or suspend any further deliveries of Goods to the Customer without prejudice to its right to recover all sums due to it.

- 6.4.2 Charge the Customer interest at 4% above the Bank of England base rate from time to time, until payment in full is made and to suspend or discontinue deliveries of Goods under any uncompleted contract with the Customer.
- 6.4.3 Require the Customer to procure an appropriate extension to the delivery date or contract period and to provide suitable letters of comfort or indemnity to the Company (as it shall require) against all costs, proceedings and claims which may be brought against the Company following a postponement of its obligations under the Contract due to the Customer's delay in making payment.
- 6.5 The Company shall be entitled (without prejudice to any of its other rights against the Customer) by verbal or written notice to the Customer to rescind the contract for the supply of the goods in any of the following events:
- 6.5.1 Should the Customer (being a company) compound or enter into any composition or arrangement or have a proposal made for a voluntary arrangement with its creditors, have a petition presented for the appointment of an administrator, have a receiver or manager or administrative receiver appointed over all or any part of its assets, have a resolution passed for its voluntary winding-up (save for the purpose of amalgamation or reconstruction) or call a creditors' meeting for a voluntary liquidation, or enter into voluntary liquidation, be in receipt of an unsatisfied statutory demand, or have a petition presented for its winding-up.
- 6.5.2 Should the Customer (being an individual) enter into a deed of arrangement or make any assignment for the benefit of, or enter into any arrangement, voluntary or otherwise, with his creditors, either by composition or otherwise, make or have an application made for an interim order in connection with the proposal to creditors for a voluntary arrangement, be in receipt of an unsatisfied statutory demand, or have a petition presented for his bankruptcy, or be made bankrupt.

7. DELIVERY

- 7.1 Unless otherwise agreed in writing, the goods shall be delivered to the destination specified in the Customer's order. In the event of the Customer cancelling or amending the delivery instructions, such cancellation or amendment will be accepted by the Company only on the understanding that the Customer pays all expenses incurred by the Company up to the time of cancellation or amendment. The Company's reasonable estimate of expenses incurred in such circumstances shall be accepted as final.
- 7.2 Unless otherwise stated, prices in any new quotation are for delivery of loads at times between 7.00am and 5.00pm, Monday to Friday (excluding public holidays) and between 7.00am and 11.30am on Saturday. If the Purchaser requires delivery outside those hours, the Company shall be entitled to make such extra charges as shall be reasonable (subject to availability).
- 7.3 If the Company is prevented from, or is delayed in delivering, for any reason outwith its control, the Company shall not be liable for any loss or damage, direct or indirect, caused to the Customer by the Company's failure to deliver or by delay in delivery.
- 7.4 The Customer must provide safe access to the place of delivery and the Company shall be entitled to refuse to deliver over roads or other ground which it considers unsuitable. If a vehicle delivering the goods is required to deliver a load to or from a place situated off a public road, the Customer must supervise the positioning and departure of the vehicle and shall be liable for any accident or damage resulting from such movements, other than death or personal injury caused by the negligence of the Company or the driver.
- 7.5 Prices quoted by the Company assume that delivery vehicles will not be detained on site and the Company shall be entitled to make an extra charge in respect of any load, delivery of which, for reasons beyond the Company's control, is not completed within 30 minutes of arrival on site.
- 7.6 Where delivery is by a series of loads, the contract between the Company and the Customer shall be divisible and any defect in any load shall give rise to a remedy in respect of that load only.
- 7.7 The Customer shall take delivery in full of the goods detailed on the delivery ticket. An extra charge is payable where the Company is required to remove from site any fraction of the goods which is deemed by the Customer to be surplus to requirements.
- 7.8 Any times specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. The Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or any instalment thereof.

8. COMPLAINTS

- 8.1 The Company's liability in respect of defects in the goods, including failure to comply with specifications (which apply only if such specifications have been given to and accepted by the Company in full at the time of acceptance

of the order) shall be limited to the cost of removal and replacement of the defective goods. The Company accepts such liability only where the Customer can establish that:

- 8.1.1 the sample tested has been taken in accordance with the relevant British Standard specification or other specification previously accepted in writing by the Company and;
 - 8.1.2 test results have been properly interpreted in accordance with the relevant British Standard specification or other specification previously agreed in writing by the Company and;
 - 8.1.3 the Customer has, within 3 days of delivery of the Goods, notified the Company of their non-compliance with the specification and;
 - 8.1.4 the Company has been given a reasonable opportunity to investigate any alleged defect and of making representations as to any remedial action to be taken.
- 8.2 If the defect(s) in the Goods should have been revealed by examination on delivery, the Company's liability in respect of such defect(s) shall be limited to supplying and delivering replacement goods free of charge.
- 8.3 The Company shall not be liable for the supply of incorrect quantities of the goods, unless the Customer shall have given the Company oral notification of the error within 12 hours and written notification within 48 hours of the completion of delivery.

9. TITLE

- 9.1 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 9.1.1 the Goods; and
 - 9.1.2 all other sums which are or which become due to the Company from the Customer on any account.

10. QUALITY AND PURPOSE

- 10.1 The Customer shall upon each and every delivery or collection inspect the Goods and notify the Company immediately of any defects which are reasonably apparent. In any event all complaints concerning the Goods must be notified to the Company by the Customer within 3 working days of delivery or collection of the Goods.
- 10.2 Any recommendation or suggestion relating to the use of the Goods made by the Company either in technical literature or in response to a specific enquiry or otherwise is given in good faith. However, it is for the Customer to satisfy himself of the suitability of the Goods for his own particular purpose and any implied warranty or condition (statutory or otherwise) as to fitness for purpose is excluded.

11. WARRANTIES AND LIABILITIES

- 11.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 11.1.1 any breach of these conditions;
 - 11.1.2 any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
 - 11.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 The Company makes no warranty as to the suitability of the Goods for any particular purpose. The Company warrants that the Goods will correspond with their specification at the time of delivery.
- 11.3 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- 11.4 The Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 11.5 The Company recommends that the Customer takes out its own insurance to cover the types of loss specified in condition 11.4.

12. INSURANCE AND INDEMNITY

- 12.1 The Customer agrees to indemnify the Company against all damages, losses, costs, claims or expenses incurred by the Company in respect of any claim brought against the Company by any third party for:
- 12.1.1 any loss, injury or damage wholly or partly caused by the Goods or their use by the Customer;

- 12.1.2 any loss, injury or damage in any way connected with the performance of this Contract, provided that this clause will not require the Customer to indemnify the Company against liability for the Company's own negligence.
- 12.2 The Customer undertakes that it will maintain sufficient insurance to cover its potential liabilities under the Contract and the Customer shall provide proof of such insurance to the Company if so requested by the Company.

13 FORCE MAJEURE

- 13.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 13.2 Should any such event referred to in clause 13.1 occur, the Company may cancel or initially suspend, then cancel the Contract without incurring any liability for any loss or damage whatsoever thereby occasioned.

14 CONSEQUENTIAL LOSS

- 14.1 Without prejudice to the generality of anything contained elsewhere in these terms and conditions, the Company shall not, in any event, be liable to the Customer for any direct, indirect or consequential loss, damage or expense. Under no circumstances shall the Company be responsible or liable for the workmanship of the Customer's employees or sub-contractor.

15 GENERAL

- 15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 15.2 If any of these Terms is found by any court, or anybody having jurisdiction to be unenforceable, unreasonable, illegal or invalid, it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 15.3 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 15.4 The Company reserves the right to make a reasonable administration charge for the provision of copy delivery notes for proof of delivery.