



## Terms and Conditions for the Supply of Materials

The customer's attention is drawn in particular to the provisions of clause 9, 4.13 and 4.14.

### 1. INTERPRETATION

#### 1.1 Definitions

In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) in England and/or Wales.

**Carrier:** means any third party who is instructed by the Supplier to effect Delivery to the Customer.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

**Containers:** Articulated tipper, 8, 6 or 4 wheel rigid tipper, skips including roll on off.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Materials together with these Conditions.

**Customer:** the person or firm or business who purchases the Materials from the Supplier.

**Delivery:** completion of delivery of an Order in accordance with clause 4.

**Delivery Date:** the date specified for delivery of an Order on the Purchase Order or on the Supplier's written acceptance of the Order as may be the case.

**Delivery Location:** means the location specified on the Purchase Order where Delivery will take place.

**Delivery Ticket:** means the ticket generated by the Supplier setting out the Order to be signed by the Customer on Delivery.

**Force Majeure Event:** has the meaning given in clause 10.

**Materials:** means any Materials/materials as specified on the Purchase Order.

**Order:** the Customer's order for the Materials, as set out in the Customer's purchase order form or in the Supplier's written acceptance as may be the case.



**Purchase Order:** means the order form completed by the Customer.

**Purchase Order Number:** the reference number to be applied to an Order by the Supplier.

**Purchase Price:** the price agreed by the parties in respect of the Materials and confirmed in the Supplier's verbal Acceptance of an Order.

**Specification:** any specification for the Materials, including any related plans and drawings, that are agreed in writing by the Customer and the Supplier.

**Supplementary Charges:** charges in addition to the Purchase Price that may be imposed by the Supplier on the Customer in any of the circumstances listed in clause 4.10 of these Conditions.

**Supplier:** Total Aggregates Limited (registered in England and Wales with company number 05087953).

## 1.2 CONSTRUCTION

In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes **and emails**.

## 2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.



- 2.2 The Order constitutes an offer by the Customer to purchase the Materials from the Supplier in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 A quotation for the Materials given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of **28** Business Days from its date of issue.

### **3. MATERIALS**

- 3.1 The Materials are described in the Specification and/or Order.
- 3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Specification of the Materials if required by any applicable statutory or regulatory requirements.

### **4. DELIVERY**

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Materials is accompanied by a Delivery Ticket which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Materials (including the code number of the Materials, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Materials remaining to be delivered; and



- (b) if the Supplier requires the Customer to return any **Containers** to the Supplier, that fact is clearly stated on the Delivery Ticket. The Customer shall make any **Containers** available for collection at such times as the Supplier shall reasonably request. Returns of **or Containers** shall be at the Supplier's expense.
- 4.2 The Supplier or its Carrier shall deliver the Materials to the Delivery Location set out in the Order or such other location as the parties may agree at any time after the Supplier notifies the Customer that the Materials are ready.
- 4.3 Delivery of the Materials shall be completed on the Materials' arrival at the Delivery Location.
- 4.4 Any dates quoted for Delivery are approximate only, and the time of Delivery is not of the essence. The Supplier shall not be liable for any delay in Delivery of the Materials that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Materials.
- 4.5 If the Supplier fails to deliver the Materials, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement materials of similar description and quality in the cheapest market available, less the price of the Materials.
- 4.6 If the Customer fails to take Delivery of the Materials at the time and date the Supplier arranges for Delivery or if the Supplier or its Carrier is unable to deliver due to inadequate instructions, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- (a) Delivery of the Materials shall be deemed to have been completed at 7.30 am on the day on which the Supplier attempts delivery; and
- (b) the Supplier shall store the Materials until Delivery takes place, and charge the Customer for all related costs and expenses including the standing time rates stated in our quotation and acknowledgement of the Order (including insurance).
- 4.7 If **5** Business Days after the day on which the Supplier notified the Customer that the Materials were ready for Delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Materials and, after deducting reasonable storage and selling costs, account to the Customer for any



excess over the price of the Materials or charge the Customer for any shortfall below the price of the Materials.

- 4.8 The Customer shall not be entitled to reject the Materials if the Supplier delivers up to and including **5%** more or less than the quantity of Materials ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Materials was delivered.
- 4.9 The Supplier may deliver the Materials by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in Delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.10 Without prejudice to any other rights that the Supplier may have, the Supplier may make Supplementary Charges in the following circumstances:
- (a) Delivery is outside of normal working hours or on a bank holiday or public holiday;
  - (b) the Supplier or its Carrier is delayed for more than 15 minutes following arrival at the Delivery Location;
  - (c) Delivery is not possible as a result of an unsuitable Delivery Location; and
  - (d) the Customer fails to take Delivery at the Delivery Location, fails to provide adequate delivery instructions or fails to obtain any necessary authorisations or licenses necessary for Delivery at the Delivery Location.
- 4.11 The Customer shall provide suitable premises for the unloading of the Delivery and the Customer shall be responsible for supervising the unloading of the Delivery at the Delivery Location.
- 4.12 The Customer will fully indemnify the Supplier in relation to any damage or accident (except for death and personal injury caused by the Supplier and/or its Carrier's negligence) as a result of unsuitable Delivery Location, inadequate supervision of unloading or inadequate unloading equipment.

### **Cancellation**

- 4.13 The Customer may within 4 Hours of placing an Order amend or cancel an Order by written notice to the Supplier. If the Customer amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of deemed



receipt of the amendment or cancellation, except that the Customer shall have no liability to the Supplier where the amendment or cancellation results from the Supplier's failure to comply with its obligations under this agreement.

- 4.14 If the Customer amends or cancels the Order after 4 p.m. on the last Business Day prior to the Delivery Date, the Customer will fully indemnify the Supplier in relation to all costs incurred by the Supplier in relation to the cancellation.

## **5. QUALITY**

5.1 The Supplier warrants that on Delivery the Materials shall:

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the); and
- (d) be fit for any purpose held out by the Supplier.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Materials do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Materials; and
- (c) the Customer (if asked to do so by the Supplier) returns such Materials to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option replace the defective Materials, or refund the price of the defective Materials in full.

5.3 The Supplier shall not be liable for Materials' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Materials after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage and use of the Materials or (if there are none) good trade practice regarding the same;



- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Materials without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Materials differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Materials' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 9 to 13 of the Consumer Rights Act 2015 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any replacement Materials supplied by the Supplier.

## **6. TITLE AND RISK**

6.1 The risk in the Materials shall pass to the Customer on completion of Delivery.

6.2 Title to the Materials shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Materials and any other materials that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Materials shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Materials, in which case title to the Materials shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Materials has passed to the Customer, the Customer shall:

- (a) store the Materials separately from all other materials held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) maintain the Materials in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;
- (c) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and



(d) give the Supplier such information relating to the Materials as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Materials in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Materials. However, if the Customer resells the Materials before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Materials shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Materials passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell the Materials or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
  - (i) require the Customer to deliver up all Materials in its possession which have not been resold, or irrevocably incorporated into another product; and
  - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Materials are stored in order to recover them.

## **7. PRICE AND PAYMENT**

7.1 The Purchase Price of the Materials shall be the price set out in the Order.

7.2 The Supplier may, by giving notice to the Customer at any time up to 1 Business Days before Delivery, increase the Purchase Price of the Materials to reflect any increase in the cost of the Materials that is due to:

- (a) any factor beyond the Supplier's control (including increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the Delivery Date(s), quantities or types of Materials ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.





- 7.3 The Purchase Price of the Materials is exclusive of the costs and charges of insurance, transport of the Materials, standing time rates stated on our quotation which shall be invoiced to the Customer.
- 7.4 The price of the Materials is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Materials.
- 7.5 The Supplier may invoice the Customer for the Materials on or at any time after the completion of Delivery.
- 7.6 The Customer shall pay the invoice in full and in cleared funds 30 days from the end of the month the invoice was received. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclay's Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. If the Customer fails to pay any sum due on its due date, the Customer shall pay and fully indemnify the Supplier in respect of all costs which the Supplier incurs in the collection of unpaid monies including all legal costs and expenses and the cost of any enforcement proceedings.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **8. TERMINATION AND SUSPENSION**

- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.



8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (g) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(f) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;



- (k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Materials under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.2(a) to clause 8.2(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment until payment in full is made.

8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

8.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **9. LIMITATION OF LIABILITY**

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 4 of the Consumer Rights Act 2015;
- (d) defective products under the Consumer Rights Act 2015; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:



- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Materials.

## **10. FORCE MAJEURE**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## **11. GENERAL**

### **11.1 Assignment and other dealings**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

### **11.2 Notices**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case)



or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or other next working day delivery service, at 7.30 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 11.3 **Severance**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### 11.4 **Waiver**

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.



### 11.5 **Third party rights**

A person who is not a party to the Contract shall not have any rights to enforce its terms.

### 11.6 **Variation**

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.

### 11.7 **Governing Law**

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

### 11.8 **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).