

Humberside Aggregates Limited

Terms and Conditions of Supply (Business/Trade Customers)

NOTE: The Customer's attention is in particular drawn to the provisions of clause 10.

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these Conditions.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.6.

Contract: the contract between Humberside Aggregates and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from Humberside Aggregates.

Force Majeure Event: has the meaning given in clause 12.

Humberside Aggregates: Humberside Aggregates Limited (registered in England and Wales with company number 07897332) whose registered office is at North Cave Quarry, Crosslands Lane, North Cave, Brough, East Yorkshire HU15 2PG.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods (including telephone orders) which is confirmed by Humberside Aggregates in accordance with clause 2.3.

Specification: any specification for the Goods, including any related description or material analysis, that is supplied to the Customer by Humberside Aggregates.

1.2 **Construction.** In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 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.

1.2.4 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.

1.2.5 A reference to **writing** or **written** includes faxes and e-mails.

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 Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Humberside Aggregates issues a written acceptance of the Order (or, if earlier, when Humberside Aggregates delivers the Goods to the Customer, or the Customer collects the Goods from Humberside Aggregates), 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 or representation made or given by or on behalf of Humberside Aggregates which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by Humberside Aggregates and any descriptions or illustrations contained in Humberside Aggregates' catalogues or brochures, or on its website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Goods given by Humberside Aggregates shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue, unless a different period is specified in writing by Humberside Aggregates or the quotation is withdrawn by Humberside Aggregates in writing during this period.
- 2.7 Humberside Aggregates shall assign an order number to the Order and this will be shown in Humberside Aggregates' written acceptance of the Order and other contractual paperwork. The Customer must quote the order number in all subsequent correspondence relating to the Order.

3. Goods

- 3.1 The Goods will conform in all material respects with the Specification.
- 3.2 Any samples given by Humberside Aggregates correspond with the Goods as far as is reasonably possible given the nature of the Goods but this is not a sale by sample and the samples are not to be treated as forming part of the Contract.
- 3.3 Humberside Aggregates reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to Humberside Aggregates' specification, which do not materially affect their quality or performance.

4. Delivery

- 4.1 Humberside Aggregates shall ensure that:
 - 4.1.1 each delivery of the Goods is accompanied by a delivery note which shows relevant Customer and Humberside Aggregates' reference

numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), and special storage instructions (if any); and

- 4.1.2 if Humberside Aggregates requires the Customer to return any packaging materials to Humberside Aggregates, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Humberside Aggregates shall reasonably request. Returns of packaging materials shall be at Humberside Aggregates' expense.
- 4.2 Humberside Aggregates shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Humberside Aggregates notifies the Customer that the Goods are ready. Alternatively, if it has been agreed that the Customer shall collect the Goods, these shall be collected from Humberside Aggregates' premises at North Cave Quarry, Crosslands Lane, North Cave, Brough, East Yorkshire HU15 2PG (or such other location as may be advised by Humberside Aggregates prior to delivery) (**Collection Location**) within 3 Business Days of Humberside Aggregates notifying the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location (or, where appropriate in the driver's opinion, to the nearest suitable road to the Delivery Location at which the vehicle can safely and lawfully unload) or, where the Customer collects the Goods, on the completion of loading of the Goods at the Collection Location. The Customer is responsible for all steps that need to be taken for the protection of persons and property where Goods (or any associated packaging or containers) are delivered and deposited, including on any public highway, and you will indemnify us in respect of all or any costs, claims, losses or expenses which Humberside Aggregates may incur as a result of your failure to do so.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Humberside Aggregates shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Humberside Aggregates with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If Humberside Aggregates fails to deliver the Goods (or, in cases where the Customer has agreed to collect the Goods, Humberside Aggregates fails to make them available for collection), its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Humberside Aggregates shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Humberside Aggregates with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods (or, where appropriate, collect the Goods from Humberside Aggregates) within 3 Business Days of Humberside Aggregates notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Humberside Aggregates' failure to comply with its obligations under the Contract:

- 4.6.1 delivery of the Goods shall be deemed to have been completed at 9 am on the third Business Day after the day on which Humberside Aggregates notified the Customer that the Goods were ready; and
- 4.6.2 Humberside Aggregates shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 10 Business Days after the day on which Humberside Aggregates notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Humberside Aggregates may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 Where delivery is to be made by Humberside Aggregates or its agents, the Customer will provide safe and proper means of access to the Customer's delivery points and for unloading of delivery vehicles, and shall arrange for an authorised representative to be available upon delivery to sign Humberside Aggregates' delivery note/ticket.
- 4.9 The Customer shall not be entitled to reject the Goods if Humberside Aggregates delivers up to and including 10% more or less than the quantity of Goods ordered.
- 4.10 Humberside Aggregates may deliver the Goods by installments, which shall be invoiced and paid for separately. Each installment shall constitute a separate Contract. Any delay in delivery or defect in an installment shall not entitle the Customer to cancel any other installment.

5. Return of Goods

Without prejudice to the provisions of clause 6 below, Goods supplied in accordance with the Contract cannot be returned without Humberside Aggregates' prior written authorisation. Duly authorised returns shall be sent to only such address as Humberside Aggregates shall notify to the Customer and only at the Customer's expense.

6. Quality

- 6.1 Humberside Aggregates warrants that on delivery the Goods shall:
- 6.1.1 conform in all material respects with their description and any applicable Specification; and
- 6.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 6.2 Subject to clause 6.3, if:
- 6.2.1 the Customer discovers and gives notice in writing to Humberside Aggregates within a reasonable time of delivery that some or all of the Goods do not comply with the warranty set out in clause 6.1 (and for these purposes the time periods stated in clause 6.3 shall apply to the specific Goods of the kind identified in that clause);

6.2.2 Humberside Aggregates is given a reasonable opportunity of examining such Goods before they are used or interfered with (it being acknowledged by Humberside Aggregates that the costs of suspending works are relevant in determining what is a reasonable opportunity, and this clause shall not apply to works which it is reasonably necessary to carry out in the interests of safety or emergency);

Humberside Aggregates shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full.

6.3 For the purposes of clause 6.2.1, the following periods of time following delivery of the Goods (for notice to be given to Humberside Aggregates by the Customer) shall apply the specific Goods identified in this clause:

<u>Type of Goods</u>	<u>Notification period from delivery/collection date</u>
Sealed (pre-bagged) Goods	7 days
Loose or non-sealed (pre-bagged) Goods	24 hours

6.4 Humberside Aggregates shall not be liable for Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:

6.4.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2;

6.4.2 the defect arises because the Customer failed to follow Humberside Aggregates' oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;

6.4.3 the defect arises as a result of fair wear and tear, willful damage, negligence, abnormal working conditions, misuse, alteration or repair of the Goods, failure to follow British Standard or industry instructions relevant to the Goods (other than where caused by Humberside Aggregates);

6.4.4 the defect arises as a result of Humberside Aggregates following any drawing, design or Specification supplied by the Customer; or

6.4.5 the Goods differ from any Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.5 Except as provided in this clause 6, Humberside Aggregates shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.6 In the case of certain Goods, natural variations may arise in the colour, consistency and finish of products, particularly where they originate from different sources. Humberside Aggregates shall not be liable for any loss caused by such variation where such variation does not diminish the quality of the Goods and where Goods bought for a specific job or purpose are not purchased at the same time.

- 6.7 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6.8 These Conditions shall apply to any repaired or replacement Goods supplied by Humberside Aggregates.

7. Title and Risk in the Goods

- 7.1 The title to the Goods shall pass to the Customer upon completion of delivery or collection of the Goods (as the case may be) and following signing by the Customer's authorised representative of Humberside Aggregates' delivery note/ticket for the Goods concerned.
- 7.2 Risk in the Goods shall pass to the Customer upon delivery or collection of the Goods (as the case may be).

8. Price and payment

- 8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Humberside Aggregates' published price list in force as at the date of delivery.
- 8.2 Humberside Aggregates may increase the price of the Goods as follows:
- 8.2.1 with effect from 1 January in each year (or with effect from any other date during a year at the discretion of Humberside Aggregates) to reflect annual increases in the cost of the Goods (including labour, material costs and other quarrying and production costs) and/or any general increase in the market price of the Goods concerned. Any such price increases will apply to any new Contracts subsequently made and also (subject to giving the Customer reasonable advance notice) to the balance of any Goods remaining to be delivered under any existing Contract with the Customer; and/or
- 8.2.2 at any time prior to delivery of the Goods upon written notice to the Customer where this is required as a result of the Customer's action or omission (including any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification, or which is caused by any failure of the Customer to give Humberside Aggregates adequate or accurate information or instructions).
- 8.3 Unless the Customer collects the Goods from Humberside Aggregates, or unless stated otherwise in Humberside Aggregates' quotation or order acceptance, the price of the Goods is inclusive of insurance and transport of the Goods to the Customer's agreed delivery location. Additional delivery costs may be charged to the Customer for changes to the Customer's delivery location.
- 8.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Humberside Aggregates, pay to Humberside Aggregates such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

- 8.5 Humberside Aggregates may invoice the Customer for the Goods on or at any time after the completion of delivery or collection.
- 8.6 The Customer shall pay for all Goods in full and in cleared funds in advance of (or at the time of) collection or delivery by such payment methods as Humberside Aggregates operates from time to time, unless Humberside Aggregates confirms in writing to the Customer that credit facilities will be available to the Customer. If Humberside Aggregates confirms in accordance with the foregoing that credit facilities are available to the Customer, all invoices must be paid in cleared funds within 30 days of the end of the calendar month in which the invoice is dated, to the bank account nominated in writing by Humberside Aggregates. Time of payment is of the essence.
- 8.7 If the Customer fails to make any payment due to Humberside Aggregates 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 Barclays Bank plc'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.
- 8.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Humberside Aggregates in order to justify withholding payment of any such amount in whole or in part. Humberside Aggregates 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 Humberside Aggregates to the Customer.

9. Termination & suspension

- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2 then, without limiting any of its other rights or remedies, Humberside Aggregates may terminate the Contract with immediate effect by giving written notice to the Customer.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- 9.2.1 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) 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;
- 9.2.2 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 other than (where the Customer is a company) where these events take place 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;
- 9.2.3 (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;
- 9.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;
- 9.2.5 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;
- 9.2.6 (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;
- 9.2.7 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- 9.2.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 9.2.9 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 9.2.1 to clause 9.2.8 (inclusive);
- 9.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- 9.2.11 the Customer's financial position deteriorates to such an extent that in Humberside Aggregates' opinion the Customer's capability to adequately fulfill its obligations under the Contract has been placed in jeopardy; and
- 9.2.12 (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.
- 9.3 Without limiting its other rights or remedies, Humberside Aggregates may suspend provision of the Goods under the Contract or any other contract between the Customer and Humberside Aggregates if the Customer becomes subject to any of the events listed in clause 9.2.1 to clause 9.2.12, or Humberside Aggregates 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.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to Humberside Aggregates all of Humberside Aggregates' outstanding unpaid invoices and interest.

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

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

10. Limitation of liability

10.1 Nothing in these Conditions shall limit or exclude Humberside Aggregates' liability for:

10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

10.1.2 fraud or fraudulent misrepresentation;

10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

10.1.4 defective products under the Consumer Protection Act 1987; or

10.1.5 any matter in respect of which it would be unlawful for Humberside Aggregates to exclude or restrict liability.

10.2 Subject to clause 10.1:

10.2.1 Humberside Aggregates shall not 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 (including any losses that may result from a deliberate breach of the Contract by Humberside Aggregates, its employees, agents or subcontractors); and

10.2.2 Humberside Aggregates' 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, including losses caused by a deliberate breach of the Contract by Humberside Aggregates, its employees, agents or subcontractors shall not exceed 200% of the price of the Goods.

11. Intellectual Property

11.1 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer (or the Customer's customer), the Customer shall indemnify Humberside Aggregates 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 Humberside Aggregates in connection with any claim made against Humberside Aggregates for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Humberside Aggregates' use of the Specification. This clause 11.1 shall survive termination of the Contract.

- 11.2 All written information, drawings, artwork, images and diagrams (excluding the Goods themselves) prepared by Humberside Aggregates in relation to the supply of Goods and the copyright therein and all other items owned by Humberside Aggregates and used in the production of the Goods shall remain the property of Humberside Aggregates and shall be returned by the Customer on demand. All such information shall be treated as confidential and shall not be copied or reproduced or disclosed to any third party without the prior written consent of Humberside Aggregates.
- 11.3 The Customer shall ensure that its employees, agents and sub-contractors and all those under the Customer's control and supervision shall comply with the obligations of confidentiality contained in clause 11.2.
- 11.4 The supply of Goods by Humberside Aggregates shall not confer any right upon the Customer to use any of Humberside Aggregates' trade marks (except in the re-sale of the Goods in the packaging supplied by Humberside Aggregates), or any of Humberside Aggregates' patents, design rights or other industrial or intellectual property rights, and at all times such patents, trade marks, design rights and other industrial or intellectual property rights shall remain the absolute property of Humberside Aggregates (or its suppliers).

12. **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 (including, in the case of Humberside Aggregates, its delivery sub-contractors).

13. **General**

13.1 **Assignment and subcontracting**

13.1.1 Humberside Aggregates may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.1.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Humberside Aggregates.

13.2 **Notices**

13.2.1 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, recorded delivery, commercial courier, fax or e-mail.

13.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2.1; if sent by pre-paid first class post or recorded delivery, at 9 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 e-mail, one Business Day after transmission.

13.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3 **Severance**

13.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

13.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.4 **Waiver** A waiver of any right or remedy under the Contract 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

13.5 **Third party rights** A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.6 **Variation** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Humberside Aggregates.

13.7 **Governing law and jurisdiction** 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.