

Primary Aggregates Limited  
Standard Terms and Conditions for the Sale of Goods

1. **Application of Terms and Conditions**

- 1.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation or offer of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller; and
- 1.2 These Terms and Conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted by the Seller, or any such order is made or purported to be made, by the Buyer.

2. **Interpretation**

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Business Day”</b>	means any day other than a Saturday afternoon, Sunday or bank holiday;
<b>“Buyer”</b>	means the person who accepts a quotation or offer of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;
<b>“Contract”</b>	means the contract for the purchase and sale of the Goods which shall incorporate, and be subject to, these Terms and Conditions;
<b>“Contract Price”</b>	means the price stated in the Contract payable for the Goods;
<b>“Delivery Date”</b>	means the date on which the Goods are to be delivered as stipulated in the Buyer’s order and accepted by the Seller, as evidenced in the Contract;
<b>“Goods”</b>	means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with the Contract;
<b>“Month”</b>	means a calendar month; and
<b>“Seller”</b>	means Primary Aggregates Limited, a company registered in England under 9581682 of 25 Creek Road, East Molesey, KT8 9BE and includes all employees and agents of Primary Aggregates Limited.

- 2.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

- 2.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
  - 2.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 2.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions and any Schedules as amended or supplemented at the relevant time;
  - 2.2.4 a Schedule is a schedule to these Terms and Conditions; and
  - 2.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule.
  - 2.2.6 a “Party” or the “Parties” refer to the parties to these Terms and Conditions.
- 2.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 2.4 Words imparting the singular number shall include the plural and vice versa.
- 2.5 References to any gender shall include the other gender.

### **3. Basis of Sale**

- 3.1 These Conditions (and any additional terms contained in the quotation and/or mix design supplied by the Company) apply to all sales of the Goods to the exclusion of all other terms and conditions. No terms or conditions written upon, delivered with, or contained in the Buyer's purchase order, specification or similar document will form part of the Contract. No variation or addition to these Conditions (including the Buyer's own terms) is effective unless expressly confirmed in writing by a director of the Company. In the absence of such express confirmation in writing, acceptance of delivery of the Goods or any quantity of them shall be deemed to be acceptance by the Buyer of these Conditions.
- 3.2 Each order for the Goods by the Buyer to the Company shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions and shall be accepted by the Company either issuing an acknowledgement of order or (if earlier) delivering the Goods. Any quotation is given by the Company on the basis that no Contract will come into existence until the Company accepts the order by either sending an acknowledgement of order to the Buyer or (if earlier) delivering the Goods.
- 3.3 The Company reserves the right to charge the Buyer an additional charge where (i) the delivery of Goods is required by the Buyer outside the Company's normal working hours; (ii) delivery of the Goods is required in part loads rather than full loads; (iii) for any reason, the delivery vehicle is unable to discharge its load within 30 minutes of arrival at the Buyer's site and (iv) the Buyer purchases quantities of the Goods which are substantially different from any quantity specified in the quotation.

- 3.4 The Buyer is wholly responsible for ensuring the accuracy of the terms of any order and any applicable specification. Any recommendation or suggestion relating to any use, storage or handling of the Goods made by the Company either in sales and technical literature or in response to a specific enquiry or otherwise is given in good faith but it is strictly for the Buyer to satisfy itself of the suitability of the Goods for its own particular purposes and the Buyer accepts it does not rely on any such recommendation, suggestion or representation.
- 3.5 The quantity, quality, description and specification of the Goods shall be those set out in the Company's quotation, otherwise as set out in the conveyance note at delivery. The Company reserves the right to change the source of materials and the type and dosage rate of any admixtures and additives, from those set out in the quotation.
- 3.6 If the Buyer varies, cancels or refuses to accept delivery of an order then the Buyer shall pay all additional costs that may be incurred by the Company. In respect of concrete or asphalt, where a cancellation instruction is received by the Company after batching has started, the Buyer shall pay the Company for the concrete or asphalt in full plus a charge for safe disposal

#### **4. Orders and Specifications**

- 4.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 4.2 The specification for the Goods shall be that set out in the Seller's sales documentation unless varied expressly in the Buyer's order (if such variation(s) is/are accepted by the Seller). The Goods will only be supplied in the minimum units thereof stated in the Seller's price list or in multiples of those units. Orders received for quantities other than these will be adjusted accordingly.
- 4.3 Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Seller are intended as a guide only and shall not be binding on the Seller.
- 4.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.
- 4.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation.

#### **5. Price**

- 5.1 The Contract Price of the Goods shall be the price listed in the Seller's quotation current at the date of acceptance of the Buyer's order or such other price as may be agreed in writing by the Seller and the Buyer.

- 5.2 Where the Seller has quoted a price for the Goods other than in accordance with the Seller's published price list the price quoted shall be valid for thirty (30) days only or such lesser time as the Seller may specify.
- 5.3 The Seller reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which are requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 5.4 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are inclusive of the Seller's charges for packaging and transport.
- 5.5 The Contract Price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods, which the Buyer shall be additionally liable to pay to the Seller.

## 6. **Payment**

- 6.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the Contract Price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the Contract Price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 6.2 The Buyer shall pay the Contract Price of the Goods (less any discount or credit allowed by the Seller, but without any other deduction, credit or set off) within thirty (30) Business Days of the date of the Seller's invoice or otherwise in accordance with such credit terms as may have been agreed in writing between the Buyer and the Seller in respect of the Contract. The time for the payment of the Contract Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.3 All payments shall be made to the Seller as indicated on the form of acceptance or invoice issued by the Seller.
- 6.4 The Seller is not obliged to accept orders from any customer or buyer who has not supplied the Seller with references satisfactory to the Seller. If at any time the Seller is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer in which event no further goods will be delivered to the Buyer other than against cash payment and notwithstanding sub-Clause 6.2 of these Terms and Conditions, all amounts owing by the Buyer to the Seller shall be immediately payable in cash.

## **7. Delivery**

- 7.1 All times quoted for delivery are estimated times only. They are not to be taken and are not intended to be agreed times, periods or dates imposing any obligations on the Company to deliver within or by such times, periods or dates.
- 7.2 Where delivery is to be made to the Customer's site, the Customer shall provide and clearly indicate to the delivery driver a route from the public highway to the site which is safe and reasonable and provides adequate turning space at the point of delivery. The driver may refuse delivery if, in his opinion, the route or the point of unloading is unsafe or likely to cause damage to the delivery vehicle. The Customer shall indemnify the Company (both or itself and as agents for any haulage contractor operating the vehicle) against any damage caused to any such vehicle and against all claims, costs and damage incurred by the Company by reason of a default to the Customer under this condition.
- 7.3 The Customer shall unload the said vehicle expeditiously and shall provide all labour for doing so. The Customer shall be responsible for any demurrage or waiting time caused by any delay in unloading.
- 7.4 The Company accepts no responsibility for any damage caused by its vehicles to any part of the Customer's site or anything there on.
- 7.5 The Customer warrants to the Company that in pursuance of the requirements of the Health & Safety Act Works etc., Act 1974 the Customer will provide safe working conditions with the site premises consistent with the Act and will ensure that the Company's personnel are not exposed to any risks to their health or safety.
- 7.6 The Customer hereby agrees to indemnify the Company against any liability, loss, damage, expense or proceedings arising out of any claims by any employee of the Company or any of its Contractors pursuant to the above Act or any statutory modifications in respect of any incident or occurrence at the point at or on the road or access to which delivery is made.
- 7.7 Delivery will be made during the Company's normal working hours. All materials delivered or made available at the Customer's request on Bank Holidays, Sundays and Saturday afternoon and outside the Company's normal working hours will be subject to an extra charge.

## **8. Collected Materials**

- 8.1 Where prices are quoted ex-depot the materials will be loaded into the Customer's vehicle at a suitable loading point at the depot as directed by the Depot Manager or Loading Supervisor. Where practicable, notice should be given of the date and time when the Customer's vehicle will collect the materials. The Customer's vehicle will be loaded with the utmost dispatch but the Company shall not in the event be liable for any delay in delivery of materials into the Customer's vehicle or any loss consequent thereon. Customers will be responsible for the condition and safety of the vehicles in which they collect materials whether owned or hired and the Company shall not be liable in any way for loss or contamination of material resulting from the condition of such vehicles.

**9. Cancellation and Returns**

- 9.1 An order accepted by the Company may be cancelled only with the written agreement of the Company and where such written agreement is obtained the Company will specify the amount of the cancellation charge (if any) that the Company will require.
- 9.2 Should loads or part loads have to be returned to the Company the transport costs to and from the site and other incidental costs will be payable as an extra by the Customer.

**10. Risk and Title**

- 10.1 The risk in the Goods shall pass on delivery as provided by these Conditions.
- 10.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full all sums due to it in respect of the Goods. If the Buyer fails to pay the contract price by the due date, the Company shall be entitled to enter the Buyer's site to recover the Goods and the Buyer shall indemnify the Company against all and any cost incurred in so doing.

**11. Assignment**

- 11.1 The Seller may assign the Contract or any part of it to any person, firm or company without the prior consent of the Buyer.
- 11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

**12. Buyer's Default**

- 12.1 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 12.1.1 cancel the order or suspend any further deliveries to the Buyer;
- 12.1.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 12.1.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 2.5% per annum above Bank of England base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 12.2 This condition applies if:
- 12.2.1 the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract;
- 12.2.2 the Buyer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or (being an



individual or firm) becomes bankrupt or (being a company) goes into liquidation;

12.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer;

12.2.4 the Buyer ceases, or threatens to cease, to carry on business; or

12.2.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

12.3 If sub-Clause 12.2 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### **13. Limitation of Liability**

13.1 Subject to the provisions of Clauses 7, 8 and 9 the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

13.1.1 any breach of these Terms and Conditions or the Contract;

13.1.2 any use made (including but not limited to modifications) or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

13.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

13.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

13.3 Nothing in these Terms and Conditions excludes or limits the liability of the Seller:

13.3.1 for death or personal injury caused by the Seller's negligence;

13.3.2 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or

13.3.3 for fraud or fraudulent misrepresentation.

13.4 Subject to sub-Clauses 13.2 and 13.3:

13.4.1 the Seller'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

13.4.2 the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, 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.

**14. Confidentiality, Publications and Endorsements**

- 14.1 The Buyer will regard as confidential the contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default.
- 14.2 The Buyer will not use, authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which the Seller is licensed to use or which is owned by the Seller upon any premises, note paper, visiting cards, advertisement or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its licensor.
- 14.3 The Buyer will use its reasonable endeavours to ensure compliance with this Clause 14 by its employees, servants and agents.
- 14.4 The provisions of this Clause 14 shall survive the termination of the Contract.

**15. Communications**

- 15.1 All notices under these Terms and Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 15.2 Notices shall be deemed to have been duly given:
  - 15.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or
  - 15.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
  - 15.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
  - 15.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 15.3 All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

**16. Force Majeure**

Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.



17. **Waiver**

The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

18. **Severance**

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and, by extension, the Contract). The remainder of these and the Contract shall be valid and enforceable.

19. **Third Party Rights**

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

20. **Law and Jurisdiction**

20.1 These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

20.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.