

Callycombe Aggregates Limited - Standard Conditions of Sale

The Customer's attention is drawn to the exclusions from and limitations of liability contained in these Terms and Conditions in particular - Conditions 7 (Quality) and 8 (Limitations of Liability)

1. DEFINITIONS

"Customer": the person or company whose order for the Goods is accepted by the Company in accordance with these Conditions; "Company": Callycombe Aggregates Limited (Company number 11207771) of C/O Burcombe Haulage, St Dominick, Saltash, Cornwall, United Kingdom, PL12 6SH; "Conditions": these conditions of sale and any variation to them which is agreed in accordance with these Conditions; "Contract": the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions; and "Goods": the goods which the Company is to supply under this Contract in accordance with these Conditions.

2. ORDERING AND PRICING

2.1 These Conditions (and any additional terms contained in the quotation 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 Customer's purchase order, specification or similar document will form part of the Contract. No variation or addition to these Conditions (including the Customer's own terms) is effective unless expressly confirmed in writing by a director of the Company.

2.2 Each order for the Goods by the Customer to the Company is deemed to be offered by the Customer to purchase the Goods subject to these Conditions and shall be accepted by the Company on the earlier of issuing an acknowledgement of order or Delivery (as defined in Clause 3.1). No Contract will come into existence until the Company accepts the order by either sending a written acknowledgement of the order to the Customer, confirming acknowledgement of the order to the Customer verbally or (if earlier) Delivery of the Goods.

2.3 Any quotation given by the Company to the Customer shall be valid for a period of 30 days from the date it is provided to the Customer unless it is withdrawn by the Company. Each order is subject to a minimum £20.00 charge. The Company reserves the right to charge the Customer an additional charge where (i) Delivery of Goods is required by the Customer is outside the Company's normal working hours; (ii) Delivery of the Goods is required in part loads rather than full loads; (iii) the delivery vehicle is unable to discharge its load within 30 minutes of arrival at Customer's site; or (iv) the Customer purchases quantities of the Goods which are substantially different from any quantity specified in the quotation.

2.4 The Customer is wholly responsible for ensuring the accuracy of the terms of any order and any applicable specification. It is strictly for the Customer to satisfy itself of the suitability of the Goods for its own particular purposes, use or suitability of the Goods for use with any product.

2.5 Due to the natural origin of the Goods, there may be inherent defects in some of the Goods and the Customer should ensure that the Goods are thoroughly inspected before use and expect some wastage. The Goods may require further dressing or working to suit the Customer's requirements when on site. As a result, the Customer shall allow for cuts and wastage when calculating the quantity of the Goods to be ordered. All stated thickness and dimensions of the Goods are approximate and are subject to cutting tolerances.

2.6 Should the Customer vary or cancel an order after the preparation of the Goods has commenced (sawing, sorting or loading) the Customer shall pay the abortive costs incurred by the Company. If the Customer refuses to accept the Delivery of an order then Customer shall pay for all additional costs that are reasonably incurred by the Company as a result.

2.7 **This Clause 2.7 only applies if the Customer is a consumer and the Contract is entered into online or via phone/email/letter:** The Customer has the right to cancel this Contract within 14 days without giving any reason. The cancellation period will expire after 14 days from the day on which the Customer acquires physical possession of the Goods. To exercise the right to cancel, the Customer must inform the Company of their decision to cancel this Contract by a clear statement (e.g. a letter sent by post or email) using the contact details in Clause 1. The Customer may use the model cancellation form in Clause 10 of this Contract, but it is not obligatory. If the Customer cancels this contract, the Company will reimburse all payments received from the Customer, including the costs of delivery (except for the supplementary costs arising if the Customer chooses a type of delivery other than the least expensive type of standard delivery offered by the Company). The Company will make the reimbursement without undue delay, and not later than 14 days after the day the Company receives back any Goods supplied from the Customer or if there were no goods supplied, 14 days after the day on which the Company is informed about the Customer's decision to cancel this contract. The Company will make the reimbursement using the same means of payment as the Customer used for the initial transaction unless the Customer has expressly agreed otherwise. If the Customer has received the Goods the Company will collect the goods from the delivery address without undue delay and in any event not later than 14 days from the day on which the Customer communicates the cancellation of this Contract to the Company. The Customer will bear the direct cost of returning the Goods and the Customer is liable for any diminished value of the Goods resulting from the unnecessary handling of the Goods by the Customer other than that which is necessary to establish the nature, characteristics and functioning of the Goods.

3. DELIVERY

3.1 Delivery of the Goods shall take place either on discharge into the Customer's vehicle at the Company's premises or on discharge from the Company's vehicle at the Customer's site or as otherwise agreed by the parties ("Delivery") The Customer shall comply with the Company's site policies at all times.

3.2 The Customer shall be responsible for notifying the Company of accurate delivery instructions including any restriction of access such as weight, width, height or unloading hours. The Customer must provide safe, adequate access to the point of discharge of the Goods, including adequate maneuvering space for the delivery vehicle and ensuring the Company's employees and/or agents are safe. Delivery by the Company will only take place on firm level ground with no adverse gradients and in the absence of overhead power lines. The Company has the right to refuse Delivery at the driver's discretion if they consider the situation to be unsafe. Failure to comply shall entitle the Company to refuse to make delivery and to charge the Customer for any costs and/or losses incurred.

3.3 The Customer shall indemnify the Company and its employees, drivers and agents against any damage or injury caused by the acts and/or omissions of the Customer, its employees, subcontractors or agents while the delivery vehicle is present on or accessing the Customer's site or while the Customer is collecting the Goods from the Company's site. If, at the Customer's request, the Company agrees to deliver the Goods to a point off the public road, the Customer will indemnify the Company against all losses, costs, expenses, actions and claims incurred by the Company arising from delivery at that point or as a result thereof including, but not limited to, damage to vehicles, kerbs, pipes, manholes or any other property. On any delivery (howsoever effected), the Customer (i) satisfies itself as to the condition of the Goods; (ii) allows uninhibited delivery of the Goods; (iii) signs the delivery note or in the case of delivery made using an electronic device, the Customer accepts the time stamp, geo code stamp or photographic record as conclusive evidence of acceptance of delivery; (iv) signs any record produced by the Company or its drivers in respect of any delay after the arrival of the Goods at the Customer's site, including standing time, or other records, failing which or if the Company is unable to deliver the Goods on time because of the Customer's default then (a) the Goods will be deemed to have been delivered; and (b) the Company may store the Goods until delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance).

3.4 Delivery times or dates specified by the Company are estimates only and the Company shall not be liable for any damages or losses arising out of failure to meet such date or time.

4. RISK & TITLE

4.1 Risk in the Goods shall pass on Delivery as provided by these Conditions. Ownership of the Goods shall not pass to the Customer until the Company has received in full all sums due to it in respect of the Goods. If the Customer fails to pay the Contract Price (as defined in Clause 5.1) by the due date, the Company shall be entitled to enter the Customer's premises / site to recover the Goods and Customer shall indemnify the Company against all and any cost incurred in so doing.

5. PRICE

5.1 The price payable for the Goods and Delivery shall be the price stated in the quotation (verbal or in writing) or the Company's applicable prices at the date of Delivery where no quotation is given (the Contract Price). The Contract Price quoted for the Goods is exclusive of any value added tax (VAT). The Customer shall pay any such VAT or any other form of taxation imposed from time to time on the Goods. The Customer agrees the Contract Price is confidential and will not disclose it to third parties, except its professional advisers, agents and representatives.

5.2 The Contract Price in any quotation may be varied by the Company at any time upon notification (verbal or in writing) by the Company which shall be applicable to all orders delivered to the Customer after such notification.

5.3 The Company and the Customer agree the Company may increase the Contract Price stated in any quotation by such additional amount to reflect any (i) increase and/or change in or introduction of any duties, tariffs, taxes, allowances, charges and/or levies which have the effect of increasing the Company's and/or its supply chain's costs; and/or (ii) change in applicable law which has the effect of increasing the Company's and/or its supply chain's costs. Such increase shall be in addition to the Contract Price stated in the quotation and the Customer shall have no right of cancellation or termination due to any such increase. The Company shall have no liability to the Customer for any losses, costs and/or damages suffered by the Customer as a result of such increase to the Contract Price.

6. PAYMENT

6.1 The Company must receive payment for the Goods not later than 30 days after the following (i) the Company dispatches the Goods or (ii) the Customer takes Delivery of the Goods at the Company's premises or (iii) the Customer defaults in its obligations under Clauses 3.1 or 3.2. The Company may refuse (under this Contract or other contracts with the Customer or its associated companies) to accept or complete any order, suspend supplies, impose special conditions or cancel the Contract if (i) the Customer's credit limit is or will be exceeded on delivery (the Company reserves the right to vary the Customer's credit limit at any time); (ii) where the Customer fails to comply with these Conditions; (iii) the Customer in the reasonable opinion of the Company, is unable to pay and/or stops or suspends payment of, any of, its debts as they fall due or is in financial distress; or (iv) the Customer is subject to any form of insolvency procedure.

6.2 Time for payment shall be of the essence of the Contract. Without prejudice to any other rights of the Company interest will be payable on all overdue accounts at Lloyds Bank base rate plus 4%.

6.3 Whether in relation to this Contract or other contracts between the parties, the Customer shall not have any right of set-off, counterclaim, discount, abatement or otherwise, nor to withhold any payments due to the Company in the event of any dispute. The Company shall be entitled to set off without notice any liability of the Customer to the Company against any liability of the Company to the Customer, under this Contract or any other contract between the Company and the Customer.

6.4 All sums payable to the Company by the Customer in respect of any Goods delivered by the Company to the Customer, shall become due immediately upon (i) the occurrence of any event listed in condition 6.1, (ii) on termination of this Contract, (iii) on commencement of legal or dispute resolution proceedings against the Customer, or (iv) upon any failure by the Customer to make payment for the Goods by the due date for payment.

6.5 In the event of any breach of these Conditions by the Customer, or dispute between the parties relating to this Contract or any other contract between them, the Company shall be entitled to suspend, withdraw or terminate any discount or other rebate agreement between the parties, affecting this Contract or any other contract between them.

6.6 We accept payment of our fees by credit or debit card. In relation to payment by cheque, any cheques presented in payment for the Goods and not paid by the Customer's bank for any reason will be represented by the Company and the Customer shall be charged a fee of £ 20.00 per cheque in respect of the administration costs incurred by the Company in relation to such representation.

7. QUALITY

7.1 The quantity, quality and description of the Goods shall be those set out in the Company's quotation or as set out in the note at Delivery subject always to this Clause 7.1. Unless expressly agreed in writing by the Company, no sale shall be a sale by sample and the Goods sold may not correspond with any sample provided to the Customer. Any image or description contained in the Company's catalogues, samples, price lists or other advertising material, or otherwise provided by the Company, is intended merely to present a general description of the Goods supplied by the Company and shall not be construed as a representation nor form part of the Contract.

7.2 The Goods are a natural quarried product and as a result they are affected by the following matters or variances and the Customer agrees to such matters and variances and acknowledges that they shall not constitute a defect: (i) variations in structure, composition, colour, consistency, markings, texture, size of particles or dimension of the Goods at the time of Delivery and over time due to weathering; (ii) the surface finish or visual appearance of the Goods; (iii) blemishes, imperfections or markings including but not limited to those resulting from the oxidation of minerals.

7.3 Subject to Clause 7.2, the Company shall not be liable for the breach of Clause 7.1 unless the Customer (i) gives the written notice of any defect to the Company within 14 days (30 days if the Customer is a Consumer) of discovery of the defect or where the defect or failure was not apparent on reasonable inspection or ought reasonably to have been discovered and (ii) follows any reasonable remedial action recommended to it by the Company, and (iii) provides documentary evidence satisfactory to the Company that the Goods do not meet the applicable specification. If any Goods are known by the Customer to be outside of specification or the terms of any order, the Company shall not be liable for costs or liabilities relating to the continuance of works or further construction, which shall be the sole risk of the Customer.

7.4 Subject always to Clauses 7.2 and 7.3, the Company shall not be liable for a breach of Clause 7.1 in the event that any defect has arisen as a result of (i) the Customer's failure to use the Goods in accordance with the specification or terms of the order, (ii) use or processing of the Goods with any product, (iii) the wrong storage, handling, placing of the Goods or weathering of the Goods (iv) a failure of the Customer to stop the discharge or offloading of the Goods where the defect is apparent on discharge or unloading.

7.5 Subject to Clauses 7.3 and 7.4, if the Goods do not conform with Clause 7.1, and are consequently the subject of a defect, then the Company shall at its option re-supply such Goods free of charge or offer a refund or credit note for the value of the Goods which are the subject of the defect.

7.6 If the Company either re-supplies the Goods or issues a refund or credit note under Clause 7.5 then it shall have no further liability for a breach of Clause 7.1. This Clause does not affect any other rights or claims of the Customer arising out of any other provision of the Contract.

8. LIMITATION OF LIABILITY

8.1 Save for where the Contract provides specific remedies to the Customer in respect breach of Clause 7.1 (Quality), the following provisions set out the total liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) for loss and damage suffered by the Customer in respect of any breach of the Contract or any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract or the supply of the Goods.

8.2 All warranties, conditions and other terms implied by statute or common law which may be excluded by the agreement of the Customer are, to the fullest extent permitted by law, excluded from the Contract.

8.3 Nothing in this Contract shall exclude or restrict the Company's liability (i) for death or personal injury resulting from the Company's negligence, (ii) under Section 2(3) of the UK Consumer Protection Act 1987, (iii) for fraud or fraudulent misrepresentation, or (iv) in respect of a Customer that is a consumer, breach of the terms implied by the Consumer Rights Act 2015 and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

8.4 Subject to Clause 8.3 the Company's total liability to the Customer in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the Contract, the Goods or the supply of Goods shall be limited to a maximum financial cap of the lesser of £5,000.00 and a sum equivalent to the Contract Price. The Company shall not be liable to the Customer for any of the following (whether direct or indirect): pure economic loss, loss of profits, or loss of business, loss of goodwill and/or reputational damage, losses arising from any liability to a third party or any claims for consequential costs, charges, expenditure or compensation (including legal costs).

8.5 The Company shall have no liability for any loss or damage suffered by the Customer that arises from matters in respect of which the Company is relieved from liability under Clauses 7.2 to 7.5.

8.6 If the Customer is a consumer, the Company shall only be liable for any foreseeable loss and damage arising as a result of the Company's failure to comply with the terms of the Contract or its failure to use reasonable care and skill.

8.7 The Customer acknowledges it bears the risk of all additional expenses, costs, losses, damages and liabilities which are incurred. The Customer acknowledges it can obtain insurance to cover such potential expenses, costs, losses, damages and liabilities. Should the Customer wish the Company to have a higher limit of liability this must be raised with the Company at the earliest opportunity and be expressly agreed by the Company in writing.

8.8 The Company will use reasonable endeavours to inform the Customer if the Company is prevented or hindered from manufacturing, supplying or delivering the Goods due to breakdown of plant, non-availability of material, labour disputes, fire, accident, inclement weather, transport difficulties, delays or any other circumstances outside the Company's control. The Company shall not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control including but not limited to acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent, collapse of buildings, fire, explosion or accident, any labour or trade dispute, strikes, industrial action, lockouts and interruption or failure of utility service. In such circumstances, the Company shall be entitled to a reasonable extension of the time for performing its obligations.

9. GENERAL

9.1 The Company's Privacy Policy details how the Company uses the Customer's personal data which is available on the Companies website – www.callycombeaggregates.co.uk

9.2 Unless otherwise stated in these Conditions, any notice to be given by either party to the other shall be in writing addressed to the party's registered office or principal place of business or such other address as may be notified to the other party from time to time.

9.3 The Company reserves the right to amend these Conditions as it considers necessary, including to comply with statutory requirements or any change in legislation and will notify any such amendment to the Customer as soon as practicable.

9.4 This Contract may not be assigned by the Customer. The Company may transfer, novate, assign, charge, sub-contract or otherwise dispose of a Contract, or any of its rights or obligations arising under it, at any time during the term of the Contract.

9.5 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

9.6 No failure or delay by a party to exercise any 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.

9.7 This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

9.8 If any provision or part-provision of this 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 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. 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.

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

10. MODEL CANCELLATION FORM

To Callycombe Aggregates Limited:

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract for the sale of the following goods [*]:

Ordered on [*] received on [*].

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper),

Date

Email Address: