

# Conditions of Supply

## 1. MASTER AGREEMENT

- 1.1 The parties agree that these conditions of supply will apply to all aggregate ("goods") supplied by Winstone Aggregates, a division of Fletcher Concrete and Infrastructure Limited ("the Company") to the customer in the future.
- 1.2 The customer acknowledges that the goods supplied to it by the Company are inventory.
- 1.3 The Company may amend these conditions of supply from time to time by notice in writing to the customer.

## 2. PRICES AND QUOTATIONS

- 2.1 Where a quotation is made it may be withdrawn at any time but if not withdrawn becomes null and void unless the customer's written acceptance is received within thirty (30) days of the date of the quotation.
- 2.2 Prices quoted are based on rates and charges ruling at the date of quotation unless otherwise specified. Winstone Aggregates Limited ("the Company") reserves the right to pass on to the customer all or any increases in rates and charges incurred by the Company whatsoever that occur between the time the price is quoted and the time of delivery.
- 2.3 Prices quoted are ex quarry unless otherwise specified.
- 2.4 The provision by the Company of a quote shall in no way be construed as a readiness to extend credit.

## 3. DELIVERY

- 3.1 Where the Company does not undertake delivery, risk in the goods passes to the customer at the time possession is given to the first carrier.
- 3.2 Where the Company does undertake delivery:
  - 3.2.1 The Company is not a common carrier and does not undertake the obligations or liabilities of a common carrier.
  - 3.2.2 The Company shall use its best endeavours to ensure that any delivery day or date provided to the customer are adhered to provided that the Company shall not be liable for failure to deliver on the estimated day or dates where such failure is due, or caused or contributed to by events or circumstances beyond the Company's control.
  - 3.2.3 Where the Company has agreed to leave a public road or street in order to effect delivery of goods then:
    - (a) When in the opinion of the Company's representative there is not sufficient and suitable means of access to the delivery point it shall be the customer's responsibility to provide such sufficient and suitable means of access, and the customer shall be liable for and reimburse the Company for all costs, damages and expenses incurred if the customer fails to provide such sufficient and suitable means of access.
    - (b) The final decision on entry onto any site will be at the option and discretion of the Company's representative. Failure to deliver pursuant to this clause will not be deemed to be a breach of contract by the Company.
  - 3.2.4 The Company shall not be liable for any damage to the goods or other property where such damage could not have reasonably foreseen by the Company's representative prior to such damage occurring.
  - 3.2.5 Normally hourly truck hire rates may (at the Company's option) be charged for excessive waiting times and delays caused by the customer or his client.

## 4. PAYMENT

- 4.1 Unless the Company expressly agrees to payment being made in accordance with Clause 4.3, all sales shall be cash sales.
- 4.2 Under no circumstances shall the customer be entitled to make any form of retention from any monies due to the Company.
- 4.3 Where the Company agrees to a sale not being a cash sale in terms of Clause 4.1 payment by the customer shall be made no later than the 20th day of the month following the month of purchase.
- 4.4 Where payment is not made in accordance with Clauses 4.1 or 4.3 as the case may require the customer agrees to pay to the Company as a result of non-payment:
  - (a) Interest will apply at the rate of twenty percent (20%) per annum on all overdue amounts from the date of default (ie. when payment becomes overdue) until payment in full on all monies overdue; and
  - (b) All costs and expenses (including all legal fees and disbursements) as charged to the Company incurred by the Company in relation to obtaining or seeking to obtain remedy of default in payment by the customer.
- 4.5 All payments by the customer shall be applied first in reduction of interest and costs due pursuant to Clause 4.4, the balance (if any) then being in reduction of any amounts due under Clause 4.3.

## 5. SECURITY

- 5.1 Risk in the goods supplied shall pass when the goods are delivered into the possession of the customer or into custody on the customer's behalf.
- 5.2 The customer grants a purchase money security interest to the Company in the goods supplied to the customer by the Company.
- 5.3 The customer also grants to the Company a general security interest in all the present and after acquired goods for any indebtedness it has to the Company.
- 5.4 The Company may allocate payment of indebtedness for any debt to any instalment of goods provided to the customer as it sees fit.

- 5.5 In default of payment in full or on the due date:
- (a) The Company shall have the right immediately to repossess and remove the goods for the purpose of resale without prejudice to any of its other rights under these conditions of supply or otherwise, and the customer hereby irrevocable authorises the Company to enter any premises where the goods may be for such purpose.
  - (b) Any proceeds of sale of goods supplied to the customer by the Company shall be held in trust for the Company separately from any other monies.
  - (c) If any goods provided to the customer by the Company become commingled with other goods to form a product or mass, then the Company is entitled to the goods or value of the goods, on the day it was commingled.
- 5.6 The customer acknowledges that goods have been provided to it by the Company on credit and acknowledges that the Company has a security interest in the goods provided by it to the customer.
6. LIABILITY
- 6.1 The liability of the Company for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of the goods or any other breach of the Company's obligations hereunder, shall not exceed any amount equivalent to the price paid by the customer for the goods supplied.
- 6.2 The Company accepts no liability for any loss, damage or injury whatsoever unless it is notified as to any claim within fourteen (14) days from the date upon which the risk in the goods would be deemed to pass to the customer pursuant to these conditions of supply.
7. STORAGE
- 7.1 Electronic Storage. Except as expressly authorised by law, the customer shall have no right or title to material stored by the Company on discs or any other electronic form of storage, but if the Company agrees to duplicate or transfer stored electronic material to the customer, the Company shall have the right to charge for these services.
8. CUSTOMER'S PROPERTY
- 8.1 Customer's property and all property supplied to the Company by or on behalf of the customer will be held at the customer's risk.
9. REMEDIES
- 9.1 The Company and the customer both agree to contract out of Part 9 of the Personal Property Securities Act 1999, to the extent permitted by law, and agree that the following remedies will apply in the event of default.
- 9.2 If the customer does not make payment in full to the Company on the due date, or if the customer ceases trading or is in the Company's reasonable opinion unable to pay its debts when due, or a receiver or liquidator of the customer's assets is appointed, or the customer becomes bankrupt or enters into an arrangement or composition with its creditors then:
- (a) The right of the customer or any agent of the customer to possession of the goods supplied by the Company (in respect of which the Company has not received payment (in full) and any right to sell or dispose of such goods shall immediately and without the necessity of any notice terminate; and
  - (b) The Company, its employees and agents may at any time enter onto any premises where the goods are, in order to inspect, take possession of and remove the goods. The customer will indemnify and hold harmless the Company, its employees and agents in respect of any expenses, loss or damage (including loss or damage to third parties) in respect of the exercise or attempted exercise of the Company's rights and powers stated in this clause 9; and
  - (c) The Company may decline at any time to make any further deliveries to the customer and may require payment in cash or satisfactory security before delivery of any further order.
- 9.3 The Company reserves the right at any time to deliver on a cash basis only.
10. VARIATION
- 10.1 The stated conditions of supply may be varied by notice in writing by the Company.
11. NOTICES
- 11.1 Any notices to the customer may be given by posting the notice to the customer's last known postal address, or faxing it to the customer's last known facsimile number, or by e-mail message sent to the customer's last known e-mail address.
- 11.2 The customer waives the right to receive a copy of the verification statement confirming registration of a financing statement relating to the security created by clause 5 herein.
12. CHANGE OF DETAILS
- 12.1 The customer must notify the Company of any change in any of the details provided by it on the Credit Account Application/ Acceptance within 7 days of such change occurring.
13. SCOPE
- 13.1 Notwithstanding any terms of trade of the customer, the Company agrees to supply only on the basis that these terms and only these terms apply.
14. GENERAL
- 14.1 An account not traded for two years will automatically be closed. A new application form will be required to resume trading.
- 14.2 Dockets are issued at point of sale for all transactions. These dockets will only be reprinted for up to one year and a charge will be incurred.