

WINSTONE AGGREGATES a division of Fletcher Concrete and Infrastructure Limited ("**Company**")

CONTROLLED FILL – TERMS & CONDITIONS

The Agreement to Dispose of Controlled Fill is set out in: (i) the site specific "Conditions of Entry"; (ii) any written quote provided by the Company; and (iii) these terms and conditions, (together, the "**Agreement**"). If there is any inconsistency between these documents then the order of precedence shall be as listed above. The Company reserves the right to amend the Conditions of Entry from time to time by notice to the Customer.

1. PRICE AND PAYMENT

- 1.1 The price to dispose of each unit of controlled fill ("**Fill**") at the site specified in the Conditions of Entry ("**Site**") is the Company's list price at the date of disposal, unless the Company has provided a quotation in writing prior to disposal.
- 1.2 If a quote is made it may be withdrawn by the Company at any time but if not withdrawn becomes null and void unless the Customer's written acceptance is received within thirty (30) days of quotation. A quote is not an offer to extend credit to the Customer. Prices quoted are for the Customer to dispose of Fill at the Site, unless the Company has specifically agreed to collect the Fill from the Customer's premises.
- 1.3 The Company may refuse to take or collect Fill if the Company has not accepted the Customer's application for credit.
- 1.4 If the Company accepts the Customer's application for credit, payment is to be made by the 20th of the month following disposal. In all cases payment must be made in full without set off or deduction. If the Customer fails to make payment in full by the due date:
 - (a) the Customer shall be liable to pay to the Company by way of liquidated damages interest at a rate of 20% per annum from the due date until payment is made in full. The Customer must also pay any expenses, including legal costs, reasonably incurred by the Company as a consequence of the Customer's payment default; and
 - (b) if payment is late by 7 days or more, then the Company shall be entitled to refuse to take any further Fill under this Agreement or to supply any goods or services under any other contract.

2. CONTROLLED FILL

- 2.1 It is the sole responsibility of the Customer to only dispose at the Site (or to present for collection at the Customer's premises) Fill that complies in all respects with the chemical standards, engineering standards and other requirements for the Fill as set out in the Conditions of Entry at the time of disposal or collection ("**Standards**").
- 2.2 The Customer represents and warrants to the Company that all Fill disposed at the Site (or presented for collection) by the Company under this Agreement complies with the Standards in all respects. If any of the Customer's Fill disposed at the Site does not comply with the Standards then the Customer indemnifies the Company against all actions, claims, demands, proceedings, costs, expenses, losses, damages and other liabilities suffered or incurred by the Company in respect of that non-compliant Fill including, without limitation, the Company's costs to uplift, remove and lawfully dispose of the non-compliant Fill.
- 2.3 The Customer's obligations under this Agreement and the Customer's liability and responsibility for the compliance of the Fill with the Standards remain unaffected notwithstanding any sampling, prior approval, testing, or acceptance of the Fill by the Company.
- 2.4 The Company is entitled to arrange, from time to time, for an independent auditor to inspect the Customer's business records to verify that the Fill complies with the Standards. The auditor must report to both the Company and the Customer. The cost of the audit will be borne by the Company, unless the audit shows that the Fill does not comply with the Standards in any material respect, in which case the cost of the audit will be borne by the Customer.
- 2.5 Unless otherwise expressly agreed in writing, the Company does not have any obligation to accept any particular volume or type of Fill for disposal, even where that Fill is compliant with the Standards. The Company reserves the right to refuse to accept any Fill for disposal or collection by the Company at any time and without reason.

3. COLLECTION BY THE COMPANY

- 3.1 If the Company has specifically agreed to collect the Fill from any premises:
 - (a) The Customer shall provide at its expense safe roading and access



suitable for use by usual road transport for the Company to collect the Fill. Should safe collection not be possible, the Company may at its discretion elect not to access the premises and any additional expenses incurred by the Company in delaying collection and/or effecting collection by alternative means shall be paid by the Customer.

- (b) Unless otherwise expressly agreed in writing, the loading of the Company's vehicles shall be the sole responsibility and cost of the Customer.
 - (c) Maximum truck waiting times of 60 minutes have been allowed for in the collected price and any costs due to time over this period at (or waiting to enter or depart) the collection site and without fault of the Company shall be paid by the Customer at normal hourly truck hire rates.
- 3.2 Where small collections incur additional costs, or the Customer specifies collection from premises other than the quoted collection location, then any additional freight costs shall be borne by the Customer.
- 3.3 The Company will use its reasonable endeavours to adhere to agreed collection dates, provided that the Company shall not be liable to the Customer for any delay or failure to collect that is caused by any reason beyond the reasonable control of the Company.

4. DELIVERY AND DISPOSAL BY THE CUSTOMER

- 4.1 Where the Customer delivers and disposes of Fill at the Site, the Customer shall (and shall procure that all of the Customer's employees, contractors or agents shall):
- (a) comply with the traffic management requirements, health and safety requirements, access hours, and other access requirements set out in the Conditions of Entry; and
 - (b) comply with the Company's directions as to the specific location at the Site for disposal of the Fill.
- 4.2 The Company will use its reasonable endeavours to make the Site available for disposal during normal access hours but the Company does not guarantee that access to the Site will be available at all times during normal access hours. The Company reserves the right to delay, restrict or refuse access to the Site as the Company

reasonably considers necessary for the safe or efficient operation of the Site, or to comply with any resource consent or other regulatory requirement.

- 4.3 Unless otherwise expressly agreed in writing, the Customer acknowledges and agrees that the Company is not responsible for:
- (a) unloading the Customer's vehicles nor for providing any plant, equipment or labour for unloading; or
 - (b) scheduling deliveries of Fill to the Site,
- and any time or costs incurred in unloading or by vehicles waiting to access the Site shall be the sole responsibility of the Customer.
- 4.4 If the Customer is backhauling any aggregate products from the Site, then the Company will provide reasonable washing facilities (but not labour) for the Customer to wash the empty vehicle tray before loading.
- 4.5 The Customer indemnifies the Company against:
- (a) loss of or damage to the Company's property; and
 - (b) against actions, claims, demands and proceedings by any person against the Company in respect of personal injury, death or loss of or damage to any property,

arising from the acts or omissions of the Customer or of the Customer's employees, contractors or agents, but the Customer's liability to indemnify the Company will be reduced proportionately to the extent that any act or omission of the Company contributes to the loss, damage, injury or death.

5. WEIGHTS

- 5.1 Each vehicle disposing of Fill shall be weighed on entry and exit to the Site using the Company's weighbridge facilities and a disposal docket provided to the driver of the vehicle. Save only in the case of manifest error, the Company's weighbridge records will be conclusive evidence of the weight of the Fill disposed. If a vehicle does not use the weighbridge or if the weighbridge is not working for any reason, then the weight of a vehicle's load will be as estimated by the Company, acting reasonably and following consultation with the Customer.



6. HEALTH AND SAFETY

- 6.1 When at the Company's Site the Customer must comply with the Company's health and safety procedures (as set out in the Conditions of Entry or otherwise notified by the Company to the Customer in writing from time to time) and comply with any reasonable direction or requirement of the Company in relation to the Health and Safety in Employment Act 1992 and all related legislation including all regulations and codes of practice approved under that Act ("**Health and Safety Legislation**").
- 6.2 When at any premises controlled by the Customer the Company must comply with the Customer's health and safety procedures as notified by the Company to the Customer in writing from time to time and comply with any reasonable direction or requirement of the Company in relation to the Health and Safety Legislation.
- 6.3 Each party must:
- (a) ensure all relevant personnel attend the other party's health and safety meetings, seminars and inductions as may be reasonably required for operations under this Agreement at the Site or any premises controlled by the Customer;
 - (b) ensure all relevant personnel submit to post-incident drug and alcohol testing;
 - (c) provide each other with such assistance as it may reasonably require to conduct any incident investigation;
 - (d) immediately notify the other party in writing if it is aware, in respect of any relevant workplace:
 - (i) any hazard may or does exist;
 - (ii) any accident, serious harm or "near miss" accident or serious harm to any person has occurred and what steps (if any) have been or are proposed to be taken in relation thereto; or
 - (iii) any regulatory notice (including any improvement or prohibition notice) is likely to be or has been issued.
- 6.4 In the event that the Customer fails to comply with its obligations pursuant to this clause, and without limitation to any other remedies available to the Company, the Company shall be entitled to immediately suspend the Agreement until such time as the Customer is in compliance with such obligations.

7. WARRANTY BY THE COMPANY

- 7.1 The Company holds all necessary consents, authorisations, regulatory approvals and rights of access to dispose at the Site Fill that complies with the Standards. No other representations or warranties are made or given by the Company under or in connection with this Agreement. All other warranties and conditions implied by law are expressly excluded to the fullest extent permitted by law.
- 7.2 The Customer acknowledges that it is disposing of the Fill for the purposes of a business and that the Consumer Guarantees Act 1993 will not apply to the disposal or collection of the Fill.

8. LIABILITY

- 8.1 The liability of the Company to the Customer for any breach of this Agreement by the Company shall not exceed an amount equivalent to the GST-exclusive price paid by the Customer for the Fill disposed of under this Agreement during the 12 month period preceding the relevant breach.
- 8.2 The Company shall not be liable (whether in contract or in tort) for any loss of profits, or any consequential, indirect or special loss or damages suffered by the Customer or any other person, arising directly or indirectly from any breach of this Agreement or from any negligence or other act or omission of the Company.
- 8.3 The Company shall not be liable to the Customer if for any reason beyond the reasonable control of the Company it is not able to accept or collect Fill for disposal.

9. TERMINATION

- 9.1 If the Customer:
- (a) fails to pay any amount owing on the due date or commits any other breach of this Agreement and such breach continues for 7 days; or
 - (b) becomes, or is deemed to be insolvent or bankrupt, or goes into receivership or has a receiver, trustee, or manager appointed in respect of all or any of its property, or any resolution is passed, or any proceeding is commenced, for the winding up or liquidation of the Customer,

then the Company may by written notice to the Customer terminate this Agreement.



- 9.2 The Company may terminate this Agreement for convenience by 30 days' written notice to the Customer.
- 9.3 Expiry or termination of this Agreement (whether under this clause 9 or otherwise) shall be without prejudice to the rights and remedies of either party arising out of or in connection with any breach of this Agreement occurring prior to the date of expiry or termination, or to the rights of either party which have accrued prior to, or which arise out of or in connection with, expiry or termination.

10. GENERAL

- 10.1 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 email message to the Customer's last known email address.
- 10.2 These terms, the Conditions of Entry and any quote issued by the Company shall constitute the entire agreement between the Company and the Customer for the disposal or collection of the Fill. The parties agree for the purposes of section 5D of the Fair Trading Act 1986 (FTA) that they are contracting out of sections 9, 12A, 13 and 14(1) of the FTA in respect of the matters covered by these terms.
- 10.3 Where any provision of these terms is rendered void, unenforceable or otherwise ineffective by operation of law, that shall not affect the enforceability or effectiveness of any other provision of these terms and conditions.

