

Newthorpe Aggregates Limited- Sale of Processed Materials Terms

The Buyer's attention is in particular drawn to Condition 10.

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this Condition 1 apply in these Conditions.

Buyer: the person who enters into a Contract.

Company: Newthorpe Aggregates Limited (CRN: 10120947) of Prospect Farm, High Bradfield, Sheffield, S6 6LJ.

Consumer: a Buyer purchasing Goods and/or Services in their own personal capacity for private use.

Contract: any contract entered into by the Buyer with the Company for the purchase of Goods and/or Services in accordance with the Conditions.

Goods: any goods (and any part thereof) to be supplied under a Contract.

Services: any services to be supplied under a Contract.

1.2 Reference to a law is a reference to it as it is in force for the time being and includes reference to any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Reference to the masculine includes the feminine and the neuter, reference to the singular includes the plural and, in each case, vice versa and, reference to a person includes companies, firms, corporations and public authorities.

1.4 Headings do not affect the interpretation of the Conditions.

2 APPLICATION OF TERMS

2.1 The Conditions shall apply to all Contracts and, subject to any variation under Condition 2.3, are the only terms and conditions on which the Company agrees to supply Goods and/or Services to the Buyer to the exclusion of all other terms and conditions.

2.2 No terms or conditions of the Buyer endorsed on, delivered with, or contained in the Buyer's purchase order, order confirmation or other documents form part of the Contract and, subject to Condition 2.3, any attempt by the Buyer to exclude or limit any Conditions shall be void and shall not form part of the Contract.

2.3 Any variation to the Conditions, and any representations about the Goods or Services, shall have no effect and shall not form part of the Contract unless agreed in writing by the Company.

2.4 The Buyer acknowledges that it has not relied on any written or oral statement, promise or representation made or given by, or on behalf of, the Company that is not set out in the Conditions.

2.5 The Company will provide the Buyer with an oral or written (includes email, WhatsApp or SMS communications) quotation. A quotation so provided is an invitation to treat by the Company to sell the Goods and/or Services, subject to the Conditions, to the Buyer. A quotation is valid for 30 days from its date, provided that the Company has not previously withdrawn it.

2.6 An acceptance of a quotation or the placing of an order by the Buyer shall be deemed to be an offer, subject to the Conditions, to purchase Goods and/or Services stated therein from the Company.

2.7 No quotation accepted or order placed by the Buyer shall be deemed to be accepted by the Company until the Company confirms acceptance to the Buyer orally or in writing (includes email, WhatsApp or SMS communications).

2.8 No binding Contract will come into existence until an order acknowledgement or acknowledgement in an email, WhatsApp or SMS communications is given by the Company in accordance with Condition 2.7 or, if earlier, by the Company delivering the Goods and/or Services to the Buyer at the Delivery Point (defined at clause 4.1 below) or the Buyer collecting the Goods.

3 DESCRIPTION

3.1 The quantity and description of the Goods and Services shall be as set out in the Company's quotation or order acknowledgement or in an email, WhatsApp or SMS communication sent on behalf of the Company.

3.2 All samples, descriptions, specifications and illustrations issued by the Company or contained in the Company's brochures, website or other materials are issued or published to provide an approximate idea of the Goods. They should not be relied on by the Buyer as precise or construed literally and shall not form part of the Contract and this is not a sale by sample.

4 DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods/Services shall take place at the address specified in the order, or and if the Company is delivering the Goods as opposed to the same being collected by the Buyer, as close thereto as the Company can deliver to at the time of delivery ("Delivery Point").

4.2 Any dates specified or agreed to by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract and shall be a separate Contract. No cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4.4 The Buyer shall, at its expense, provide adequate and appropriate equipment and manual labour for unloading the Goods at the Delivery Point. At the time of unloading an authorised representative of the Buyer must sign the delivery note to confirm that the Goods are as ordered and undamaged. In the case of bulk deliveries, the representative will also advise if there is not adequate space existing in the receiving tank or area for the quantity of Goods ordered or if any current contents of such are incompatible with the Goods to be delivered.

4.5 The Company's record of the date of delivery and the quantity and description of Goods delivered to the Buyer shall be conclusive evidence of such, unless the Buyer can provide conclusive evidence to the contrary.

4.6 If the quantity of Goods delivered to the Buyer is up to 10% more or less than the quantity ordered, the Buyer shall not be entitled to object to or reject all or any of the Goods by reason of the surplus or shortfall and shall pay for such at the pro rata Contract rate.

4.7 Subject to the other provisions of these Conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods/Services (even if caused by the Company's negligence).

4.8 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, wishes to delay delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

4.8.1 the Goods will be deemed to have been delivered for the purposes of Conditions 5 and 7; and

4.8.2 the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.9 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer notifies the Company in writing of the non-delivery within 7 days of the agreed delivery date (as recorded by the Company).

4.10 The Company's liability for non-delivery of the Goods is limited (at its option) to replacing the Goods within a reasonable time or issuing a credit note for the Goods at the pro rata Contract rate.

4.11 If, as at the time that the Company attends the Delivery Point and is ready to deliver the Goods, the Buyer is not in a position to accept the Goods and the Company waits at or near to the Delivery Point beyond a grace period of ten minutes (Grace Period) from the time that the Company arrives at the Delivery Point, the Company shall be entitled to charge the Buyer a waiting time charge calculated on a per-minute basis at as rate of £1.25per minute, commencing immediately after the Grace Period has expired.

5 RISK/TITLE

5.1 The Goods are at the risk of the Buyer from the time of delivery.

5.2 Ownership of the Goods shall not pass to the Buyer until the Company has received (in cash or cleared funds) from the Buyer:

5.2.1 the full Price for the Goods and/or Services plus VAT; and

5.2.2 all other sums which are due to the Company from the Buyer.

5.3 Until ownership of the Goods has passed in accordance with Condition 5.2, the Buyer shall:

5.3.1 hold the Goods on a fiduciary basis as the Company's bailer; and

5.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property; and

5.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

5.3.4 maintain the Goods in satisfactory condition, keep them insured on the Company's behalf for their full Price against all risks and provide the Company with a copy of the insurance policy on request; and

5.3.5 deliver up the Goods to the Company on demand.

5.4 The Buyer may only resell the Goods before ownership has passed if such sale is made in the ordinary course of the Buyer's business, at full market value and is a sale of the Company's property on the Buyer's own behalf dealing as principal.

5.5 The Buyer's right to possession of the Goods shall terminate immediately if the Buyer:

5.5.1 has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager or administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, or the Buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

5.5.2 suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it; or

5.5.3 fails to observe or perform any of its obligations under the Contract or any other contract it has with the Company; or

5.5.4 encumbers or in any way charges any of the Goods.

5.6 The Company shall be entitled to recover payment for the Goods and/or Services notwithstanding the fact that ownership of any of the Goods has not passed from the Company to the Buyer.

5.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

5.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

5.9 Should the Company repossess any Goods or the Buyer delivers up any Goods, in accordance with this Condition 5, the Contract in respect of those particular Goods is rescinded.

5.10 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 5 shall remain in effect.

6 PRICE

6.1 Unless otherwise agreed by the Company in writing, the price for the Goods/Services is the price stated in the quotation, order acknowledgement, or email, WhatsApp or SMS communications provided by the Company to the Buyer in accordance with Condition 2.7 ("Price").

6.2 The Price shall be exclusive of any value added tax and all costs or charges in relation to unloading, carriage and insurance, all of which amounts the Buyer shall pay when they fall due.

7 PAYMENT

7.1 Subject to Condition 7.3, payment of the Price is due in pounds sterling within 30 days of the date of the Company's invoice for such Goods and time for payment shall be of the essence.

7.2 No payment shall be deemed to have been received until the Company has received cash or cleared funds.

7.3 All payments payable to the Company under a Contract shall become due immediately on its termination, howsoever arising.

7.4 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

7.5 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

8 QUALITY

8.1 As the Goods have often been reclaimed, the Company confirms that the Company has complied with all applicable legislation in respect of the recycling of the Goods.

8.2 Where the Buyer is a Consumer, the Company warrants that, upon delivery, the Goods shall be of satisfactory quality within the meaning of the Supply of Goods and Services Act 1982.

8.3 The Company shall not be liable for a breach of the warranty in Condition 8.2 unless the Buyer gives written notice of the defect within 7 working days of the date the defect was discovered to the Company (or if the defect is a result of damage in transit to the carrier) and the Company is given a reasonable opportunity after receiving the notice to examine such Goods and the Buyer (if requested by the Company) returns such Goods to the Company.

8.4 The Company shall not be liable for a breach of the warranty in Condition 8.2 if the Buyer makes any further use of such Goods after giving such notice, or the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice, or the Buyer alters such Goods without the written consent of the Company.

8.5 Subject to Conditions 8.3 and 8.4, if any of the Goods do not conform with the warranty in Condition 8.2 the Company shall, at its option, replace such Goods (or the defective part) or refund the Price at the pro rata Contract rate provided that (if requested) the Buyer shall return the Goods or the defective part of such Goods.

8.6 If the Company complies with Condition 8.5 it shall have no further liability for a breach of the warranty in Condition 8.2.

9 BUYER CANCELLATION

9.1 A Buyer's request to cancel or amend an order must be in writing and the Company shall confirm its acceptance of such in writing.

9.2 The Buyer shall indemnify the Company in full and against all loss (including loss of profit), costs (including the full cost of labour and materials used), damage, charges and expenses incurred by the Company as a result of any cancellation.

9.3 The Company may charge a handling fee on any returned Goods to cover the administration costs and restocking costs.

9.4 Consumers may cancel any order at any time before or within 7 working days from the day after the delivery date and receive a refund of the Price paid for the Goods but not for the Services. The Consumer must return the Goods at its cost and risk. This Condition shall not apply if the Goods have been used prior to such cancellation or if the Goods had been altered to meet the Consumer's particular requirements.

10 LIMITATION OF LIABILITY

10.1 Subject to Conditions 4 and 8, Condition 10 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of the Conditions and any representation, statement, tortious act or omission, including negligence, arising under or in connection with the Contract

10.2 Subject to Conditions 10.3, 10.4 and 10.5:

10.2.1 the Company'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

10.2.2 the Company 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.

10.3 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.

10.4 Condition 10.3 shall not apply to a Contract with a Consumer and any statutory Consumer rights are unaffected by these Conditions.

10.5 Nothing in these Conditions excludes or limits the Company's liability for death or personal injury caused by the Company's negligence, or for fraud or fraudulent misrepresentation, or under section 2(3) of the Consumer Protection Act 1987, or for any matter which it would be illegal for the Company to do so.

11 FORCE MAJEURE

11.1 The Company reserves the right to defer the date of delivery or cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental action, war or national emergency, act of terrorism, protest, riot, civil commotion, fire, explosion, flood, epidemic, labour disputes (other than in relation to the Company's own workforce), or restraint or delay affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

12 GENERAL

12.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

12.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract, and the remainder of such provision, shall continue in full force and effect. In the event that such court, tribunal or administrative body of competent jurisdiction decides that such provision is not severable, the parties agree to substitute the relevant provision with a legal, valid, enforceable and reasonable provision which achieves, to the greatest extent possible, the same effect as the original provision.

12.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

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- 12.4 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.5 The formation, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 13 COMMUNICATIONS**
- 13.1 All notices sent under the Contract must be in writing. All communications and notices sent, and invoices issued, shall be sent to the other party's registered address, or such other address as is notified in writing, either by hand, first class post, or email and shall be deemed served on delivery if delivered by hand, 48 hours after posting if sent by post, and on completion of transmission if sent by email.
- 13.2 Communications addressed to the Company must be marked for the attention of one of the Company's officers, or senior manager of the Company, or any other authorised person notified as such to the Buyer by the Company.