

TERMS AND CONDITIONS OF SALE (“Terms”)

The customer’s attention is drawn in particular to the provisions of Clause 7

1 DEFINITIONS

1.1 In these Terms the following definitions have the following meanings:

- 1.1.1 “Buyer” means the purchaser of the Goods.
- 1.1.2 “Carrier” means any person who in a contract of carriage undertakes to perform or procure the carriage of Goods to the Buyer, an employee, or agent of that person.
- 1.1.3 “Company” means Longcliffe Quarries Limited (registered in England and Wales with company number 00273400).
- 1.1.4 “Contract” means the contract between the Company and the Buyer for the sale and purchase of the Goods in accordance with these Terms.
- 1.1.5 “Delivery” means delivery of the Goods in accordance with Clause 4.3.
- 1.1.6 “Goods” means the goods (or any part of them) set out in the Order Acknowledgement.
- 1.1.7 “Order” means the Buyer’s order for the Goods, as set out the Buyer’s purchase order or otherwise communicated by the Buyer to the Company.
- 1.1.8 “Order Acknowledgement” means the electronic written confirmation sent by the Company to the Buyer that confirms the Company’s acceptance of the Order.
- 1.1.9 “Packaging” means all returnable IBCs and other returnable packaging, containers or pallets in which the Goods are contained.
- 1.1.10 “Sample” means the sample pot containing specified labelled product as provided by the Company to the Buyer.
- 1.1.11 “Specification” means the chemical analysis and particle size analysis given by the Company in respect of the Goods.
- 1.1.12 “Terms” means the terms and conditions set out in this document as amended from time to time in accordance with Clause 10.5.
- 1.1.13 “Working Day” means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

2 BASIS OF CONTRACT

- 2.1 The Contract consists of an Order placed by the Buyer for the Company to supply the Goods in accordance with these Terms. These Terms shall govern the Contract to the exclusion of any other terms and conditions.
- 2.2 The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Company issues a written Order Acknowledgement accepting the Order, at which point the Contract shall come into existence.
- 2.4 A quotation for the Goods given by the Company to the Buyer shall not constitute an offer. A quotation shall only be valid for a period of 1 month from its date of issue. The Company is entitled to withdraw any quotation at any time.

3 GOODS

- 3.1 The description of the Goods is set out in the Specifications and the quantity of Goods is set out in the Order Acknowledgement.
- 3.2 If the Company provides a Sample the bulk of the Goods will comply with the Specification given in respect of such Sample.
- 3.3 The Company reserves the right to make any changes to the Specification which are required to conform with any applicable statutory or regulatory requirement or which do not materially affect the quality or performance of the Goods. The Company will inform the Buyer of changes to the Specification as soon as reasonably practicable after they have been made.

4 DELIVERY

- 4.1 The Company shall provide the Buyer with a delivery note that documents Delivery of the Order.
- 4.2 Delivery of the Goods shall be made by:
 - 4.2.1 the Buyer or its Carrier collecting the Goods from the Company’s premises within 5 Working Days after the Company has notified the Buyer that the Goods are ready for collection; or
 - 4.2.2 if some other place for delivery is agreed by the Company (“Delivery Location”), by the Company delivering the Goods to the Delivery Location at any time after the Company notifies the Buyer that the Goods are ready for delivery.
- 4.3 Delivery is completed on the completion of the Buyer or its Carrier loading the Goods or (where the Company agrees to deliver pursuant to Clause 4.2.2) when the Goods are ready for unloading at the Delivery Location.
- 4.4 Any dates and times quoted for Delivery are approximate only and the time of Delivery shall not be of the essence. The Company shall not be liable for any delay in making the Goods available for Delivery.

4.5 Where the Company agrees to deliver the Goods to the Delivery Location, such agreement is based upon:

- 4.5.1 the Buyer providing adequate Delivery instructions;
- 4.5.2 safe and easy access of the Company’s vehicles for Delivery and collection of the Goods; and
- 4.5.3 where relevant, the availability to discharge a full load of Goods from a pressurised vehicle into a suitable silo equipped with relevant silo protection systems.

4.6 If the Company considers that safe and easy access to the Delivery Location is not available or any road or ground over which its vehicles would have to travel is unsuitable or a suitable silo equipped with relevant silo protection systems is not available, the Company reserves the right to refuse to deliver or collect Goods. If material is returned or no material is available to collect then the Company reserves the right to charge a reasonable cost to cover the cost of the haulage.

4.7 Whilst the driver has instructions to deliver to the point required by the customer, the driver’s decision as to the safety or otherwise of that point shall be final. In these circumstances, the Company reserves the right to refuse to deliver the Goods. If material is returned the Company reserves the right to charge a reasonable cost to cover the cost of the haulage.

4.8 Immediately upon Delivery, prior to signature of a delivery receipt, the Buyer will inspect the Goods. At this time the Buyer shall:

- 4.8.1 satisfy itself as to the condition of the Goods; and
- 4.8.2 in the case of loose bulk products, satisfy itself as to the actual weight of the Goods delivered. The Company’s weighbridge readings will apply except in the case of manifest error. The Company reserves the right to deliver 10% more or less than the ordered weight. The Buyer will pay for the actual weight or volume delivered.

4.9 Unless otherwise agreed Packaging remains the property of the Company at all times. The Buyer shall:

- 4.9.1 make all Packaging available for return as soon as possible to the place indicated by the Company;
- 4.9.2 ensure that all Packaging returned to the Company is empty, securely closed, free from residual materials, substances, products or other waste and in good order;
- 4.9.3 consign the Packaging “carriage paid” unless otherwise agreed with the Company;
- 4.9.4 notify the Company of any loss or damage to the Packaging whilst in the Buyer’s possession; and
- 4.9.5 indemnify the Company in respect of all losses, liabilities, costs and damages incurred by the Company arising from any breach of Clauses 4.9.1 to 4.9.4.

5 RISK AND TITLE

- 5.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon completion of Delivery.
- 5.2 Notwithstanding Delivery and the passing of risk in the Goods, the title in the Goods shall not pass to the Buyer until the Company has received (in cash or cleared funds) payment in full of the price of the Goods and all other sums due to the Company by the Buyer on any account in respect of which payment has become due.
- 5.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
 - 5.3.1 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company’s property;
 - 5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 5.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery; and
 - 5.3.4 notify the Company immediately if it becomes subject to any of the events listed in Clauses 8.2.2 to 8.2.6.
- 5.4 Subject to Clause 5.5, the Buyer may resell the Goods before title has passed to them in the ordinary course of its business (but not otherwise). However, if the Buyer resells the Goods before that time:
 - 5.4.1 the Buyer deals as principal and not as agent; and
 - 5.4.2 title to the Goods passes from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.
- 5.5 At any time before title to the Goods passes to the Buyer, the Company may:
 - 5.5.1 by notice in writing, terminate the Buyer’s rights under Clause 5.4 to resell the Goods or use them in the ordinary course of its business; and
 - 5.5.2 require the Buyer to deliver up all Goods in its possession that have not been resold. If the Buyer fails to do so promptly, the Buyer grants an irrevocable licence to the Company and its agents to enter any premises of the Buyer or of any third party where the Goods are stored to recover them.

6 PRICE AND PAYMENT

6.1 The price of the Goods shall be the price confirmed by the Company's sales team to the Buyer either on the telephone or in a written quote. The price is exclusive of VAT (or any other Government duty or tax applicable). The price includes Aggregate Levy in accordance with the UK government rate at the time of invoice. Some industrial processes are relieved of Aggregate Levy and the Company require the Buyer to complete annually, a self-certification form with supporting evidence to qualify for relief. The company has the right to recover from the Buyer any cost incurred by HMRC or their representatives to recover Aggregate Levy in the event of fraudulent or incorrect self-certifications.

6.2 All prices are subject to revision without notice.

6.3 Except where agreed in writing all prices are given by the Company on an ex works basis.

6.4 All quotations for or which include the transportation of Goods are based on the provisions of Clause 4.5 being satisfied. Where the Company agrees to deliver the Goods to the Delivery Location, the Buyer shall be liable to pay:

6.4.1 the Company's charges for transport and insurance which shall be invoiced to the Buyer; and

6.4.2 the Company's charges for waiting time where the Company's vehicles are held or delayed on the Buyer's site due to the fault or delay of the Buyer which shall be invoiced to the Buyer. Tanker deliveries will be charged after 90 minutes from entry to site. Tipper deliveries will be charged after 30 minutes from entry to site.

6.4.3 The Company includes one silo discharge point as part of the standard delivery charge. Should a change of silo be required as part of the delivery the Company will charge for each additional silo discharge point.

6.4.4 The Company includes one tipping point as part of the standard delivery charge. The company will charge for each additional tipping point.

6.5 Pursuant to Clauses 4.5 and 4.6, should the Company incur extra costs in making Delivery by reason of unsatisfactory instructions or access or unsuitability of roads or ground or unavailability of suitable silos to discharge into, the Company shall be entitled to recover these costs as an increase to the quoted price.

6.6 Where it is agreed that Clause 4.9 does not apply and the Company is to supply Packaging, the Buyer will pay the Company's charges for Packaging which shall be invoiced to the Buyer.

6.7 If Packaging is returned to the Company in accordance with Clauses 4.9.1 to 4.9.5 above, the Company will issue a credit note to the Buyer (for such amount as the Company and the Buyer may agree) against the Packaging charges of the Company.

6.8 The Company may submit invoices on or at any time after Delivery.

6.9 Payment shall be due 30 days after the end of the month of supply of materials or services. Each invoice submitted by the Company shall be paid in full and in cleared funds to the bank account details notified by the Company to the Buyer from time to time. The time of payment of the price shall be of the essence of the Contract.

6.10 Without prejudice to any other rights or remedies of the Company, if the Buyer fails to make a payment due to the Company under the Contract by the due date, interest shall be charged (whether before and after any judgement) on any amount unpaid by the Buyer at the rate of 8 per cent per annum above Barclays Bank Plc base rate from time to time, until payment in full is made together with all costs and expenses incurred by the Company in the collection of overdue monies.

6.11 All amounts due under the Contract shall be paid in full and free from any set-off, counterclaim, deduction or withholding whatsoever.

7 LIABILITY

7.1 Any claim by the Buyer which is based on a shortfall in quantity of the Goods or any defect in the quality or the condition of the Goods delivered shall be given by notice in writing to the Company within 24 hours from the date of Delivery. If defect or failure was not apparent on a proper inspection of the Goods, then the Buyer shall give notice in writing to the Company within 7 days of discovery of the defect or failure.

7.2 The Buyer acknowledges that each Delivery of the Goods whilst complying with the Specification may vary in colour and/or grade size and that the Company can only supply Goods which comply with the tolerance levels stated in the Specification. Accordingly, the Company shall not be liable to the Buyer where the Goods comply with the Specification.

7.3 Any information supplied in the Company's safety data sheets is given for guidance only and the Company shall not be liable in respect of any loss or damage (including consequential loss) or any other liability whatsoever incurred by the Buyer as a result of usage of the Goods which is inconsistent with the guidance given in the safety data sheet or as a result of the Buyer following its own or independent advice.

7.4 Unless expressly stated in these Terms, no guarantee, warranty, condition or representation on the part of the Company is given or implied by these Terms nor is it to be taken to have been given or implied from anything said or written in the negotiations between the parties or their representatives prior to the Contract. It is for the Buyer to carry out its own tests and to satisfy itself of the suitability of the Goods for its own particular purpose.

7.5 Except in respect of death or personal injury caused by the Company's negligence or liabilities which cannot legally be limited, the Company shall not be liable to the Buyer by reason of any representations, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer.

7.6 In any event the Company's maximum aggregate liability (other than liability in respect of death or personal injury arising out of the negligence

of the Company or in respect of liabilities which cannot legally be limited) whether for breach of the Contract or these Terms or otherwise and whether or not arising from the negligence of the Company shall not exceed an amount equal to the aggregate price paid for the relevant Goods under the Contract.

7.7 The Company shall not be liable to the Buyer for the following types of losses, in each case whether direct, indirect or consequential:

7.7.1 loss of profits;

7.7.2 loss of sales or business;

7.7.3 loss of agreements or contracts

7.7.4 loss of anticipated savings;

7.7.5 loss of or damage to goodwill; and

7.7.6 any other indirect or consequential losses whatsoever and howsoever caused.

7.8 The Buyer may request that the Goods are to be manufactured or a process is to be applied to them by the Company in accordance with a specification submitted in writing by the Buyer and agreed with the Company. The Buyer shall indemnify and keep indemnified the Company against all liabilities, loss (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses), damages, costs and expenses awarded against, or incurred by the Company in connection with, any claim made against the Company for actual or alleged infringement of any third party's patent, copyright, design, trademark or other intellectual property rights which arise out of or in connection with the Company's use of the Buyer's specification.

7.9 This Clause 7 shall survive termination of the Contract.

8 RETURNS AND TERMINATION

8.1 The Company may, at its discretion, accept or reject the cancellation of any contract or the return of any Goods not required. Any such cancellation or return shall be on such terms as the Company specifies and, in particular, the Company will charge:

8.1.1 a handling fee for returned Goods;

8.1.2 a return fee and all costs incurred on returned loads of Goods;

8.1.3 all costs incurred on cancelled Orders; and

8.1.4 a fee for short notice cancellations that are communicated to the Company after 3.00 pm on the Working Day before Delivery.

8.2 Without prejudice to any other right or remedy available to the Company, the Company shall be entitled to terminate the Contract with immediate effect or suspend any further deliveries under the Contract without any liability to the Buyer by giving written notice to the Buyer if:

8.2.1 the Buyer fails to pay the Company a sum due pursuant to the Contract or any other contract between the parties on the due date for payment;

8.2.2 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);

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

8.2.4 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on business;

8.2.5 any other Insolvency Proceedings as defined by the Insolvency Rules 1986 or any event similar to the above are commenced;

8.2.6 the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy; or

8.2.7 the Buyer fails to observe or perform any of their obligations under the Contract.

8.3 On termination of the Contract for any reason:

8.3.1 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 and the Company shall be entitled to immediate possession of the Goods. If an invoice has not yet been submitted for delivered Goods, the Company shall submit an invoice to the Buyer; and

8.3.2 the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.

8.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

9 FORCE MAJEURE

9.1 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control (including the acts or omissions of the Company's suppliers and subcontractors).

10 **GENERAL**

10.1 The Company may at any time assign, transfer, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

10.2 The Buyer may not assign, transfer or subcontract any or all of its rights or obligations under the Contract.

10.3 The Contract constitutes the entire agreement between the parties.

10.4 Each party acknowledges that in entering the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that it is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

10.5 No variation of this Contract shall be effective unless it is in writing and signed by the parties.

10.6 A failure or delay by the Company in exercising any right or remedy under the Contract shall not waive that or any other right or remedy, not shall it prevent or restrict the further exercise of that or any other right or remedy.

10.7 If any provision of the Contract is or becomes invalid, illegal or unenforceable it shall be deemed deleted and the remaining provisions of the rest of the Contract shall continue in full force and effect.

10.8 The Contract and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

10.9 Any notice to be given under this Contract shall be in writing and shall be:

10.9.1 delivered by hand or sent by first class recorded delivery post to the Company at Brassington, Matlock, Derbyshire, DE4 4BZ or other such address as is specified by the Company (and in the case of the Buyer its registered office); or

10.9.2 sent by electronic mail to the Company at sales@longclife.co.uk.

10.10 Any notice shall be deemed to have been received:

10.10.1 if delivered by hand, at the actual time of delivery if left at the proper address;

10.10.2 if sent by first class recorded delivery post, at the expiry of 2 Working Days after the date of posting; or

10.10.3 If sent by electronic mail, 2 hours after transmission if transmitted before 1.00 pm on a Working Day and otherwise at 10.00 am on the next Working Day.

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