

AGGREGATE INDUSTRIES UK LIMITED
Additional Terms and Conditions of Sale for Aggregates

1. DEFINITIONS

1.1. These Additional Terms and Conditions of Sale for Aggregates (“**ATCs**”) supplement Aggregate Industries General Terms and Conditions of Sale (“**GTCs**”).

1.2. In these ATCs:

“**Railway Industry Standards**” means all rules, regulations, codes of practice and conduct, and laws in the railway industry including but not limited to those produced by or under the authority of Network Rail and the Health and Safety Executive or any subsequently constituted responsible authority.

Any other capitalised terms used in these ATCs shall be given the meaning set out in the GTCs.

2. COLLECTION AND DELIVERY

2.1. Where You are collecting Goods from Us, and:

2.1.1. We are responsible for the loading of the Goods into Your vehicle, collection for the purposes of clause 8.1 of the GTCs shall be complete upon the completion of loading of the relevant Goods into Your vehicle, which shall include but not be limited to trains and wagons, ships, and automotive vehicles; or

2.1.2. You are responsible for the loading of the Goods into Your vehicle, collection for the purposes of clause 8.1 of the GTCs shall be complete upon the commencement of loading of the Goods into the collection vehicle.

2.2. Where We are delivering Goods to You, and:

2.2.1. We are responsible for the unloading of the Goods at the delivery location, delivery for the purposes of clause 8.1 of the GTCs shall be complete upon the completion of unloading of the relevant Goods at the delivery location; or

2.2.2. We are responsible for the unloading of the Goods directly into Your silo at the delivery location, delivery for the purposes of clause 8.1 of the GTCs shall be complete once the Goods leave Our delivery vehicle and pass the silo intake valve of the silo; or

2.2.3. You are responsible for the unloading of the Goods at the delivery location, delivery for the purposes of clause 8.1 of the GTCs shall be complete upon the arrival of the delivery vehicle (which shall include but not be limited to trains and wagons, ships, and automotive vehicles) at the delivery location.

3. AGGREGATES LEVY

3.1. Where Goods are subject to the HM Revenue and Customs Aggregates Levy, the price of the Goods shall be inclusive of the levy.

4. ADDITIONAL CHARGES

4.1. In addition to the price for the Goods as set out in the Quotation, We shall be entitled to charge such additional costs as specified by Us from time to time, or otherwise incurred by Us, where such costs are incurred as a result of any action or inaction by You in breach of the Contract, including but not limited to the following circumstances:

4.1.1. We are required to incur any costs as a result of You cancelling or amending Your Order, or returning any or all of the Goods, or where You are unable to accept delivery of any or all of the Goods, for whatever reason, including but not limited to where We deliver Goods under clause 6 and Your silo cannot accept any or all of the Goods, unless clause 9.4 of the GTCs applies;

4.1.2. You do not provide Us, or any sub-contractors, hauliers, or freight operating companies who We may engage in delivery of the Goods from time to time, with safe and suitable access to the delivery location at the pre-agreed time and on the pre-agreed date, for whatever reason, including but not limited to disposal costs, tipping costs, administration costs, freight operating company costs, and additional haulage costs;

4.1.3. We are required to deliver Goods in part-loads, that being less than the full capacity of Our delivery vehicle(s) (including, where applicable, Our trains), which We shall communicate to You at the time of Quotation, or in any event, before delivery;

4.1.4. You detain any rail wagon used by Us to make delivery to You for 24 hours or more, We may charge You demurrage at the rail operating company's scale for demurrage in force at the time that such detention ceases;

4.1.5. You require Us to collect, or You deliver to Us, waste which is wet, damp, or moist; and/or

4.1.6. You require delivery between 6:00pm and 7:00am GMT on Monday to Friday, or any time after 12:00pm on Saturday, or any time on Sunday, for delivery of the Goods.

5. VARIATIONS IN GOODS

5.1. You acknowledge that the Goods are subject to variations both in physical and chemical content, and where We supply any analysis of Goods, please note that this is for indicative purposes only and is supplied in accordance with clause 3 of the GTCs.

6. SAND

6.1. This clause 6 applies only where the Goods sold are sand.

6.2. The Goods will either be delivered directly into Your silo(s), pursuant to clause 2.2.2 above, or sold in bags.

6.3. Where Goods are delivered by Us directly into Your silo(s):

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- 6.3.1. You shall be responsible for identifying the silo(s) in which the Goods are to be delivered and ensuring that they are suitable for delivery of the Goods. For the avoidance of doubt, We shall not be liable for any issue or Defect, or damage to any other property, caused by Your failure to identify and notify Us of the correct silo(s) to discharge the Goods into prior to delivery;
 - 6.3.2. We shall connect the pipe attached to Our delivery vehicle to the pipe or valve on the silo(s) to deliver the Goods into the silo(s);
 - 6.3.3. You shall be responsible for cleaning any and all of Your plant, site, and/or equipment before and following delivery;
 - 6.3.4. You shall be solely responsible for ensuring that the silo(s) in which the Goods are delivered do not contain any other goods or materials and that the silo(s) can accept the Goods ordered by You in their entirety; and
 - 6.3.5. You shall be solely responsible for any Defects caused or any commingling or merger of materials, or any costs incurred by Us or You as a result of Your failure to comply with clause 6.3.4 above.
- 6.4. When You purchase the Goods, You acknowledge that the moisture content and the colour of the Goods may vary. For the avoidance of doubt, We shall not be responsible for any moisture in or contamination of the Goods attributed to Your storage of the Goods.
- 6.5. You acknowledge that certain specialist performance Goods do not comply with British standards. All other Goods will comply with the relevant BS EN standard BS EN 13242, BS EN 13043, BS EN 12620, BS EN 12904 and BS EN 13139. We will inform You whether the Goods ordered by You comply with the relevant British standards upon request.
- 6.6. Defects:
- 6.6.1. Where You allege that there is any Defect in the Goods that is not in any way attributable to Your actions or omissions, You must provide Us with such evidence of that Defect as We require, including but not limited to photographs and test results.
 - 6.6.2. Once You have provided Us with evidence of any Defect, it is at Our sole discretion to review the grading of the Goods and to test samples of the Goods obtained from Your site. You shall provide Us with access to Your site where We need to obtain a sample of Goods from Your site for testing.
 - 6.6.3. We may, at Our sole discretion, seek the opinion of an expert within the sand industry such as Geologists, technical personnel, and/or independent accredited laboratories regarding any Defect. Where We instruct an expert in accordance with this clause 6.6.3, the expert opinion shall be binding on You and Us and, where the expert concludes that there is no Defect in the Goods, We shall not be liable for any loss suffered as a result of the alleged Defect.

7. WASTE REMOVAL SERVICES

- 7.1. Where We provide services for the removal and disposal of any type of waste, including but not limited to muck or soil, pursuant to this clause 7, any references in the GTCs to Goods shall be construed as a reference to Goods and services with logical amendments.
- 7.2. Where We provide services for the removal and disposal of waste under this clause 7, Our Waste Recovery Terms and Conditions shall apply in addition to these ATCs, the Quotation, and the GTCs. Where there is any conflict between the Waste Recovery Terms and Conditions and these ATCs, these ATCs shall prevail. Where there is any conflict between the Waste Recovery Terms and Conditions and the GTCs, the GTCs shall prevail.
- 7.3. Where We provide Services for the removal and disposal of waste, You must:
- 7.3.1. obtain and provide Us with a Certificate of Analysis in accordance with the rules and requirements of UKAS Testing and by MCERTS – The Environmental Agency Monitoring Certification Scheme;
 - 7.3.2. (where We are collecting the waste) provide Us with safe access to the location where the waste is stored at a time agreed between You and Us in writing; and
 - 7.3.3. ensure that the waste conforms with clause 3 of the Waste Recovery Terms and Conditions.
- 7.4. Where We are collecting waste from You pursuant to this clause 7, and:
- 7.4.1. We are responsible for loading the waste into Our vehicle, delivery for the purposes of clause 8.1 of the GTCs shall be complete upon the commencement of loading; or
 - 7.4.2. You are responsible for loading the waste into Our vehicle, delivery for the purposes of clause 8.1 of the GTCs shall be complete upon the completion of loading.
- 7.5. Where You are delivering waste to Us, or to a tip, or to any other waste disposal facility, as agreed between You and Us with Our reference, and:
- 7.5.1. We are responsible for the unloading of the waste, delivery for the purposes of clause 8.1 of the GTCs shall be complete upon the arrival of the vehicle containing the waste at the delivery location; or
 - 7.5.2. You are, or a third party is, responsible for the unloading of the waste, clause 4.3 of the Waste Recovery Terms and Conditions shall apply and delivery for the purposes of clause 8.1 of the GTCs shall be complete upon the completion of unloading at the delivery location.
- 7.6. You will unconditionally fully and effectively indemnify Us against all loss, damage, claims, demands, expenses, liabilities, and costs, including legal costs, on an indemnity basis, as well as in respect of any and all expenses awarded against Us or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim arising from Your failure to provide a valid Certificate of Analysis in accordance with clause 7.3.1 above.
- 7.7. We shall not be required to collect or receive the waste until the requirements under clause 7.3 have been met and the time for collection or delivery has been agreed in writing.

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7.8. Where You will transport the waste for disposal using the reference which We give to You, You shall not do so until You have complied with the requirements under clause 7.3.

8. DELIVERY AND COLLECTION BY RAIL

8.1. Goods delivered by rail shall be delivered to the nearest suitable, accessible and available railway infrastructure to the delivery site, unless it is agreed in writing that delivery will be made by rail and by road. If delivery will be made by rail and road, clauses 6.6 to 6.8 of the GTCs (inclusive) shall apply in addition to this clause 8. Our railway conductors are empowered to refuse delivery if, in their opinion, the point of unloading is unsafe or is likely to prove dangerous to them, the Goods, the train, or any other property, whether owned by Us or utilised in the delivery.

8.2. Where all or part of the delivery shall be by rail, You shall:

8.2.1. ensure that there is railway infrastructure in place that (i) We can access by train, (ii) is rail connected to the National Railway Network, (iii) can accommodate the train which We will be delivering the Goods to You in and the dimensions of which We will communicate to You prior to delivery, (iv) the platform is an appropriate length to accommodate the delivery train and to allow for safe unloading of the Goods, and (v) is otherwise suitable for the delivery of Goods;

8.2.2. ensure that the railway infrastructure to which delivery will be made is maintained in accordance with Railway Industry Standards;

8.2.3. inform Us of any quality and/or safety issues regarding any proposed delivery and the railway infrastructure immediately once You are aware of them; and

8.2.4. provide stabling facilities, communication facilities, and a train crew to Us, or any sub-contractor engaged by Us in the delivery of the Goods, including but not limited to a freight operating company, free of charge.

8.3. Where You will be collecting the Goods from Us by rail, You shall:

8.3.1. engage a suitable freight operating company who holds a valid and in-date operator licence granted by the Office of Rail and Road, operating within Railway Industry Standards to collect the Goods from the collection location, which We shall communicate to You prior to collection;

8.3.2. provide wagons for the transportation of the Goods; and

8.3.3. ensure that the wagons are suitable for the carriage and transportation of the Goods; and

8.3.4. collect the Goods at Our railway infrastructure which We shall communicate to You prior to collection.

8.4. You shall provide Us with such co-operation and assistance as may be reasonably required by Us to schedule haulage by rail.

8.5. Where You agree with Us that You shall have responsibility for unloading the Goods, You shall ensure that all Goods are properly unloaded and that the locomotive and rail wagons used to deliver the Goods are not, in any way, damaged by You, or by any person acting on Your behalf, when unloading the Goods. Where, in contravention of this clause 8, You damage Our locomotive and rail wagons used to deliver the Goods, You shall notify Us and any freight operating company engaged by Us immediately once the damage has occurred.

8.6. If You are entitled to reject any Goods delivered by rail, You must reject the entire contents of the relevant rail wagon and We shall be entitled to charge You such costs as We incur as a result of Your return in accordance with clause 4.1.1.

8.7. Where You agree with Us that delivery is to take place by rail, and at Our (or any sub-contractors who We have engaged in the delivery of the Goods, including but not limited to freight operating company) sole discretion, safe delivery is not possible on the agreed date or at the agreed time (for whatever reason), We may, at Our option:

8.7.1. deliver the Goods by road; or

8.7.2. delay delivery until the Goods can be delivered by rail; and

8.7.3. charge You such fees, charges, costs, and/or expenses as incurred by Us as a result of Your failure to ensure safe delivery in accordance with clause 4.1.2.

8.8. You will unconditionally fully and effectively indemnify Us against all loss, damage, claims, demands, expenses, liabilities, and costs, including legal costs, on an indemnity basis, as well as in respect of any and all expenses awarded against Us or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim arising from any damage to a rail wagon and/or locomotive arising out of or in connection with any act, negligent performance, or default by You, Your employees, agents, or sub-contractors.

9. RETENTION OF TITLE

9.1. Pursuant to clause 8 of the GTCs, until title to the Goods has passed to You, You shall:

9.1.1. store the Goods separately from all other goods held by You so that they remain readily identifiable as Our property;

9.1.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

9.1.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

9.1.4. notify Us immediately if You become Insolvent; and

9.1.5. give Us such information as We may reasonably require from time to time relating to the Goods, and Your ongoing financial position.