

# H. SIVYER (Transport) Ltd.

## CONDITIONS OF SALES

### 1. DEFINITIONS

"H. Sivyer" means H. Sivyer (Transport) Ltd. "Materials" means the goods agreed in the Contract to be supplied by H. Sivyer Aggregates including all quarried recycled and coated stone products and Minerals and "Services" means all other work undertaken by H. Sivyer. "The Customer" means the person whose order for the Materials or Services is accepted by H. Sivyer. "The Conditions" means the standard conditions of sale set out in this document and includes any special terms and conditions agreed in writing between H. Sivyer and the Customer and "the Contract" means the contract for the supply of Materials incorporating these Conditions.

### 2. APPLICATION OF SERVICES PROVIDED AND SUPPLIES

All Materials sold by H. Sivyer shall be subject to these Conditions which may not be varied unless agreed in writing by H. Sivyer. Any contrary or additional terms whether or not contained in a document of the Customer are excluded.

### 3. QUOTATIONS

- 3.1 Unless otherwise stated in writing all quotations and estimates by H. Sivyer are valid for 30 days from their date and may be withdrawn at any time before receipt of an order.
- 3.2 H. Sivyer may make any changes in the specification of the Materials which are required to meet any applicable statutory or EC requirements, or if the Materials are to be supplied to H. Sivyer's specification, which do not materially affect their quality and performance.
- 3.3 No cancellation or variation of the whole or any part of the Contract is allowed except with the written agreement of H. Sivyer.

### 4. PRICE

- 4.1 The price of Materials is the price current at the date of despatch. Prices quoted are not fixed unless agreed in writing by H. Sivyer. The prices of services remain as quoted unless agreed in writing by H. Sivyer. The price is exclusive of Value Added Tax and inclusive of Aggregates Levy at the appropriate rate.
- 4.2 Charges for vehicles and drivers on a daywork basis are available on request. All such charges will apply from the time of arrival at the Destination, unless otherwise specified and agreed between H. Sivyer and the Customer.

### 5. PAYMENT

- 5.1 The Customer shall pay the price for the Materials delivered and services as performed.
- 5.2 Payment without deduction or set off is due thirty days from the date of invoice unless agreed in writing by H. Sivyer.
- 5.3 H.Sivyer reserves the right in its absolute discretion at any time to insist upon payment by way of cleared funds for Materials and Services before delivery or to demand security for payment before continuing with or delivering any Materials or performance of services notwithstanding any subsisting agreement to provide credit to the Customer.
- 5.4 H.Sivyer reserves the right in its absolute discretion to set off any amounts due to suppliers if they hold a credit account with H. Sivyer's sales department.

### 6. DELIVERY

- 6.1 H. Sivyer requires a minimum of 48 hours prior notice of delivery times.
- 6.2 The Customer shall ensure that H.Sivyer has sufficient particulars of the site and the point of unloading ("the Destination") or collection to which the Materials are to be delivered to or loads being collected from ("the Collection point").
- 6.3 Delivery will be deemed to have taken place when H. Sivyer notifies the Customer that the Materials are available for collection or services have been performed as agreed or at the time of arrival at the Destination, or if H. Sivyer is unable to deliver because of inadequate instructions, or the Customer wrongly fails to take delivery of the Materials at the time when H. Sivyer has tendered delivery of the Materials or service.

- 6.4 Dates and times quoted for delivery or performance of service are approximate only and time for delivery or performance of service shall not be of the essence of the Contract.
- 6.5 H. Sivyver shall not be liable for any damages whatsoever whether direct or consequential resulting from any delay in delivery of the Materials or performance of service or failure to deliver the Materials or performance of service within a reasonable time whether such delay or failure is caused by H. Sivyver 's negligence or otherwise.
- 6.6 H. Sivyver may deliver by instalments and tender a separate invoice for each instalment. Each delivery shall be a separate contract and failure by H. Sivyver to deliver any one or more of the instalments or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to terminate or rescind the Contract.
- 6.7 Without prejudice to any other rights or remedy available to H. Sivyver an additional charge may be made if:
- 6.7.1 the customer requires delivery of Materials in quantities less than minimum loads aggregates – 20 tonnes (Tippers) and 16 or 12 tonnes (Various Grabs).
- 6.7.2 the Customer requires delivery, outside the core hours of 0730 and 1700 Monday to Friday (excluding Public Holidays);
- 6.7.3 the Customer re-directs a delivery, fails to take delivery or fails to give H. Sivyver adequate delivery instructions;
- 6.7.4 unloading of the delivery vehicle is delayed for more than 30 minutes after H. Sivyver is ready to unload or in case of Waste Clearing, Service does not commence within 30 minutes of arrival at the Destination;
- 6.7.5 delivery cannot be effected because of unsuitable access;
- 6.7.6 unused Materials are returned to H. Sivyver for disposal;
- 6.8 The Customer must provide convenient and safe access to the Destination or Collection point and H. Sivyver shall be entitled to refuse to deliver or perform the service over roads or over grounds which it considers unsuitable. The Customer shall be liable for and shall indemnify H. Sivyver against any accident or damage (with the exception of death and personal injury caused by the negligence of H. Sivyver or its driver) occurring due to unsuitable access.
- 6.9 If the Customer requests that any Materials be deposited or Waste being collected from a street or public highway the Customer shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property and shall indemnify H. Sivyver in respect of all costs, claims, losses or expenses including legal costs on an indemnity basis which H. Sivyver may incur as result of such delivery or collection.
- 6.10 In the case of cash sales H. Sivyver shall be deemed to have supplied the quantise of aggregates agreed to be sold if the quantity delivered is within plus or minus 2% of the quantity agreed to be sold and the price for the aggregates shall be varied accordingly.

## 7. INSPECTION AND SHORTAGES

- 7.1 The Customer must inspect the Materials at the place and time of unloading.
- 7.2.1 The Customer must immediately advise the driver and note any claim for short delivery or incomplete service on the Proof of Delivery ("POD") and sign the POD (the "Notice Procedure"). The driver will also sign the POD and print their name.
- 7.2.2 If the Customer fails to follow the Notice Procedure the Materials will be deemed to have been delivered in the weights or quantities shown on the consignment note.
- 7.2.3 The customer shall not be entitled and irrevocably and unconditionally waives any right to reject the Materials or claim any damages whatsoever for short delivery howsoever caused.
- 7.2.4 H. Sivyver's liability for short delivery is limited to making good the shortage.
- 7.2.5 If the Customer fails to follow the Notice Procedure Clause 7.2.2 shall have effect.

## 8. RISK AND TITLE

- 8.1 The risk in the Materials shall pass to the Customer upon delivery.
- 8.2 Ownership in the Materials shall not pass to the Customer until the price of the Materials and all sums owed by the Customer to H. Sivyver on any account have been paid in full and until such payment, H. Sivyver shall be entitled to enter the destination and remove the Materials.

## 9. RESPONSIBILITIES

- 9.1 Nothing in these conditions shall exclude or restrict H. Sivyver's liability for death or personal injury resulting from its negligence or H. Sivyver's liability for fraudulent misrepresentation.
- 9.2 If the Customer deals as a consumer as defined by the Unfair Contract Terms Act 1977 or the Unfair Terms in Consumer Contracts Regulations 1994 ("a Consumer") any provision of these Conditions which is of no effect shall not apply. The statutory rights of a Customer dealing as a Consumer are not affected by these Conditions.
- 9.3 Subject to Clauses 9.1 and 9.2:
- 9.3.1 the liability accepted by H. Sivyver under Clause 9.4 shall be in substitution of any other legal remedy of the Customer in respect of any alleged defect in relation to the Materials or failure of the Materials to comply with the specification or quality contained in the Contract and any other condition, warranty, representation or undertaking on the part of H. Sivyver as to the quality of the Materials or their fitness or suitability for any purpose

howsoever and whenever expressed which may be implied by statute custom of the trade or otherwise is hereby excluded and the provisions of section 13 to 15 inclusive of the Sale of Goods Act 1979 (as amended) shall not apply to the contract;

9.3.2 the liability of H. Sivyver whether in contract or in tort arising out of or in connection with any act, omission, neglect or default of H. Sivyver, its employees, agents or sub-contractors in connection with Contract (including, without limiting the generality of the foregoing for negligence breach of any condition or warranty whether express or implied by statute common law or otherwise howsoever) shall be limited to the remedies set out in Clause 9.4;

9.3.3 H. Sivyver shall not be liable to the Customer in contract or tort including negligence or for breach of statutory duty for any loss of profit, loss of income, loss of data, loss of opportunity or losses calculated by reference to profits, income, business, revenue, goodwill, anticipated savings, data or opportunity (in all cases whether direct or indirect) or any indirect, consequential or economic loss of any kind whatsoever which the buyer may suffer of incur by reason of any act, omission, neglect or default (including negligence) in connection with the contract by H. Sivyver, its employees or agents.

9.4 If the Customer can establish to the reasonable satisfaction of H. Sivyver that:

9.4.1 there is a defect in the workmanship of H. Sivyver in relation to the Services carried out; or

9.4.2 the Materials are not in accordance with the quality or specification contained in the Contract; or

9.4.3 there is some other failure by H. Sivyver in relation to the Materials to comply with the Contract; then subject to the conditions set out in Clause 9.5, H. Sivyver shall in its sole discretion supply replacement Materials free of charge or refund all (or where appropriate part) of the price paid for the relevant Materials.

9.5 H. Sivyver will not be liable under Clause 9.4:

9.5.1 if the defect arises from fair wear and tear;

9.5.2 if the defect arises from wilful damage, negligence, abnormal working conditions, misuse, alteration or repair of the Materials, failure to follow British Standard or industry instructions relevant to the Materials, or storage of the Materials in unsuitable conditions (but this sub-clause shall not apply to any act or omission of H. Sivyver);

9.5.3 unless after discovery of the defect H. Sivyver is given a reasonable opportunity to inspect the Materials before they are used or in any way interfered with. H. Sivyver acknowledges that the costs of suspending works are relevant to the determination of what is a reasonable opportunity and this sub-clause shall not apply to any works affecting the Materials which may be reasonably necessary to carry out in the interests of safety and/or as emergency measures.

9.5.4 the defect would have been apparent on a reasonable inspection under Clause 7.1 at the time of unloading and notice of any claim is given to H. Sivyver in accordance with the Notice Procedure; or in any other case.

9.5.5 the defect is discovered within the period following delivery ("Discovery Period") and notice given after discovery within the period ("Notice Period") as set out below:

Materials	Discovery Period	Notice Period
Asphalt	7 days	Immediate and written notice within 2 working days
Aggregates	24 hours	Immediate and written notice within 2 working days
Minerals	24 hours	Immediate and written notice within 2 working days

9.6 If the Materials are manufactured processed or mixed by H. Sivyver to the design, quantity, measurement or specification of the Customer or its agents then;

9.6.1 Subject to Clauses 9.1 and 9.2 H. Sivyver shall not be under any liability for damages whatsoever of under Clause 9.4 of these Conditions as the case may be except in the event of:

9.6.1.1 fraudulent misrepresentation;

9.6.1.2 misrepresentation where the representation was made or confirmed in Writing;

9.6.1.3 non-compliance with such design quantity measurement or specification

9.6.1.4 breach of a written warranty by H. Sivyver that the Materials are fit for that purpose; or

9.6.1.5 a claim maintainable against H. Sivyver pursuant to Clauses 9.1 or 9.2 of these conditions.

9.6.2 The Customer will unconditionally fully and effectively indemnify H. Sivyver against all loss damages costs on an indemnity basis and expenses awarded against or incurred by H. Sivyver in connection with or paid or agreed to be paid by H. Sivyver in settlement of any claim for infringement of any patents copyright design trademark of any other industrial or intellectual property rights of any other person.

9.6.3 The Customer will unconditionally fully and effectively indemnify basis and expenses awarded against or incurred by H. Sivyver in connection with or paid or

agreed to be paid by H. Sivyver in settlement of any other claim arising from any such manufacturing processing or mixing including but not limited to any defect

in the Materials. The indemnity will be reduced in proportion to the extent that such loss damage costs and expenses are due to the negligence of H. Sivyver.

- 9.6 Except where the Customer deals as a Consumer the Customer will unconditionally fully and effectively indemnify H. Sivyver against all loss damages costs on an indemnity basis and expenses awarded against or incurred by H. Sivyver in connection with or paid or agreed to be paid by H. Sivyver in settlement of any claim by any third party arising from the supply or use of the Materials including loss arising from H. Sivyver's negligence.
- 9.8 Without prejudice to any other provisions in these conditions in any event H. Sivyver' total liability for any one claim or for the total of all claims arising from any one act or default of H. Sivyver (whether arising from H. Sivyver's negligence or otherwise) shall not exceed the purchase price of the Materials the subject matter of any claim.

#### 10 DEFAULT

- 10.1 If the Customer fails to pay H. Sivyver for any Materials on the due date or any credit limit is exceeded or bankruptcy or insolvency proceedings are brought against the Customer; or if the Customer does not make any payment under a judgement of a Court on time, or makes an arrangement with its creditors; or a receiver or an administrative receiver is appointed over any of its assets; or the Customer goes into liquidation; or if the Customer is in breach of any term of this Contract and fails to remedy such breach after being so requested to do so the full balance outstanding on any account between H. Sivyver and the Customer shall become immediately payable and H. Sivyver shall be entitled to do one or more of the following (without prejudice to any other right or remedy it may have):
- 10.1.1 require payment in cash or cleared funds in advance of delivery of undelivered Materials;
  - 10.1.2 cancel or suspend any further delivery to the Customer under any contract;
  - 10.1.3 sell or otherwise dispose of any Materials which are the subject of any contract with the Customer;
  - 10.1.4 charge the Customer interest on the balance of monies due at the rate of 4% per annum above Barclays Bank Plc base rate in force from time to time from the date the payment became due until actual payment is paid whether before or after Judgment:

#### 11 GENERAL

- 11.1 The construction validity and performance of these Conditions and the Contract Shall be governed by English Law
- 11.2 H. Sivyver shall not be liable to the Customer if it is unable to perform its obligations as a result of a cause beyond H. Sivyver's reasonable control including but not limited to: strikes, lockouts of other industrial actions or trade disputes (whether involving employees of H. Sivyver or a third party); premature exhaustion of reserves of Materials or geological faults which were not reasonably foreseeable rendering the working of reserves uneconomic; failure of a processing plant.
- 11.3 The parties agree that the terms of this Contract are not enforceable by a third Party under the Contracts (Right of Third Parties) Act 1999.

#### CONDITIONS FOR THE DELIVERY OF WASTE

1. The Conditions shall apply mutatis mutandis to the delivery of waste to any of H. Sivyver's ("site") unless they conflict with the following Conditions which shall apply to the deposit of waste (as defined by the Environmental Protection Act 1990) at the Sites and in the following Conditions "the Customer" means the person to whom a quotation for the deposit of waste has been issued by H. Sivyver.
2. The Customer shall be responsible for ensuring that every delivery of waste to any Site is made only during normal business hours at the Site and that on arrival at the Site the Customer's driver shall report to the Site office and provide a Waste Transfer Note and any other documentation required by law which shall accurately describe the type and quantity of waste the Customer wishes to deposit there. The Customer's driver shall, before leaving the Site, collect from the Site office a conveyance note confirming the type and quantity of waste deposited.
3. The Customer's driver shall deposit the waste in that part of the Site indicated by H. Sivyver's Site personnel and shall comply with all instructions given by such personnel and with H. Sivyver's site rules and all legislations relating to the deposit of waste and the conditions of any permits and/or authorisations relating to the Site (which are available for inspection at the Site) and all legislation affecting the health, safety and welfare of the general public and persons using or employed at the Site.

4. The Customer shall only deliver to any Site waste permitted to be deposited there under the terms of any permits and/or authorisations relating to the Site. If H. Sivyver's Site personnel discover upon the unloading of waste delivered by a Customer to any Site that the waste does not comply with the description in the permits and/or authorisations relating thereto or is otherwise waste not permitted to be deposited and/or disposed at the Site the Customer shall immediately remove such waste and any other materials contaminated by such waste or which have become mixed with such waste. If non-compliance of the waste so deposited with the description of waste in the Waste Transfer Note or with the conditions of the Waste Management Licence is discovered only after the Customer's driver has left the Site at H. Sivyver's option the Customer shall either remove the same from the Site or reimburse H. Sivyver in the removal and disposal of such wrongly deposited waste and any other materials which may have been contaminated by it or mixed with it.
5. The quantity of waste delivered to any Site shall be deemed to be equal to the nominal volume of the skip vehicle or container in which the waste shall have been delivered notwithstanding that the skip vehicle or container may not have been filled to its nominal capacity weight thereof in which case the weight shall be determined in accordance with the records of the weighbridge at the Site.
6. Unless otherwise agreed in writing between H. Sivyver and the Customer the rates for depositing waste shall be those current at the Site when tipping takes place.
7. The Customer's driver shall satisfy himself that the access to the tipping area at the Site to which he is delivering waste is in a suitable condition for his vehicle and H. Sivyver gives no warranty that such access will be suitable and accordingly will have no liability in respect of any damage caused to the delivery vehicle or any losses arising there from. The Customer's driver shall follow all signs and use any wheel cleaning facilities at the Site.
8. Subject to Condition 4, all waste delivered by the Customer to any Site shall become the property of H. Sivyver and the Customer shall not be entitled to sort over or remove any waste from the Site (with the exception of 11.3.4).
9. In addition to the rates for depositing waste in the Site H. Sivyver shall be entitled to recover from the Customer the amount of any landfill tax VAT or other similar tax chargeable in respect of the deposit of the waste.
10. The Customer shall ensure that all provisions of Section 34 of the Environmental Protection Act 1990, the Environmental Protection (Duty of Care) Regulations 1991 and the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 are complied with in relation to its activities connected with the deposit of waste at any of the Sites including without limitation:
  - 10.1 Waste shall be adequately contained and not allowed to escape;
  - 10.2 A Waste Transfer Note shall be provided by the Customer for each delivery of waste they deliver to any Site.
  - 10.3 An accurate written description of the waste shall be provided
  - 10.4 Waste shall be transported only by a registered waste carrier.
11. The Customer shall indemnify H. Sivyver against all losses damages costs and Expenses incurred by H. Sivyver arising from any failure to comply with such legislation or regulations or from the Customer's use of the Site provided that nothing in this Condition shall affect H. Sivyver's liability for death or personal injury arising from negligence.