# CONDITIONS OF SALE

**1. The Agreement**

(i) This quotation (and as soon as it is accepted by the Client, hereafter referred to as the "**Agreement**") is given on the basis that only these Conditions of Sale (and reference to these conditions shall include any other terms and conditions agreed in writing with the Client) will govern any supply by us, the Lhoist entity (hereafter referred to as the "**Company"**), to you (hereafter referred to as the "**Client**"), of the material set out overleaf to the exclusion of any other terms and conditions which the Client may seek to impose whether contained in an order or otherwise.

(ii) No conduct by the Company shall be deemed to constitute acceptance of any terms the Client put forward and no variation to these conditions shall be binding on the Company unless agreed in writing by one of the Company's Directors.

(iii) The Company contracts as suppliers only and shall not be bound by nor imputed with any knowledge of any contract between the Client and any other person.

**2. Time Limit**

This Agreement is open for acceptance for 30 days from its date of issue and we reserve the right to reject an order received after that period or to withdraw this Agreement on written notice at any time.

**3. Price**

(i) This Agreement is based on the sale of the approximate quantity of material and the programme for delivery or collection which the Client has informed the Company that it will require.

(ii) Unless otherwise specified in the Agreement, the price only relates to the goods sold and is exclusive, amongst others, of the costs of packaging, insurance and transport of the materials and the goods are sold on a CPT basis.

(iii) The Company reserves the right to vary its prices at any time by giving the Client written notice of the variation, whether this be in an electronic or postal medium.

(iv) The prices in this Agreement apply to the supplies within our normal working hours. Surcharges may be applied for supplies made outside these hours or for any delay through your request in off-loading the material.

Returned material will also incur return transport charges which shall be borne entirely by the Client, except if the material is confirmed to be defective.

**4. Payment**

(i) Unless other payment terms are set out on the face of this Agreement all sums shall be paid in full within the 30 days of the date of the invoice. All terms as to payment shall be of the essence of the contract.

(ii) Any credit facility the Company agree with the Client may be amended or withdrawn at any time.

(iii) Interest on overdue invoices shall accrue from day to day from the date when payment becomes due until the date of payment at a rate of 4% above the base rate from time to time in force of National Westminster Bank PLC and shall accrue at such a rate after as well as before any judgement.

**5. Taxes**

All direct or indirect taxes, as well as all equivalent costs or levies (with the exception of corporate income taxes) that are currently imposed or may be imposed in the future and that are related to the quarrying/extraction, the processing, the manufacturing, the sale or the delivery of products by the Company to the client (inclusive of the energy consumption tax, and generally any other charges relating to the environment in the broad sense) shall be charged to the client.

**6. Delivery**

(i) Any delivery times quoted are approximate only and shall not be of the essence of the contract. The Company shall not be liable for any loss or damage resulting from a delay in delivery to the Client

(ii) The Client will provide and clearly indicate to the driver of the delivery vehicle a safe and proper route from the metalled highway to the point at which the material is to be discharged and shall indemnify the Company (both for ourselves and as agent and trustee for any other person operating any vehicle making a delivery) against damage or loss which may result from a failure to do so.

(iii) It is a condition between the Company and the Client that the Client will ensure that, at the site to which the material is to be delivered, there are silos or tanks in good condition and suitable for receiving material delivered by bulk pressurised powder or liquid tanker or sufficient space to allow for the safe unloading of pallets if material is delivered on pallets.

(iv) Without prejudice to any rights or remedy available to the Company, additional charges may be made for any of the following that occur:

(a) Deliveries of less than the quoted minimum loads due to circumstances outside of our control;

(b) Deliveries which cannot be made due to unsuitable access or storage facilities at the delivery site or the Client's failure to accept a delivery;

(c) Delivery or collection out of normal weekday hours;

(d) Re-direction of deliveries, either in location or time of delivery, or cancellation by the Client, within 12 hours prior to the requested delivery time;

(e) Delays in unloading delivery vehicles due to the Client.

**7. Demurrage Rules**

Delivery requirements are based on normal working hours Monday to Friday 6:00am to 6:00pm and Saturday 6am to 12:00pm. The Company will make every effort to schedule deliveries as requested but cannot guarantee specific delivery times.

Specific costs as regards demurrage shall be borne exclusively and entirely by the client in the following circumstances:

- Delivery outside of working hours:
  - An additional surcharge may apply for weekend or Bank Holiday deliveries requested Friday after 12:00pm;
  - An additional surcharge may apply for deliveries before 6:00 am or after 6:00 pm;
- Discharge:
  - Delivery time (time on site) of 90 minutes is included for all deliveries. A charge of £65 per hour applies for each additional hour unless due to vehicle or driver fault.
- Return loads:
  - Regardless of the volume a fixed rate of 70% of haulage rate will be charged.
- Rescheduling orders:
  - Orders moved after the 2:00pm deadline will also be subject to a charge of a fixed rate of 70% of haulage.
- Cancellation:
  - A cancellation fee will be charged at a fixed rate of 70% of the haulage rate for orders cancelled or rescheduled after 2:00pm for a delivery scheduled for the following day.
  - Order cancelled on the same day of the scheduled delivery will be charged a fixed rate of 100% of the haulage rate.
  - For weekend and bank holiday deliveries, cancellations must be made before 2:00 PM on the last working day prior. Otherwise, the cancellation fees as outlined above will apply.

**8. Samples**

The supply of material under these conditions shall not be deemed to be a sale by sample. Any samples of material submitted to the Client are intended to indicate the substance and general character of the material only and no liability is accepted if the bulk of the material does not correspond with the sample. The same exclusion of liability shall be applicable for any illustrations, descriptions or advertising of any materials that would not correspond with the sample.

**9. Warranty**

The Company warrants that the material supplied to the point of delivery or collection will be in accordance with the specification set out in this Agreement. This warranty shall be excluded, among other things, under the followings circumstances:

- Failure by the Client to store the material correctly;
- Alterations or modifications made to the materials by the Client;
- Defects arising from wilful damage or negligence of the Client.

Except for this express warranty no other representation or warranty is given by the Company as to the suitability or fitness of the material for any particular purpose and it is incumbent on the Client to satisfy itself that the material will be fit for the particular purpose the Client requires. All other conditions warranties or other terms including those concerned with the condition or quality of any material implied by statute, common law, course of dealing or otherwise are excluded to the fullest extent permitted by law.

**10. Liability**

The maximum liability of the Company to the Client under or in connection with this Agreement, whether arising in contract, tort, breach of statutory duty, or otherwise, shall not exceed, in respect of each individual load of goods supplied, the price paid by the Client for that specific load..

If any material is supplied which is shown not to be in accordance with the specification, the Company shall have the option to replace the product or provide a refund, contingent upon the product being returned or made available for collection. This being the Client's exclusive remedy.

The Company shall not be liable for any other loss or damage including but not limited to any loss of profit, loss of (future) sales and/or business, loss of anticipated savings, loss of or damage to goodwill, damage to the Client's reputation, damages for or the costs of delay, damages costs or expenses payable by the Client to any third party, any loss or damage arising from the Company's negligence (except where such exclusion is prohibited by law), or any other indirect or consequential loss or damage however it arises.

Nothing in this clause shall limit or exclude the Company's liability for:

- Death or personal injury caused by the Company's *negligence;*
- Fraud or fraudulent misrepresentation;
- Any other liability that cannot be excluded or limited by law.

This Clause shall survive the termination of the agreement for whatever reason.

**11. Retention of Title**

(i) All material delivered to the Client shall remain the Company's property until the Client has paid for it in full. Until that time the Client will hold the material as bailee and store it in such a way that it can be identified as the Company's property and will keep it separate from its own property and that of any other person.

(ii) Although the goods remain the Company's property until paid for in full, they shall be at the Client's risk from the time of delivery and the Client shall insure them against loss or damage accordingly and in the event of such loss or damage shall hold the proceeds of such insurance on behalf of the Company as trustee for the Company.

(iii) The Client's right to possession of the goods shall cease if: (a) The Client has not paid for the goods in full by the expiry of any credit period allowed for in these conditions; b) The Client is declared bankrupt or made any proposal to its creditors for a composition or any other voluntary arrangement; or

(c) A receiver, liquidator or administrator is appointed in respect of the Client's business.

On cessation of the Client's right to possession of the goods in accordance with this clause the Client shall at its own expense make the goods available to the Company and allow the Company to repossess them.

(iv) The Client hereby grants the Company, its agents and employees an irrevocable licence to enter any premises where the goods are stored in order to repossess them or inspect them at any time.

**12. Variation**

Where the Company complies with a request from the Client or from a person reasonably believed by the Company to be acting on the Client's behalf for a variation in the specification of a delivery, the Client will accept any consequential variation in the properties and/or the constituents of that delivery.

**13. Claims**

The Client is required to conduct a quality check upon delivery of the material and accept it.

(i) Where the Client claims an alleged failure of the material to correspond with the specification or any variation of it which may have been agreed then:

(a) Immediately after the time when such failure is first suspected the Client will send to the Company written notice of the claim including the reasons for suspecting a failure and the precise position in which the material in question was placed;

b) Any such notice shall in any event be given within three (3) days for what concerns defects that can be identified following a visual inspection and fifteen (15) days after the delivery of the material in question for any other defect, and in any case prior to any use of the material.

(c) The Client will give the Company all the facilities which the Company may reasonably require to check any assessments made or to be made.

(d) Upon the Company's request the Client will permit the Company to carry out its own assessments and in particular (subject to the Company's doing so as quickly as is reasonably practicable) to inspect to sample and to test the material in question in situ and to investigate and to advise on any remedial action.

Where the Client does not act in accordance with this clause any claim or right in respect of any failure to reach the specification shall be deemed to have been waived and to be absolutely barred.

(ii) Any claim that the correct quantity of material has not been delivered must be made within three (3) days of the delivery and confirmed in writing within seven (7) days.

**14. Termination**

Each delivery of material may be invoiced separately and shall be paid for in full in accordance with condition 4(i). The Company may without prejudice to its rights refuse to effect any further deliveries, and unilaterally terminate this Agreement, without prejudice to any of its rights, if:

(a) the Client fails to pay any invoice in accordance with these conditions

Or :

(b) the Client should go into either voluntary or compulsory liquidation or is made bankrupt or shall enter any composition or voluntary

agreement with its creditors or shall suffer any distress or execution to be levied on its goods.

**15. Privacy**

In the context of the sales and transactions covered by the present general sales conditions, the Company will deal with information about the Client or the Client's representatives and members of the Client's staff (if the client is a legal person) constituting "personal data" as a data controller for the purpose of making the sales and intended transactions.

If the client is a natural person, the client will find more information about how the Company processes the client's personal data in this context as well as about the client's rights (including the right of access, rectification, opposition to the treatment for the purposes of prospecting and, in certain circumstances, a right to erasure, limitation of treatment, portability of data and a right to oppose other forms of treatment) and the obligations of the Company in this respect in our Privacy Policy available on our website https://www.lhoist.com/lhoist-privacy-policy and which forms an integral part of these general sales conditions. If the client is a legal person, given the fact that the Company is not necessarily able to inform the Client's representatives and staff with whom the Company does not have a direct relationship, the Company herein delegates to the Client the obligation (and, by accepting these general sales conditions, the Client agrees) to ensure that the Client's representatives and staff members are adequately informed in accordance with applicable data protection legislation that personal data about them may be disclosed, used and processed by the Company in accordance with these general sales conditions and, where applicable, have validly consented thereto. To this end, the Client undertakes to communicate to the persons concerned a copy of the Company's Privacy Policy as referred to here above and which forms an integral part of these general sales conditions.

**16. Set Off**

The Company shall be entitled to deduct from or set off against any monies lawfully due or becoming due to the Client from the Company or from any of its subsidiary or associated companies any monies which are due or become due to the Company from the Client or any of its subsidiary or associated companies.

The Client shall not be entitled, under no circumstance, to any net off or compensation.

**17. Force Majeure**

In the event of the Company's inability to deliver material due to any Act of God, force majeure, riot, civil commotion, government order or legislation, fire, accident, strike, industrial action short of a strike, lock out, adverse weather conditions, delays to our transport, breakdown of plant or machinery, non-availability of materials or due to any other matter over which the Company has no control the Company shall notify the Client without any undue delay and may suspend deliveries under this contract and shall not be liable for any loss or damage suffered as a result of any failure to deliver or delay in delivery.

**18. General**

(i) **Waiver**. Any omission or delay of a Party in asserting a right or legal remedy provided for by this Agreement or by law does not constitute a waiver of such right or legal remedy. Any waiver of a right or legal remedy shall only be effective and valid if it is in writing and signed by the Party waiving such right or legal remedy.

(ii) **Cumulative rights**. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The exercise of any one or more of the rights or remedies provided under this Agreement shall not preclude the simultaneous or subsequent exercise of any other right or remedy.

(iii) **Assignment**. The Company may assign, licence or sub-contract all or any part of its rights or obligations under the Agreement without the Client's consent.

(iv) The Contract is personal to the Client and it may not assign, licence or subcontract all or any of its rights or

(v) obligations under the Contract without the Company's prior written consent.

(vi) The parties to the Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

(vii) The Company's rights contained in Condition 10 shall continue beyond the discharge of its primary obligations under the Agreement consequent upon its termination.

(viii) **Entire Agreement**. This Agreement is and represents the entire understanding and agreement of the Parties with respect to the subject matter hereof. Any amendment or modification to it shall only be valid and effective if agreed in writing and signed by both Parties.

(ix) **Severability**. If any clause or part of a clause of this Agreement is held (by any authority, arbitration or court having jurisdiction on this Agreement) to be illegal, invalid, unenforceable, such clause or part of a clause shall: (i) automatically be deemed to be modified so as to comply with the applicable law or regulation in the manner which most closely renders such clause or part of a clause to be valid, legal and enforceable and closest to the intent of the Parties; and, (ii) all other clauses herein shall remain in full force and effect.

(x) **Governing law**. This Agreement shall be construed and governed in all respects by the laws of England and Wales (excluding conflict of laws rules).

(xi) **Jurisdiction**. Any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this Agreement, its subject matter or formation shall be subject to the exclusive jurisdiction of the courts of England and Wales.

(xii) The termination of this Agreement howsoever arising shall be without prejudice to the rights and duties of either party accrued prior to termination.