

# Hogan Asphalt Terms and Conditions

## CONDITIONS OF SALE OF HOGAN ASPHALT LIMITED

### 1. INTERPRETATION

1. In these conditions the following words have the following meanings: **the Buyer**: the person(s), firm or company who purchases the Goods from the Company (and this term shall be deemed to include any employees, agents or sub-contractors of the Buyer if appropriate to the circumstances); **the Company**: Hogan Aggregates Limited (and this term shall be deemed to include any employees, agents or sub-contractors of the Company if appropriate in the circumstances) **Contract**: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions; and **Goods**: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

### 2. APPLICATION OF TERMS

1. Subject to any variation under condition 2.3, the Contract will be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2. No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

3. These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by authorised representative of the Company. Nothing in this condition will exclude or limit the Company's liability for fraudulent misrepresentation.

4. Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these conditions.

5. No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

6. The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

7. Any quotation is given on the basis that no contract will come into existence until the Company accepts the order in accordance with condition 2.5. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

8. *The Company's catalogues, instruction leaflets, manuals, drawings, illustrations, specifications, quotations and price lists do not constitute offers by the Company and the Company reserves the right to withdraw the same at any time prior to the acceptance of an order.*

9. *All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.*

3. *ORDERS/SPECIFICATIONS The quantity, quality and description of the Goods and any specification for them shall be as set out in the Company's quotation.*

#### 4. DELIVERY

1. *Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.*

2. *Where delivery of the Goods shall take place at the Company's place of business:*

1. *the Goods will be delivered into the vehicle in which the Buyer collects the Goods, at such suitable delivery point as the Company directs;*

2. *the Buyer must obey the site rules and instructions of the Company; and*

3. *the Buyer will be responsible for the condition of the vehicle in which its collects the Goods and the Company shall not be liable for loss or contaminations of the Goods resulting from the condition of such vehicle. The Buyer shall indemnify the Company for any loss, damage or injury to the Company, its plant and equipment caused by the Buyer, the Buyer's vehicles, or that of its agent or sub-contractor, or the condition thereof.*

3. *Where the Goods are to be delivered to the Buyer's place of business or such other place as the Company and Buyer may agree pursuant to condition 4.1, the Buyer shall provide a route to the Company over sound hard roads to the point at which the Buyer wishes the Goods to be discharged which, in the reasonable opinion of the Company is safe and proper and provides a proper means of access and adequate manoeuvring space. If, in the Company's reasonable opinion, such roads or access are unsuitable, the Company reserves the right to:*

1. *refuse to deliver; or*

2. *to deposit the Goods at the nearest point, which in the Company's reasonable opinion was the nearest point to safely take the Goods to the point of delivery agreed between the Company and Buyer pursuant to condition 4.1 and delivery shall be deemed to have been made. The Buyer shall be responsible for supervising completion of delivery. The Buyer indemnifies the Company against all losses, costs, proceedings, claims, demands and expenses incurred by it (other than in respect of death or personal injury caused by*

*the negligence of the Company) as a result of failure to provide a safe and convenient access or delivery point and/or properly supervise delivery.*

*4. Any dates specified 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 will be within a reasonable time.*

*5. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these conditions or any claims by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.*

*6. The Buyer must inspect the Goods at the time of delivery and the Company's liability in respect of incorrect quantities of Goods supplied shall be limited to the additional supply of Goods to make up the shortfall. The Company shall have no liability relating to the delivery of incorrect quantities unless it is notified within 24 hours of delivery of the Goods. The Buyer must sign a delivery note, if requested by the Company upon delivery of the Goods. The Buyer shall be bound by the signature on the delivery note, unless the Buyer has previously advised the Company in writing that only specified persons are authorised to sign delivery notes.*

*7. The Buyer shall reimburse the Company all costs and expenses incurred by the Company as a result of the Company being prevented from or delayed in making any delivery resulting from the acts or omission of the Buyer or any of its employees, agents or sub-contractors.*

*8. Without prejudice to any other rights or remedies available to it, the Company may make an extra charge in the event:*

*1. the Buyer requires delivery of the Goods in quantities of less than a full load;*

2. *the Buyer fails to take delivery or fails to give the Company adequate delivery instructions;*
3. *the Buyer requires delivery outside the Company's normal working hours;*
4. *the time for discharging the vehicle at the delivery point is not completed within 15 minutes of the arrival of the vehicle at the delivery point;*
5. *delivery cannot be effected due to unsuitable access or discharge point; and*
6. *the Buyer requests that delivery be deferred.*
9. *Unless the Company agrees in writing, the Buyer may not re-direct delivery of the Goods or any instalment of the Goods.*
10. *If the Buyer cancels or postpones its order, the Company shall be entitled to recover all costs accrued and / or incurred up the date upon which the Seller receives notice of such cancellation.*

#### **5. RISK/TITLE**

1. *The Goods are at the risk of the Buyer from the time of delivery.*
2. *Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:*
  1. *the Goods; and*
  2. *all other sums which are or which become due to the Company from the Buyer on any account; and until such payment, the Company shall be entitled to enter the Buyer's premises to recover the Goods.*

#### **6. PRICE**

1. *The price of the Goods shall be the price quoted by the Company.*
2. *Except as otherwise stated in the Company's quotation, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Buyer shall be liable to pay the Company's charges for transport and insurance.*
3. *The Company reserves the right at any time before delivery to adjust the price to reflect any increase in the cost to the Company of materials, labour, equipment or operation.*
4. *The price of the Goods shall be exclusive of VAT.*

## *7. PAYMENT*

- 1. Payment shall be made strictly net within 28 days from the date of invoice unless otherwise agreed in writing by the Company.*
- 2. Time for payment shall be of the essence.*
- 3. No payment shall be deemed to have been received until the Company has received cleared funds.*
- 4. All payments payable to the Company under the Contract shall become due immediately in the event the Buyer defaults in the payment of any one invoice or upon termination of this Contract despite any other provision.*
- 5. The Buyer shall make all payments due under the Contract 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.*
- 6. If the Buyer fails to pay the Company any sum by the due date the Company shall be entitled to (without prejudice to any other right or remedy:*

- 1. charge the Buyer interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of [INSERT NAME OF BANK], accruing on a daily basis until payment is made, whether before or after any judgment; and*

- 2. cancel the Contract or suspend any further deliveries to the Buyer.*

## *8. QUALITY*

- 1. The Company warrants that (subject to the other provisions of these conditions) it shall at its sole discretion supply to the Buyer additional goods in the same quantity as defective or non-compliant Goods and which in all respects are in accordance with the Contract or refund the price of such defective or non-compliant Goods at the pro rata Contract rate in the event that the Buyer can establish to the reasonable satisfaction of the Company that:*

- 1. there is a defect in the workmanship of the Company in relation to the Goods; or*
- 2. there is a defect in the design of the Goods in circumstances where the Company has designed the Goods; or*
- 3. the Goods are not in accordance with the quality or specification contained in the Contract; or*
- 4. there is some other failure by the Company in relation to the Goods to comply with the Contract.*

- 2. The warranty under condition 8.1 is subject to the following conditions:*

*1. the Company shall not be liable for a breach of the warranty in condition 8.1 unless the Buyer gives the Company notice in writing of the alleged defect within 40 days of the time when the Buyer discovers ought to have discovered the defect;*

*2. the Company shall not be liable for a breach of the warranty in condition 8.1 unless the Company is given a reasonable opportunity after receiving the notice under condition 8.1 of investigating any alleged defects, by drawing a representative sample of the delivery complained of and conducting the necessary tests; and*

*3. the Company will accept no responsibility for faults in or failure of the Goods due to unsuitable use or application.*

## **9. LIMITATION OF LIABILITY**

*1. Subject to condition 8, the following provisions set 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:*

*1. any breach of these conditions; and*

*2. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.*

*2. 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.*

*3. Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.*

*4. Subject to conditions 9.2 and 9.3:*

*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 this Contract shall be limited to the refund of the price of the Goods; and*

*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. TERMINATION**

*1. The Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer if any of the following occur (without prejudice to any other right or remedy available to the Company):*

*1. the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his 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 and / or manager, 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 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*

*2. the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his its property or obtained against it, or fails to observe/perform any of its obligation under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or*

*3. the Buyer commits any breach of the Contract or of any other contract between the Buyer and the Company or between the Buyer and any companies within the same group of companies or which the Company is a member.*

*2. If the Company cancels or suspends any further deliveries under the Contract under condition 10 and if the Goods have been delivered but not paid for the price shall become immediately due and payable regardless of previous agreement or arrangement to the contrary.*

## **11. ASSIGNMENT**

*1. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.*

*2. The Company may assign the Contract or any part of it to any person, firm or company.*

*12. FORCE MAJEURE The Company reserves the right to defer the date of delivery or to 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 the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.*

### 13. GENERAL

- 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.*
- 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.*
- 3. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.*
- 4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.*
- 5. The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.*
- 6. The formation, existence, 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.*

### 14. COMMUNICATIONS

- 1. All notices between the parties in respect of this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission to the Company's address, facsimile number as notified in writing to the Company from time to time.*
- 2. Communications shall be deemed to have been received 48 hours after posting (exclusive of the day of posting) if sent by first class post, on the day of delivery if delivery by hand, or at the time of transmission if sent by facsimile transmission on a working day prior to 4.00pm, and otherwise on the next day.*