

Gallagher Aggregates Limited

Terms & Conditions

- Definitions**

"The Company" Shall mean Gallagher Aggregates Limited of Leirim House, Little Preston, Aylesford, Kent ME20 7NS and should include agents or sub-contractors appointed by it and its successors.

"The Customer" Shall mean any person, Company or other legal entity who enters into a Contract with the Company of the supply of products, material and services.

"The Products" Shall mean the products, materials, goods and services supplied by the Company to the Customer.

"The Site" Means the location for the delivery of the Products specified by the Customer at the time it requests an estimate/quotation from the Company.

"These Terms" Shall mean all the terms, conditions and warranties set out herein.

"The Estimate" Shall mean the Company's written estimate or quotation of costs of the Products.
- Waiver**
 - No variation or waiver by the Company of any of these Terms shall be effective unless agreed in writing by the Company.
 - Any waiver by the Company of strict compliance with any of these Terms shall not affect the obligations of the Customer strictly to comply with all these Terms at any future time.
- Estimates**
 - All prices stated on the Estimate are exclusive of VAT payable at the current rate, unless otherwise stated.
 - The Estimate is based upon the tax contribution or levies in force at the date of the same. In the event in any increase in the Company's tax or levies burden in connection with the Estimate prior to the delivery to the Customer, the Company shall be entitled to recover the increased burden from the Customer.
 - Prices stated on the Estimate are based upon current costs of labour and materials and general running costs ruling at the date of the same.
 - The prices stated on the Estimate apply only to the specific details given by the Customer at the time in respect of quantity of the Products, location of the Site and time and mode of delivery based upon the delivery by the full load and delivery during normal working hours. It shall be the Customer's obligation to establish normal working hours of all the Company's facilities likely to affect delivery or collection.
 - Unless otherwise stated the prices stated on the Estimate are include delivery to the Site and waiting time allowance of 10 minutes on Site at the time delivery is made.
- Contract**
 - The Company's Estimate constitutes an offer to the Customer to enter into a contract on these Terms.
 - The Customer's order shall constitute acceptance of the Company's Estimate. Upon receipt of that order by the Company a contract is made for the Customer's purchase of and the Company's supply of the Products in accordance with the Company's Estimate and on these Terms. The Customer should confirm its order in writing but the Customer shall not be entitled to deny the existence of a contract on the grounds of the Customer's failure to confirm the order in writing in circumstances where offer and/or acceptance of has been effected verbally.
 - The Customer acknowledges that all contracts with the Company are subject to these Terms and all other conditions, warranties and representations, express or implied in statutory or otherwise except as to the title are hereby excluded. No variation to these Terms shall apply unless specifically agreed in writing by the Company.
 - All contracts are entered into by the Company subject to the Products being available to the Company.

In issuing an Estimate the Company does not warrant that the Products are available and in the event that the Products are not available to the Company the contract shall be void.
 - Any Estimate given is provisional only and may be subject to amendment if an order is not placed by the Customer within one calendar month of the date of the Estimate.
 - The Company's Estimate shall remain open for acceptance for one calendar month from the date of the same, thereafter it shall be incapable of acceptance save at the Company's sole discretion which shall at all times be confirmed in writing. Any written acceptance or formal order will be acknowledged in writing by the Company affirming the terms and conditions of the Contract and in the event that the Products are delivered or collected in the absence of such terms being affirmed, these Terms shall apply and any other terms or conditions shall be of no effect.
 - The Company's Estimate is based upon the Customer making satisfactory arrangements for payment prior to the Customer ordering the Products from the Company. Notwithstanding any other term or condition contained herein or whether or not the Products have been supplied by the Company, the Company shall have no obligation towards the Customer until satisfactory arrangements for payment are put in place by the Customer.
- The Contract Price**

"The Contract Price" means the price stated in the Estimate, or such increased price resulting from:-

 - Any alterations made by the Customer in any specification upon which the Estimate was based.
 - Any variations made by the Company at the request of the Customer as to the Site, mode, time frequency for delivery of the Products or variations as a result of conditions 8 a) and 8 f).
 - Any expense incurred by the Company by reason of delay arising from the Customer's instructions.
 - Any variation in prices of materials, labour or other costs which may occur between the date of the Estimate the date of delivery.
 - Any delivered amount of the Products being less than the specified quantity, where the Estimate provided for specific quantities and in such circumstances the Company shall be entitled to increase its price in light of the reduced quantities.
 - Any orders for aggregates less than 20 tonnes.
 - Any orders for ready mix concrete less than 6 cubic metres.
 - Any waiting time on the Site beyond 10 minutes on any one delivery.
 - Any deliveries or collections outside of normal working hours which shall be subject to a price increase unless the Company's Estimate expressly states for delivery or collection outside normal working hours at no extra charge.
 - Any variation in the Company's price(s) rulings, that all contracts are subject to the conditions that deliveries are made in accordance with, and in such event and any variation of such costs, the Company shall be entitled at its absolute discretion to increase prices accordingly.
 - Any breach of warranty or duty contained in these Terms on the part of the Customer.
- Assignment**

The Customer shall not assign the contract without the express written consent of the Company.
- Customer's Specifications/Warranties**
 - Where particular specifications are to be supplied by the Customer, then the Customer should supply such specifications before or at the time of the order. Unless the Company is so provided with the specifications then the Company will not be liable for any discrepancy between the Products and the Customer's specifications.
 - The Customer warrants that it has made full investigations into the suitability of the Products requested by the Customer and it is satisfied that the Products will be suitable in all respects for the Customer's requirements save and except defects arising from the Company's negligence.
 - In giving an Estimate for the Products, the Company accepts no responsibility whatsoever that the materials referred to within the Company's Estimate shall be suitable for the purpose the Customer intends.
 - The Customer warrants that access to the Site will be available without charge and shall be suitable and safe for the Company's delivery vehicles at the time of each delivery in accordance with conditions 8 a) and 8 f).
 - The Company gives no warranty or undertaking in respect of the description, quality or fitness for purpose of the goods save that where goods are ordered in accordance with British or the Department of Transport Standards, they will comply with that specification at the time of delivery.
 - If Products are supplied to conform with a sample provided by the Company, the Company's liability in respect thereof shall be entirely discharged by the provisions of Products which conform to such sample in all material respects. The parties hereby acknowledge that the only characteristic of the Products delivered which is material for the purposes of establishing conformity with any sample is the relative size of the Products in the sample as compared with the Products supplied hereunder. If any of the Products do not conform to this warranty and by not conforming with the quality or specification stated, such Products provided are proved defective and unsuitable for the purpose to which they are being put, the Company will at its option:-
 - replace the goods found not to conform to warranty; or
 - take back the goods that do not conform to warranty and refund or credit the appropriate part of the Contract Price.
 - The liability of the Company shall in no event exceed the Contract Price and performance of any one of the above options shall constitute an entire discharge of the Company's liability under this warranty. For the avoidance of doubt the Customer shall have no right to reject the whole or any part of the Products.
 - Save as provided for in condition 7 e), and any statutory right, all conditions and warranties, express or implied, as to the quality or fitness for any purpose of the Products are hereby expressly excluded.
- Delivery**
 - The Company's Estimate is based upon safe and easy access for delivery and collection of goods using the Company's usual road vehicles. In the event that the Customer considers in its absolute discretion that such access is not available or that any road or ground over which the Company's vehicle would have to travel is unsafe/unusable, the Company shall have the right to effect delivery or collection at the location determined by the Company as being the closest to the Customer's requirements or refuse to make the delivery. Should the Company incur extra costs in making a delivery to or collection from an unsatisfactory access or over an unsuitable road or ground, the Company shall be entitled to recover the extra costs from the Customer and should the Company refuse to make delivery the Company may charge the Customer for all costs incurred under the contract. The Company shall have no obligation to make further deliveries or collections until the Customer has met the extra costs.
 - The Company may deliver by separate instalments each of which may at the Company's option be invoiced and paid for as a separate contract.
 - Statements made as to the time and date for delivery of the Products shall be treated as a guide only and the Customer shall not be entitled to refuse delivery or to compensation because of any delay.
 - The Company shall not be responsible for any consequences arising out of its failure to deliver or, where the Customer will collect materials, for its delay in supplying any Products.
 - The Company's responsibility following any missed delivery or collection shall be limited to effecting delivery or collection at the earliest reasonable opportunity after the missed delivery or collection.
 - The Customer shall provide, free of charge, access and reasonable assistance in unloading at the Site.
 - Where the goods are to be delivered by 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 Terms or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the contract as a whole as repudiated.
 - The Company will not be liable to the Customer for any damage caused to the Customer's property by delivery of the Products.
 - Delivery shall be deemed to take place at the moment of discharge from the delivery vehicle at the Site or in the event that the Customer collects and/or transports the Products from the Company the moment of loading into the Customer's vehicle or container and upon delivery, risk passes to the Customer or any carrier acting upon the Customer's behalf.
 - The property and title in the Products shall not pass to the Customer until the Contract Price has been paid in full.
 - If the Customer has failed to pay for the Products in accordance with these Terms, they shall be held in a fiduciary capacity by the Company until such time as payment is made in full and the Company shall have the right to bring an action against the Customer and effect lien and recovery in accordance with clause 11 herein, for the price of the Products outstanding notwithstanding that property and title has not passed to the Company.
- Terms of Payment**
 - The Company's terms of payment are payment upon delivery or collection, or for approved credit account Customers 28 days from the date of invoice, unless it is agreed in writing by the Company that different terms shall apply.
 - In respect of all payments due to the Company, time of payment is of the essence of the contract.
 - The Company reserves the right to charge interest at an annual rate of 4% above the Barclays Bank Plc's Base rate from time to time exclusive of VAT, on all invoices which remain unpaid after the due date of payment and where the Customer is trading in the course of business the Company will rely on the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.
 - Where any sum owed by the Customer to the Company under this or any other contract is overdue the Company may withhold deliveries of goods due to be made under this contract until arrangements as to payment or credit have been established which are satisfactory to the Company.
 - The Customer shall not be entitled to withhold payment by reason of any claim to be set off or counterclaim against the Company.
 - If the Customer fails to pay for the Products in accordance with these Terms, the Company may bring an action against the Customer for the price at any time, even though the property and title in the Products has not passed to the Customer.
- The Company's Liability**

These Terms (and as modified in accordance with condition 2 a)) and together with the matters referred to on the face of the Company's Estimate and/or acknowledgement of the order, embody the entire understanding of the parties and superseded any prior promises, representations, undertakings or implications but this clause shall not operate so as to exclude liability which the Company would otherwise have for any statements made fraudulently by the Company prior to the date of this contract.

The warranty provided in condition 7 f) is conditional upon:-

 - the Customer giving written notice to the Company within 48 hours of the time the when the Customer discovers or ought to have discovered the defect and in any event with 7 days of delivery of the Products.
 - the Customer affording to the Company a reasonable opportunity to inspect the goods and if so requested by the Company, returning the allegedly defective Products to the Company's works, carriage pre-paid for inspection to take place there, and goods not having been altered or used in any way whatsoever or not having been subjected to misuse, and
 - goods having been properly handled; and
 - the Customer complying with its obligations under this or any other contract made with the Company.
 - Where the Products comprise or contain natural marine dredged or quarried materials they may contain natural imperfections and are sold by the Company with any such imperfections as may exist in them and the Company shall not be liable in respect of any such imperfections.
 - The Customer shall inspect the Products immediately upon its receipt thereof. If the Customer considers that the Products are defective in any way whatsoever it shall within 48 hours of receiving the Products give notice in writing by fax to the Company stating the defects or discrepancies alleged. Unless the Customer gives such notice the Products shall be deemed to be in all respects in accordance with the Contract and to the satisfaction of the Customer.
 - Products represented by the Customer or any third parties to be defective or not in accordance with the contract shall not form the subject of any claim for any direct or consequential loss, damage or expenses whatsoever arising directly or indirectly from such defect, but such Products if (should the Company so require) made available for inspection and testing by the Company and accepted by it as defective will at the request of the Customer and if practicable be replaced.
 - In the event of the desired finish not being obtained owing to the supply by the Customer of inappropriate specifications or any other reason outside the Company's control, no responsibility shall attach to the Company and the Customer shall remain liable to pay the Contract Price.
 - The Company gives no warranty that the Products are suitable for any particular purpose and the Company shall not therefore be liable in respect of any claims in respect of alleged unsuitability of the Products.
 - The Company shall have no liability in contract or in negligence or otherwise for consequential loss, indirect loss or economic loss howsoever arising.
 - The Company shall not be liable in the Contract, tort or otherwise for any personal injury loss or damage of whatsoever kind suffered by the Customer as a result of its use of the Products.
 - In any event the Company's liability whatsoever and howsoever arising shall be limited to the Contract Price of the contract in respect of which the liability has arisen.
 - The Company's liability to the Customer or others in respect of the Company's materials or goods shall, in any circumstance, be limited to supplying replacement materials or goods. The Customer shall have no other right in contract, delict, tort or otherwise and all and any conditions, terms and representations, whether express, implied, statutory or otherwise are by agreement excluded.
 - Sub clauses 10 h), i), j) and k) shall not apply in respect of any claim for death or personal injury to persons arising out of the Company's negligence.
- Lien and Recovery**
 - The Company (without prejudice to any other remedy available to it) have in respect of all unpaid debts due from the Customer a general lien on all property of the Customer in possession of the Company and the Products for which some or all sums due under these Terms are unpaid in possession of the Customer, for whatever purposes and whether worked upon or not and the Company shall be entitled on the expiration of not less than 14 days' notice in writing to the Customer to dispose of such property and to apply the proceeds, if any, towards the satisfaction of such costs.
 - In respect of lien and recovery of the Products in the Customer's possession, the Customer hereby grants a licence to the Company to enter the Customer's premises and or the Site to re-take the Products.
 - In respect of lien and recovery of the Products in the Customer's possession in accordance with a) and b) above, the Company will not be liable whatsoever for any reasonable damage arising to the Customer's property, the Site or goods or materials not covered by this Contract in removing and recovering the Products.
- Termination of Contract**
 - The Company may terminate all or any of its contracts with the Customer if the Customer is in breach of such contract or (in the case of the Customer being a Limited Company) goes into liquidation, has an administrative receiver appointed to it or has an administration order made in respect of it or (if the Company is an individual) he or she is adjudicated bankrupt or an interim receiver is appointed to his/her property.
 - The Customer shall be entitled to terminate any contract with the Company with the Company's agreement:-
 - if written notice to terminate is given prior to batching, mixing or loading, upon payment of such sum as the Company shall reasonably require to cover its administration and processing costs and the price of any materials purchased by the Company for use under the contract, or
 - if notice to terminate is given after batching, mixing or loading has taken place, upon payment in full of the Contract Price.
- Force Majeure**

The Company accepts no responsibility for total or partial failure to supply or for the delay in supplying any Products which may be due directly or indirectly to any Act of God or force majeure, or any war in which Her Majesty is engaged, invasion, riot, civil commotion, military or usurped power, any legislation, Government order, regulation or direction, any strike, differences with workmen or lock out, any fire, accident, breakdown in machinery, any shortage of labour or raw materials, equipment or spare parts effecting the production or transit of such materials or goods or any other cause or circumstances reasonably beyond its control or any abnormal conditions arising from the foregoing clauses. In the event of partial stoppage of work resulting from, one of the circumstances referred to above, the Company shall perform its obligations under the contract pro rata with other engagements existing at the time.
- Set Off**

The Customer will have no right of set-off statutory or otherwise.
- Data Protection Act 1998**
 - As part of these Terms, Customers hereby authorise and understand that the Company may make enquiries relating to Customer's credit standing as The Company considers necessary and may check the bank and any trade references supplied.
 - Customers hereby authorise and understand that the Company may make a search with a credit reference agency, and may keep a record of that search and may share that information with other businesses and also make enquiries about the principal Directors with a credit reference agency.
 - Sole Trader or Partnership Customers with a credit account hereby give their consent and understand that:-
 - Our Insurers may keep a record of personal data and it may be passed to their customers.
 - Our insurers may pass this personal data to credit reference agencies and information providers, insurance companies, intermediaries and agents and they may keep a record of it and pass it to their customers.
 - The personal data will be used for credit risk assessment and insurance and other related purposes.
 - Our insurers may provide us with personal data they have obtained from sources other than us.
- Construction**
 - The Contract shall be interpreted and governed in accordance with English Law and any action shall be pursued through the English Judicial System (to the jurisdiction of which the Customer hereby irrevocably submits) and shall have the exclusive jurisdiction to resolve any disputes out of it.
 - In case any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions contained in this contract and the contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.
 - If a Court finds that any clause or sub clause of these Terms fails the requirements of reasonable or fairness under statute the Company nevertheless excludes the relevant liability to the extent that the Court shall determine what is reasonable and fair.