

AGGREGATES

1 Definitions and Interpretation

1.1 In these Conditions the following words have the following meanings:

“Aggregate Levy” means a per tonne levy on all aggregates commercially exploited or imported in the UK, that is charged to quarry operators and other extractors of rock, sand, and gravel (with numerous exceptions);

“Cancellation Charge” means the charge for cancellation set out in the Services and Surcharges Price List;

“Company” means Tubbs Payload Limited (Registered No: 10157639) whose registered office is at Medina House, 2 Station Ave, Bridlington, YO16 4LZ;

“Contract” means any contract between the Company and the Customer for the sale of Goods and provision of Services, incorporating these Conditions;

“Customer” means the person(s), firm or company who purchases the Goods and/or Services from the Company;

“Environmental Surcharge” means a surcharge to cover costs imposed by government and regulators relating to extraction of mineral reserves;

“Event of Force Majeure” has the meaning given in Condition 9;

“Goods” means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them and pallets where applicable);

“Group Company” means any subsidiary or holding company of the Company and the ultimate holding company of the Company and any subsidiary company of any of them (in each case from time to time) (and the terms “Subsidiary” and “Holding Company” shall have the meanings given to them by Section 1159 of the Companies Act 2006);

“Part Load Charge” means the charge for part loads set out in the Services and Surcharges Price List;

“Quotation” means the documents issued by the Company which set out the prices of the Goods and/or the applicable Services;

“Returned Materials Charge” means the charge for returning and handling material set out in the Services and Surcharges Price List;

“Services” means any services provided by the Company;

“Services and Surcharges Price List” means the document setting out the prices of additional services and surcharges as published or issued from time to time by the Company;

“Surcharges” means those charges made by the company including without limitation the Cancellation Charge, the Returned Materials Charge, the Aggregate Levy and the Environmental Surcharge; and

“Waiting Time Charge” means the charge for waiting at the disposal point as set out in the Services and Surcharges Price List.

2 Basis of Contract

2.1 Subject to any variation under Conditions 2.3 the Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).

2.2 Each order for Goods and/or Services by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods and/or Services subject to these Conditions. It is the Customer’s obligation to ensure that the terms of its order and any applicable specification are complete and accurate.

2.3 Any variation to these Conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and executed by a director of the Company.

2.4 No order placed by the Customer shall be deemed to be accepted by the Company until a Quotation is issued by the Company or (if earlier) the Company commences loading and dispatching of the Goods, their appropriation to the Customer’s order or despatch of the Goods to the Customer or the Company commences provision of Services. Any order shall be accepted entirely at the discretion of the Company.

2.5 Any Quotation or estimate made by the Company is given subject to these Conditions. Without prejudice to the Company’s right not to accept an order, Quotations will be valid for 30 days from date of issue.

2.6 All Goods are sold and/or Services provided by reference to the Company’s specification for those Goods and/or Services in force at the date of the Company’s acknowledgement of order and available to the Customer on request.

2.7 Any cancellation or delay of an order by the Customer on or after 3pm on the working day before the order is due to be fulfilled, or if the Company cannot deliver

an order due to a failure of the Customer to comply with its obligations pursuant to Condition 3.2 or 3.5, is subject to payment by the Customer of:

- (a) the Cancellation Charge; and
- (b) the Returned Materials Charge.

2.8 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the use of the Goods by the Company is followed or acted upon entirely at the Customer's own risk, such advice and/or recommendation should not be relied upon.

2.9 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

2.10 The description of the Goods and/or Services shall be set out in the Company's acknowledgement of order and/or the Quotation.

2.11 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions, details 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 and/or Services described in them and they will not form part of the Contract unless otherwise agreed in writing by the Company.

3 Delivery and Acceptance of Goods

3.1 Unless otherwise agreed in writing by the Company delivery of the Goods shall take place at a discharge point agreed between the Customer and the Company in normal working hours.

3.2 The Customer shall provide and clearly indicate to the Company a safe and proper route from a metalled highway to the agreed discharge point.

3.3 Any dates or time of day specified by the Company for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence. If no dates or times are so specified, delivery will be within a reasonable time.

3.4 If for any reason the Customer does not accept delivery of any of the Goods within the sum of 30 minutes of when the Goods arrive and are available for discharge at the agreed discharge point, the Company reserves the right to charge the Customer the Waiting Time Charge.

3.5 The Customer shall provide:

- (a) an authorised representative to accept the Goods;
- (b) all appropriate instructions concerning the delivery of the Goods;
- (c) an appropriate access to the discharge point;
- (d) all applicable documents; and
- (e) a discharge point which is compliant with health and safety legislation and regulations, licences or authorisations.

3.6 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

3.7 Given the nature of the Goods, the Customer will be deemed to have accepted the Goods as being in accordance with the Contract on signature of the delivery docket or on delivery, whichever is the earlier and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

3.8 At the anticipated time of delivery the Customer shall ensure that an authorised person is present at the agreed discharge point to accept the Goods and to sign the delivery docket. Any signature will be legible and accompanied with a legible printed name.

3.9 The Customer shall ensure that an authorised person shall sign a delivery docket on delivery. By signing the delivery docket the Customer:

- (a) acknowledges that the product description set out on such delivery docket describes the Goods required by the Customer;
- (b) confirms the times of arrival of the truck at the agreed point of discharge and of completion of discharge; and
- (c) acknowledges receipt of delivery.

3.10 Full legal, beneficial and equitable title to and property in the Goods shall remain vested in the Company (even though they have been delivered and risk has passed to the Customer) until:

- (a) payment in full, in cash or cleared funds, for all the Goods has been received by the Company; and
- (b) all other money payable by the Customer to the Company on any other account or under the Contract or any other contract has been received by the Company.

3.11 Risk in the Goods shall pass on delivery.

3.12 Until full legal, beneficial and equitable title to and property in the Goods passes to the Customer:

- (a) the Customer shall hold the Goods on a fiduciary basis as the Company's bailee;
- (b) the Customer shall store the Goods and shall insure them, without any charge to the Company, and not tamper with any identification upon the Goods and the

Company shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Customer reasonable notice of its intention to do so;

(c) the Company may at any time, on demand and without prior notice, require the Customer to deliver the Goods up to the Company and the Company may repossess and resell the Goods if any of the events specified in Condition 10.1 occurs or if any sum due to the Company from the Customer under the Contract or on any other account or under any other contract is not paid when due;

(d) for the purposes of this Condition 3.12 the Company, its employees, agents and sub-contractors will be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Customer and/or any other location where any of the Goods are situated at any time without prior notice;

(e) the Company shall be entitled to maintain an action against the Customer for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to the Customer; and

(f) the Company hereby authorises the Customer to use the Goods in the normal course of the Customer's business. This right shall automatically cease on the occurrence of any event set out in Condition 10.1 and/or if any sum owed to the Company by the Customer is not paid when due.

3.13 The Company shall be entitled at its discretion to make delivery of the Goods by instalments and to invoice the Customer for each instalment individually. 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 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 or to refuse to accept subsequent instalments.

4 Price and Payment

4.1 Unless otherwise agreed by the Company in writing the price for the Goods and/or Services shall be the price set out in the Quotation and/or the Service and Surcharges Price List as at the date of delivery.

4.2 The Company reserves the right, by giving notice to the Customer at any time before delivery, to amend the Quotation and/or the Services and Surcharges Price List to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (including, without limitation, any increase in the costs of labour, fuel, materials, or other costs of manufacture or supply), any change in the quantities of the Goods and/or nature of Services requested by the Customer or any change in the delivery dates or location for the Goods and/or Services

requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

4.3 Unless otherwise agreed in writing the prices for the Goods shall include costs or charges in relation to delivery but are not inclusive of the charges for Services and Surcharges. For the avoidance of doubt, this does not affect the Company's right to charge for delivery related charges as set out herein.

4.4 The price for the Goods and/or Services shall be exclusive of value added tax and any other taxes and duties or levies all of which amounts the Customer will pay in addition when it is due to pay for the Goods and/or Services.

4.5 The Company reserves the right to levy the Part Load Charge, where the Customer orders less than a full load. Details of load capacities can be obtained from the Company upon request.

4.6 The Company reserves the right to make a charge for delivery of the Goods and/or the Services on the request of the Customer at a specific time or outside normal working hours.

4.7 Except where otherwise agreed by the Company or where the Customer is a credit account holder, payment of the price for the Goods (plus Services and Surcharges that have been incurred or are anticipated by the Company to incurred on or before delivery) is due before dispatch of the Goods and/or completion of Services. Any other charges are due as they are incurred (unless agreed otherwise with the Customer). Time for payment of the Goods and Services shall be of the essence.

4.8 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise.

4.9 The Company shall be entitled to apply any amount due to the Customer under this or any other agreement in or towards payment of any sum owing by the Customer to the Company in relation to any matter whatsoever.

4.10 If any sum due from the Customer to the Company under the Contract or any other contract is not paid on or before the due date for payment then all sums then owing by the Customer to the Company shall become due and payable immediately

and the Company shall be entitled to:

- (a) cancel or suspend its performance of the Contract or any order including suspending deliveries of the Goods and/or provision of the Services; and/or
- (b) require the Customer to pay for Goods prior to their despatch or collection from the Company's place of business; and/or
- (c) charge the Customer
 - (i) interest calculated on a daily basis on all overdue amounts (both before and after judgement) until actual payment at the statutory rate of interest for commercial debts prevailing from time to time until payment is made in full; and
 - (ii) the cost of obtaining judgement or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.

Any credit facility given to the Customer by the Company may be altered or withdrawn by the Company at any time.

5 Warranty of Quality of Goods

5.1 The Company gives no warranty that Goods will be fit for any particular purpose unless this has been expressly agreed in writing between the parties to the Contract.

5.2 Furthermore, the Company gives no warranty that Goods will be free from lignite or pyrites.

5.3 Subject to Conditions 5.4 and 5.5, if the Customer establishes to the Company's reasonable satisfaction that there is a defect in the Goods or there is some other failure in relation to the conformity of the Goods with the Contract, and such non-conformity is the fault of the Company then the Company shall at its option, at its sole discretion and within a reasonable time:

- (a) subject to the reasonable co-operation of the Customer, remove the defective Goods free of charge to the Customer and replace such Goods with Goods which are in all respects in accordance with the Contract (including the cost of transporting the Goods to and from the Customer for that purpose); or
- (b) issue a credit note to the Customer in respect of the whole or part of the Contract price of such Goods and/or Services plus the reasonable costs of removing the defective Goods;

and performance of any one of the above options shall constitute an entire discharge of the Company's liability under this warranty and shall be the Customer's sole and exclusive remedy.

5.4 The Company shall be under no liability under the warranty at Condition 5.3 above:

(a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether given orally or in writing), misuse or alteration of the Goods without the Company's approval; and/or

(b) if the total price for the Goods and/or the Services and Surcharges has not been paid by the due date for payment; and/or

(c) for any Goods manufactured or appropriated to the Contract in accordance with any specification, instruction or recommendation made to the Company by the Customer;

(d) for any additional Services performed in accordance with the Customer's instructions;

Conditions of Sale (Aggregates) 1 March 2017

(e) in respect of any type of defect, damage or wear specifically excluded by the Company by notice in writing; or

(f) an Event of Force Majeure.

5.5 If the Customer believes that there is some defect or other non conformance of the Goods with the Contract then the Customer shall give:

(a) written notification of such alleged defect to the Company which notice shall include details of such suspected non-conformance or defect and the precise location of where such material was placed as soon as such defect or non conformance is suspected or discovered or ought to have been discovered but in any event within 40 days after delivery of the Goods or within 48 hours if the volume of Goods delivered do not correspond to the volume shown on the delivery docket; and

(b) the Company a reasonable opportunity to inspect the relevant Goods and, if so requested by the Company and, promptly return to the Company or such other person nominated by the Company a sample of the Goods within 14 days, carriage paid by the Customer, for inspection, examination and testing and/or otherwise permit the Company to have access to the Goods at the Customer's premises or other location where they may be for such purposes.

5.6 The warranties set out in the Contract are the only warranties which shall be given by the Company and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

6 Exclusion and Limitation of Liability

6.1 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with Condition 5.3 of the Contract shall be limited to the value of the Goods supplied under that Contract.

6.2 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, in respect of all claims not subject to condition 6.1 arising in connection with the performance or contemplated performance of the Contract shall be limited to the lower of the value of the Contract or £50,000 (fifty thousand pounds).

6.3 The Company shall not be liable to the Customer (whether in contract, tort negligence, breach of statutory duty or otherwise) however arising (whether relating to the Goods and/or Services or otherwise) for:

- (a) any loss of profit or other economic loss (direct or indirect); and/or
- (b) any loss or damage or liability which the Customer incurs due to delay in its works or project; and/or
- (c) any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused).

6.4 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence, or for fraudulent misrepresentation.

7 Customers Indemnity

7.1 The Customer irrevocably and unconditionally agrees to indemnify the Company, its employees, sub-contractors and agents in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including without limitation legal and other professional advisers' fees and all consequential and economic loss (including without limitation loss of profit, future revenue, reputation or goodwill and anticipated savings)) whether direct or indirect made against or incurred or suffered by any of them directly or indirectly and whether wholly or in part resulting from the matters listed

below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the Contract:

(a) the manufacture and sale of the Goods by the Company in accordance with the Customer's specifications or other data or information furnished or instructions given by the Customer; and/or

(b) any breach by the Customer of its obligations under the Contract; and/or

(c) any breach by the Company of its obligations under the Contract or any other act or omission (including, without limitation, negligence) of the Company, its employees and agents in excess of the liability of the Company under the Contract.

8 Subcontracting, Assignment and Third Party Rights

8.1 The Customer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Company.

8.2 The Company may assign, charge, subcontract or transfer the Contract or any part of it to any person or Group Company. The Customer irrevocably consents to novation of the Company's rights and obligations pursuant to the Contract to any Group Company.

8.3 A Group Company may enforce any term of the Contract. Save for the Group Companies, no person who is not a party to the Contract (including any employee, officer, agent, representative or sub-contractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 (the "Act") or otherwise) to enforce any term of the Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Company and the Customer which agreement must refer to this Condition 8.3.

8.4 Even if a person who is not a party to the Contract has a right to enforce any term of the Contract by virtue of Section 1 of the Act, the parties may, notwithstanding Section 2(1) of the Act, vary or cancel the Contract by agreement between them without requiring the consent of such third party.

9 Force Majeure

The Company reserves the right to suspend or cancel the Contract in whole or in part (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business and its obligations under the Contract due to any circumstances beyond the reasonable control of the Company including, without limitation, acts of

God, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strikes, lock outs or other industrial action (whether of the Company's own employees or others), failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services (an "Event of Force Majeure") provided that, if the Event of Force Majeure continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

10 Breach of Contract or Insolvency

10.1 The Company may immediately suspend performance of the Contract, cancel any outstanding delivery of the Goods, cease the provision of any Services, stop any Goods in transit or by notice in writing to the Customer terminate the Contract without liability to the Company if:

- (a) the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy or fails to remedy any breach of its obligations under the Contract which is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been requested in writing by the Company to remedy or desist from such breach within a period of 14 days; or
- (b) the Customer suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation); has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets; has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets; takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts; or has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security; or has any distress, execution or sequestration or other such process levied or enforced on any of its assets; has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Condition 10.1(b); or
- (c) any sum payable under the Contract is not paid within seven days of its due date

for payment in accordance with the Contract.

10.2 Notwithstanding any such termination or suspension in accordance with Condition 10.1 above the Customer shall pay the Company for all Goods and/or Services delivered up to and including the date of suspension or termination.

10.3 Termination of the Contract for any reason shall be without prejudice to the rights and remedies of either party which may have accrued up to termination.

11 General

11.1 Nothing in the Contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

11.2 The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

11.3 If at any time any one or more of the Conditions or part of them of the Contract is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission.

11.4 The Company may record phone calls it makes to, or receives from, the Customer.

11.5 Any communication between the parties relating to the obligations of the Contract must be in writing and delivered by hand (when delivery shall be deemed to be the day of delivery) or sent by pre-paid first class post (when delivery shall be deemed to be 48 hours after posting) to, in the case of the Company, the address set out above, and in the case of the Customer, to its registered address, or such change of address as shall be notified to either party by the other. Pre-contractual communications, including any orders or Quotations, may be sent by email to such email addresses as the parties agree.

11.6 The Contract sets out the entire agreement and understanding between the Customer and the Company in connection with the sale of the Goods and/or provision of Services, and shall supersede and replace all documentation previously issued by the Company purporting to set out its terms and conditions of sale of the Goods. The parties acknowledge that this agreement has not been entered into wholly or partly in reliance on, nor has either party been given, any warranty,

statement, promise or representation by the other or on its behalf other than as expressly set out in this agreement. Each party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind this agreement which it might otherwise have had in relation to them.

11.7 The Contract and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England and Wales unless the Goods are delivered in Scotland, in which case the Contract and any issues, disputes or claims arising out of or in connection with it (whether contractual or noncontractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of Scotland.

11.8 All disputes or claims arising out of or relating to the Contract shall be subject to the exclusive jurisdiction of the English and Welsh Courts to which the parties irrevocably submit unless the Goods are delivered in Scotland, in which case all disputes or claims arising out of or relating to the Contract shall be subject to the exclusive jurisdiction of the Scottish Courts to which the parties irrevocably submit.