

CREDIT ACCOUNT APPLICATION

Thank you for your recent credit account enquiry, please complete this form and return to accounts@nreaggregates.co.uk

Company Name:			
Company Address:		Invoice Address: (If different)	
Postcode:		Postcode:	
Telephone:		Email for Invoices:	
Email:		Company Reg. No:	
Business Type:		VAT Reg. No:	
Requested by:		Position:	
Credit Requirement:	£.	Payment Method:	BACS

Please send payments to:	
Company	NRE Aggregates Limited
Bank	RBS
Sort Code	16-00-02
Account No	22108195

<u>Office use only</u>	
Account No.	
Credit limit	£.

NRE AGGREGATES LIMITED – Terms and Conditions of Sale

1 DEFINITIONS

1.1 In these Conditions the following words and expressions shall have the following meanings:

"**Business Day**" means any day (other than a Saturday or Sunday) on which clearing banks are open for business in the City of London for the transaction of normal banking business;

"**Buyer**" means the buyer of the Goods;

"**Conditions**" means these terms and conditions of sale;

"**Contract**" means a legally binding contract between the Seller and the Buyer for the sale and purchase of Goods ordered under a Purchase Order and accepted by the Seller in accordance with Clause 2.5 subject to these Conditions;

"**Delivery Address**" means the delivery address agreed in writing by the Seller;

"**Delivery Date**" means the delivery date agreed between the Parties or if no delivery date is agreed, then within a reasonable time from acceptance of the Purchase Order by the Seller in accordance with Clause 2.5;

"**Force Majeure Event**" means any event arising from or attributable to acts, events, omissions or accidents which are beyond the reasonable control of the Seller including, but without limitation, any abnormally inclement weather, flood, lightning, storm, fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, unavailability or shortage of raw materials, failure or shortage of power supplies, traffic, road accident, delay of a third party carrier, breakdown of plant and/or machinery, war, military operations, riot, crowd disorder, strike, labour dispute, terrorist action, civil commotion and any legislation, regulation, ruling or omissions (including failure to grant any necessary permissions) of any relevant government, court or authority;

"**Goods**" means the goods described in the Purchase Order as accepted by the Seller pursuant to Clause 2.5;

"**Intellectual Property Rights**" means any patents, trade marks, service marks, registered designs, database rights, applications for any of the foregoing, copyright, unregistered design rights know how and any other similar protected rights in any other country.

"**Party**" and "**Parties**" means the Seller or the Buyer or both the Seller and the Buyer (as is applicable);

"**Price**" means the price of the Goods agreed between the Seller and the Buyer.

"**Purchase Order**" means the Buyer's written or oral purchase order;

"**Quantity Required**" means the quantity of Goods to be delivered by the Seller to the Buyer as set out in a Purchase Order accepted by the Seller under Clause 2.5 or otherwise agreed in writing between the Parties;

"**Seller**" means **NRE AGGREGATES LIMITED** (Company Number 13941536

"**Specification**" means the Seller's standard written specification for the Goods (available upon request).

1.2 Any reference in these Conditions to:-

- (a) a statute or a provision of a statute shall be construed as a reference to that statute or provision as

amended, re-enacted or extended at the relevant time;

- (b) a Clause is to a clause in these Conditions; and
 (c) a person includes an individual, a firm, a corporation, an unincorporated association, a government, a state, an agency of government or state, and an association, partnership and joint venture (whether or not having a separate legal personality);
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.4 Where the context dictates, the singular shall include the plural and vice versa and any gender includes the other gender.

2 BASIS OF SALE

2.1 Any quotation (whether written or oral) is given on the basis that it is an invitation to treat only and no Contract will come into existence until the occurrence of one of the events set out in Clause 2.5.

2.2 Unless otherwise agreed in writing any quotation is valid only for a period of 30 days from its date of issue provided that the Seller has not previously withdrawn it by written or oral notice to the Buyer and shall be subject to the availability of the Goods.

2.3 Each Purchase Order constitutes a separate offer by the Buyer to purchase the Goods subject to these Conditions.

2.4 Each Purchase Order shall contain:-

- (a) the Goods required;
 (b) the Specification;
 (c) the Delivery Address (or confirmation that the Buyer will collect the Goods from the Seller);
 (d) the quantity of Goods required; and
 (e) the date on which the Buyer would like the Goods to be delivered (such date not being binding on the Seller and being subject to Clause 4.1).

2.5 The Purchase Order shall be deemed to be accepted on the occurrence of the earlier of:

- (a) the issue by the Seller of an acknowledgement of the Purchase Order;
 (b) notification by the Seller that the Goods are ready for delivery; or
 (c) delivery of the Goods (or any part of the Goods). and such occurrence shall create a Contract.

2.6 Nothing in these Conditions shall oblige the Seller to accept a Purchase Order from the Buyer.

2.7 These Conditions shall apply to the Contract to the exclusion of all other terms and conditions including, but without limitation, any under which a Purchase Order has been issued.

2.8 In the event of any queries, inaccuracies, typographical, clerical or other error or omission in any sales literature, quotation, price list or acknowledgment of Purchase Order, the Seller shall contact the Buyer and such document shall be subject to correction without any liability on the part of the Seller.

2.9 Any Purchase Order which has been accepted by the Seller pursuant to Clause 2.5 may only be cancelled, postponed or varied by the Buyer with the prior consent of the Seller.

3 WARRANTIES AND REMEDIES

3.1 The Seller warrants that the Goods sold to the Buyer shall comply with the Specification at the time of delivery. It is the responsibility of the Buyer to

promptly upon delivery undertake all appropriate inspections and testing of the Goods.

- 3.2 Any suggestion or representation concerning any possible use of the Goods made by the Seller in any sales or marketing literature or in any response to a specific enquiry is given in good faith, but it is entirely for the Buyer (and its customers) to satisfy themselves fully as to the suitability of the Goods for any particular purpose. No suggestion or representation relating to such possible use shall form part of the Contract.
- 3.3 Where it is (or ought to be) reasonably apparent at the time of delivery that (i) the Goods do not comply with the Specification or (ii) there is an under-delivery of the quantity of the Goods, the Buyer shall note all such issues on the carrier's delivery note/proof of delivery documentation.
- 3.4 The Buyer shall, no later within 5 Business Days of the delivery of the Goods, notify the Seller in writing of any defect by reason of which the Buyer alleges that the Goods delivered are not in accordance with the Specification. Thereafter the Buyer shall cooperate with the Seller in providing such samples, information and documentation as the Seller shall reasonably require to examine the alleged defects in the Goods and make no further use of the Goods so claimed to be defective.
- 3.5 If the Buyer fails to give notice under Clause 3.4 then the Goods shall be deemed conclusively to be in all respects in accordance with the Specification and accepted by the Buyer.
- 3.6 If, following notification in accordance with Clause 3.4 any of the delivered Goods are proved to the reasonable satisfaction of the Seller not to comply with the Specification due to defects in materials, workmanship or composition, the Seller at its option will:-
- (a) replace such Goods free of charge;
 - (b) refund the price of such Goods; or
 - (c) agree a reduced fee for such Goods.
- The remedies set out in Clause 3 of these Conditions shall be the sole and exclusive remedies of the Buyer in respect of any and all of non-conformance of the Goods with the Specification and in lieu of all rights and remedies the Buyer may have.
- 3.7 The Seller's obligation under Clause 3.6 will not apply where failure of the Goods to comply with the Specification is as a result of:
- (a) the Goods having been improperly altered in any way whatsoever, or have been subject to misuse;
 - (b) the Goods having been improperly used;
 - (c) the Goods having been mixed incorrectly with other products or mixed with incompatible products;
 - (d) any instructions as to storage of the Goods having not been complied with in all respects;
 - (e) failure by the Buyer to follow British Standard or industry instructions relevant to the Goods; or
 - (f) the Buyer storing the Goods in unsuitable conditions.
- 3.8 Any Goods that have been replaced will belong to the Seller. Any replacement Goods issued by the Seller will be liable to a replacement or refund under the terms specified in Clause 3.6.
- 3.9 Except as otherwise provided in these Conditions, all warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 Sale and Supply of Goods and

Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

4 DELIVERY

- 4.1 The Seller will use reasonable endeavours to deliver the Goods by the Delivery Date, but the timing of delivery of the Goods will not be of the essence in the Contract.
- 4.2 If, despite using reasonable endeavours, the Seller is unable for any reason to fulfil any delivery of the Goods by the Delivery Date, the Seller will be deemed not to be in breach of the Contract, nor will the Seller have any liability to the Buyer howsoever caused (including, but without limitation, as a result of negligence) for any delay in delivery.
- 4.3 Delivery of the Goods shall be deemed to be made on the earliest occurrence of:-
- (a) collection of the Goods by the Buyer or a third party carrier engaged by the Buyer from the Seller; or
 - (b) delivery of the Goods by the Seller to the Buyer at the Delivery Address.
- 4.4 Where Delivery is to occur by way of collection of the Goods from the Seller, the Buyer (or any such third party collecting on behalf of the Buyer) will comply with all reasonable instructions of the Seller and shall comply with all site safety regulations.
- 4.5 Where Delivery is to occur by delivery of the Goods by the Seller to a Delivery Address of the Buyer:
- (a) the Buyer shall prepare the area for delivery of the Goods with free access to such place and any services or facilities that may be required by the Seller to facilitate the delivery of the Goods;
 - (b) the Buyer shall ensure that it provides to the Buyer the correct address and contact names for delivery, and the Seller shall have no liability to the Buyer where the Seller is not given sufficient information to enable it to deliver the Goods;
 - (c) the Seller shall not be obliged to deliver the Goods if there is any failure of the Buyer's safety equipment designed for use in the course of delivery by the Seller; or where the Delivery Address, route to the Delivery Address, equipment at the Delivery Address or onsite manoeuvrability of the Delivery Address is unsuitable, hazardous or inadequate for the proper and safe delivery and/or unloading of the Goods; and
 - (d) if the Goods are to be delivered and left on a street or public highway, the Buyer is responsible for compliance with all laws and regulations applicable in the relevant jurisdiction and the Buyer shall take all measures required to ensure the safety and protection at all times of persons or property. The Buyer shall be responsible for all damages, liabilities, costs, claims, losses or expenses incurred or paid by any other person (including the Seller) in connection with the Goods being left on a street or public highway.
- 4.6 Where the unloading of Goods is for any reason delayed due to the acts or omissions of the Buyer (or its agents or representatives), the Buyer shall indemnify the Seller in respect of any loss, costs, expenses or damages that the Seller suffers as a consequence thereof.
- 4.7 The Seller reserves the right to Deliver the Goods in instalments and to invoice in instalments and in such event each instalment shall be treated as a separate Contract.
- 4.8 If the Buyer refuses or fails to take delivery of any of the Goods at the time stated for delivery then, without

prejudice to any other right or remedy available to the Seller, the Seller will be entitled to:

- (a) store the Goods at any location, until actual delivery and charge the Buyer for the cost of storage, transport any related insurance and a handling fee; and/or
 - (b) sell the Goods at the best prices obtainable in all the circumstances and after deducting all storage, insurance, transport and selling expenses, invoice the Buyer for the difference between the sum obtained by the Seller (less deductions) and the Price and the Buyer shall pay such sum immediately.
- 4.9 The Seller may deliver to the Buyer an excess or deficiency of up to 10% of the Quantity Required and:
- (a) the Buyer shall pay for the actual weight delivered; and
 - (b) the Seller shall not be in breach of the Contract.

5 LIMITATION OF LIABILITY

5.1 The Seller does not attempt to exclude any liability:

- (a) for breach of the Seller's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
- (b) for personal injury or death resulting from the Seller's negligence;
- (c) under section 2(3) Consumer Protection Act 1987;
- (d) for its fraudulent misrepresentation; or
- (e) for any matter for which the Seller may not exclude or to attempt to exclude its liability under applicable law.

5.2 Subject to Clauses 5.1 and 20.3, the Seller shall not be liable to the Buyer whether in contract, tort (including, without limitation, negligence) misrepresentation or otherwise howsoever arising for any loss of profit, loss of anticipated profit, loss of business, loss of contract, overhead recovery, anticipated savings, loss of data, loss of production, depletion of goodwill, product recall, nor for any special, indirect or consequential loss or damage, or otherwise for any costs, expenses or claims for consequential compensation whatsoever.

5.3 Subject to Clauses 5.1 and 20.3 the Seller's total liability for all claims in respect of each delivery, non-delivery, late delivery or mis-delivery of Goods, under or in connection with the Contract whether such liability arises in contract, tort (including, without limitation, negligence) misrepresentation or otherwise is limited to an amount equal to 120% of the amounts paid or payable by the Buyer to the Seller for those Goods (excluding VAT).

6 PRICES AND PAYMENT

6.1 The Price is exclusive of all taxes and duties including, but without limitation, value added tax, which, if applicable, shall be payable by the Buyer in addition to any additional delivery, packaging and/or insurance costs, as detailed in any quotation issued by the Seller to the Buyer.

6.2 The Buyer shall pay the Price (including value added tax or any other applicable tax or duty together with any items specified in Clause 6.1) within 30 days from the end of the month in which the Seller issues the invoice to the Buyer. Payment shall be made via Direct Debit, BACS or CHAPS or otherwise as agreed between the parties.

6.3 If any sum payable under the Contract is not paid when due then without prejudice to the Seller's other rights under these Conditions, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at 8% per

annum over the Royal Bank of Scotland Plc base rate from time to time and the Seller will be entitled to suspend all future deliveries of the Goods until the outstanding amount has been received.

6.4 No payment will be deemed to have been received until the Seller has received the Price in full in cleared funds.

6.5 Time for payment will be of the essence under the Contract and the Buyer will indemnify the Seller against all expenses and legal costs incurred by the Seller in recovering overdue amounts.

6.6 Notwithstanding any other provision of these Conditions, all sums outstanding under the Contract will become due immediately on termination of the Contract.

6.7 The Buyer will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

6.8 Without prejudice to Clause 6.7, if the Buyer fails, or the Seller reasonably believes that the Buyer will fail, to pay the Price when due the Seller may demand payment of all sums due, treat the Contract as repudiated by the Buyer and/or suspend all future performance of the Contract until all overdue sums have been paid.

6.9 The Seller shall be entitled to set off and retain any and all sums due to the Buyer against any contingent or actual liabilities of the Buyer to the Seller.

6.10 The Seller reserves the right to increase the Price if any extra cost is incurred by the Seller after quoting the Price as a result of the inaccuracy or incompleteness of any instructions issued by the Buyer.

7 RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-

- (a) in the case of Goods to be collected from the premises of the Seller, at a time when the Seller passes the Goods to the Buyer or a third party carrier engaged by the Buyer; or
- (b) in the case of Goods to be delivered to the Delivery Address by the Seller, when the Goods are delivered to the Delivery Address.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, ownership of the Goods shall not pass to the Buyer until the earliest of:

- (a) Seller has received in cash or cleared funds payment in full of the Price payable for the Goods; or
- (b) the Buyer resells those Goods, in which case title to those Goods shall pass to the Buyer at the time specified in Clause 7.4(b).

7.3 Until ownership of the Goods has passed to the Buyer pursuant to Clause 7.2, the Buyer will:

- (a) hold the Goods on a fiduciary basis as trustee of the Seller;
- (b) keep the Goods free from any charge, lien or other encumbrance;
- (c) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- (d) not destroy, deface or obscure any identifying mark on the Goods or their packaging;
- (e) maintain the Goods in a satisfactory condition;

- (f) insure the Goods for the Price in full on behalf of the Seller against all usual risks to the reasonable satisfaction of the Seller; and
- (g) hold all proceeds of the insurance policy referred to in Clause 7.3 (f) if any claim is made on the policy on trust for the Seller and not mix it with any other money or pay the proceeds into any overdrawn bank account.

7.4 Subject to Clause 7.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:

- (a) it does so as principal and not as the Seller's agent; and
- (b) title to those Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

7.5 Until ownership in the Goods has passed pursuant to Clause 7.2, the Seller may recover the Goods at any time, and the Buyer grants to the Seller, its agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored. In the case of the Goods being stored on premises owned by a third party the Buyer shall procure such a right for the Seller.

7.6 The Buyer's right to possession of the Goods shall cease on the occurrence of any of the events set out in Clause 9 which would permit the Seller to terminate this Contract. In such circumstances, the Seller may upon notice enter any premises occupied by the Buyer where the Goods are stored and repossess the Goods and the Buyer shall procure a right for the Seller to enter any premises not occupied or owned by the Buyer.

8 FORCE MAJEURE

If the Seller is prevented or delayed in the performance of any of its obligations by a Force Majeure Event then the Seller will be excused from the performance of its obligations from the date of the occurrence of such Force Majeure Event for so long as such Force Majeure Event continues and shall not be deemed to be in breach of these Conditions or the Contract or otherwise liable to the Buyer in any manner whatsoever.

9 TERMINATION OF THE CONTRACT

9.1 Either Party shall be entitled to terminate the Contract immediately upon the occurrence of any of the following:

- (a) the other Party being in material breach of any term of these Conditions and such breach not being capable of remedy;
- (b) the other Party being in material breach of any term of these Conditions and failing to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
- (c) the other Party (being an individual or firm) becomes bankrupt or goes into sequestration, or (being a partnership) is wound up by the court or becomes bankrupt or goes into partnership administration or sequestration, or (being a body corporate) is wound up by the court or is voluntarily wound up by reason of its inability to pay its debts or an administrator or receiver is appointed of any part or all of its income or assets and in any case if the other Party enters into any informal or voluntary arrangement (whether or not in accordance with the Insolvency Act 1986) with

or for the benefit of the general body of creditors of the individual, the partnership or the body corporate; or

- (d) the other Party suffering the equivalent of any similar or analogous event in (c) (above) in any jurisdiction.

9.2 Without prejudice to any of its other rights or remedies, the Seller shall have the right to terminate the Contract without any liability to the Buyer immediately upon written notice, if in the reasonable opinion of the Seller after an inspection into the Buyer's financial or trade status or in light of any report considered by the Seller, the Seller at its absolute sole discretion deems that the Buyer may not be able to pay the Price.

10 CONFIDENTIALITY

Each Party hereby undertakes not at any time to divulge any of the terms of the Contract or use any information in relation to the other Party's business or any other information received from the other Party in relation to the Contract of a confidential or proprietary nature other than for the purposes expressly envisaged by these Conditions provided that the Seller can divulge such information to any party to whom it assigns or transfers all or part of this Contract.

11 INDEMNITY

Without prejudice to any rights or remedies implied by statute or common law or under any provision of these Conditions or the Contract, the Buyer shall indemnify the Seller and keep the Seller indemnified in full against any and all losses, liabilities, costs, claims, demands, expenses and fees (including, but without limitation, legal and other professional fees), actions, proceedings, judgments awarded and damages suffered or incurred by the Seller arising out of or in connection with any and all acts and omissions of the Buyer, its employees, agents or sub-contractors relating to the use, misuse, marketing, advertising, sale and Delivery of the Goods.

12 HEALTH AND SAFETY

If the Buyer is unclear as to the correct use of the Goods it should immediately contact the Seller for clarification. It is the responsibility of the Buyer to meet all safety standards in the application, use and sale of the Goods.

13 COMPLIANCE

The Buyer shall comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption (including but not limited to the Bribery Act 2010) and shall notify the Seller (in writing) if it becomes aware of any such non-compliance.

14 COSTS AND EXPENSES

Each Party shall be responsible for all the costs and expenses incurred by it in connection with and incidental to the preparation and completion of each Contract.

15 RELATIONSHIP OF PARTIES

Nothing in these Conditions or any document referred to herein shall be construed as creating a partnership between the Parties for any purpose and neither Party shall have the power or authority to bind the other Party or impose any obligations on it for the benefit of any third party.

16 AMENDMENTS AND VARIATIONS

No variation or amendments to the Contract or these Conditions shall be binding unless agreed in writing by an authorised representative of the Seller.

17 WAIVERS

No delay in exercising or failure to exercise any of the rights of either Party arising from or in connection with the Contract or these Conditions shall operate as a waiver or release of that right. Any such waiver or release must be specifically granted in writing signed by the Party granting it.

18 ASSIGNMENT

The Buyer shall not assign, sub-contract, sub-license or otherwise dispose of any of its rights and/or obligations arising from the Contract or these Conditions without the prior written consent of the Seller (such consent not to be unreasonably withheld or delayed).

19 SEVERABILITY

If any part of these Conditions is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from these Conditions and shall be ineffective without, as far as is possible, modifying any other provision or part of these Conditions and this shall not affect any other provisions of the Contract which shall remain in full force and effect.

20 ENTIRE AGREEMENT

20.1 These Conditions and the acknowledgement of Purchase Orders represent the entire agreement between the Parties relating to the sale and purchase of Goods and supersede all previous agreements, arrangements and understandings between the Parties relating to the sale and purchase of the Goods.

20.2 Each Party acknowledges that in entering into the Contract it places no reliance on any representation, warranty or other statement relating to the subject matter of the Contract, other than as expressly set out in these Conditions and any acknowledgement of the applicable Purchase Order.

20.3 Neither Party shall have any liability or remedy in respect of any representation warranty or other statement being false, inaccurate and/or incomplete unless it was made fraudulently or is contained in these Conditions. Nothing in these Conditions shall exclude or limit the liability of either Party for a fraudulent misrepresentation.

20.4 Each Party agrees that its only remedy for breach of the Contract shall be for breach of contract.

21 NOTICES

21.1 Notices under these Conditions may be served by personal delivery, by first class post or by email.

21.2 Notices shall be deemed to be served

- (a) on delivery when delivered personally; or
- (b) at the time of transmission if sent by email to the email address notified by the other Party; or
- (c) two (2) days after mailing if sent by mail, provided the postage is properly paid and such notice is correctly addressed to the respective Party at its registered office, or such other address as shall have been notified to the other Party in writing.

22 RIGHTS OF THIRD PARTIES

An entity which is not expressly a Party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall be expressly excluded from the Contract.

23 GOVERNING LAW

Any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Conditions and the Contract or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. The Parties hereby agree to submit to the exclusive jurisdiction of the English Courts, save that the Seller may elect to bring proceedings in the country where the Buyer is incorporated.