

**KILWAUGHTER MINERALS LIMITED**  
**9 Starbog Road, Larne, Co Antrim, BT40 2TJ**  
**Tel: 028 2826 0766 Fax: 028 2826 2151**

**TERMS AND CONDITIONS OF SALE**

1. **GENERAL**

In these terms and conditions, the "Price" means the price of the Goods as stated in the Order subject to paragraphs 5 and 8 below. "Goods" include the supply of services in accordance with the provision hereof and "Delivery" includes performance of services as the context may admit and may be effected by the Company, by carriers or collection by the Buyer. "Order" means an Order accepted by the Company either by way of fax, telephone, email or post and includes contracts to provide services and also authorised amendments to Order "Price" include mutatis mutandis payment for Goods and/or services according to time expended materials used or supplied or on any other basis than fixed price. The "Company" means Kilwaughter Minerals Limited. The "Buyer" means any customer placing an order with the Company.

Estimates or quotations comprise an invitation to treat only and are valid for 30 days. An Order will become effective once it is received and reviewed by the company. Receipt of an Order from the Buyer by the Company will constitute acceptance by the Company of the Order and the Terms and Conditions herein shall apply.

These terms and conditions exclude any other terms and conditions which a Buyer might seek to impose even though such other terms and conditions may be submitted in later documents and/or purport to exclude or supersede any terms and conditions inconsistent with them or may be contained in any offer acceptance or counter offer made by the Buyer.

2. **AMENDMENTS TO ORDER**

Save as expressly agreed in writing signed by the Company's duly authorised representative as provided by clause 3 hereof:-

- 2.1 Once an order is received and reviewed by the Company, the Buyer shall become liable for the whole cost of the Order. If any information supplied by or on behalf of the Buyer is insufficient incorrect inaccurate or misleading or if the buyer notifies the Company of any change or requirements in relation to any Order after acceptance thereof by the Company the Company shall be entitled to amend the Price the terms of payment and the Delivery date or Delivery schedule as the Company shall consider fair and reasonable. The Buyer shall be liable for any additional costs in relation to labour and transport incurred by the company.
- 2.2 Any variation or amendment to an Order requested by the Buyer shall only be valid when accepted by the Company in writing and signed by a duly authorised representative of the Company. Such amendments shall be subject to appropriate adjustment in Price, Delivery dates and other matters as the Company shall consider fair and reasonable.

3. **DELIVERY**

The Company will endeavour to make Delivery at the time and in the manner specified in the Order but **any Delivery date given is an estimate only and in no circumstances shall time be made of the essence of the contract.** Delivery may be made by instalments if the Company so requires.

If in the Company's opinion any part of the Goods is usable by the Buyer independently of other parts the Company shall be entitled to Delivery and to be paid for such part alone in the event of the whole of the Goods not being immediately available.

Unless otherwise stated in the Order, Delivery of Goods shall be at the Company's premises.

Where Goods are collected ex works either by the Buyer's own transport or by a carrier employed by him, the Company's responsibility shall cease when the Goods are handed over to the carrier.

Where Goods are despatched by a carrier:-

Damage in transit must be notified both to the Company and the carrier within three days of receipt of the Goods and details of the damage for claim purposes, shall be furnished to the Company within seven days of receipt.

Non-delivery of the whole or any part of the consignment of Goods must be notified to the Company within 20 days of despatch. In either case the carrier should be notified immediately.

The Company shall be deemed to have fulfilled its contractual obligations in respect of any Delivery if the quantity delivered exceeds or is less than the quantity specified in the contract provided that it falls within the limits set out below:

| <u>QUANTITY</u>        |   | <u>PERMITTED VARIATION</u> |
|------------------------|---|----------------------------|
| Less than 1 tonne      | : | 30%                        |
| Less than 10 tonnes    | : | 20%                        |
| Greater than 10 tonnes | : | 10%                        |

Where Goods are delivered to the Buyer in Bulk Tankers or in bags, the Company shall not be liable for small differences in quantities ordered including exact measurements.

If the Company supplies Goods that require a special order the Buyer must accept the quantity that is delivered and pay for the whole amount that is produced and delivered.

The Buyer shall be solely responsible for unloading of Goods at the point of Delivery. The Buyer shall unload and inspect the Goods immediately on their arrival at its premises, unless the contrary is agreed in writing with the Company. The Buyer shall indemnify the Company against all liabilities claims or costs arising as a result of the Company or its subcontractor assisting the Buyer in the unloading, loading or other removal of the Goods at the point of Delivery.

#### **4. PACKAGES**

- 4.1 Where the Buyer is stated in the Order to have an option to return packages such packages must be returned empty carriage paid in good order and condition.
- 4.2 Packages so returned and received in good order and condition will be subject to an allowance at the standard rate as originally charged.

- 4.3 Allowances for packages must not be deducted when payment of the invoice is made unless the Buyer is in receipt of a credit note indicating that the packages have been received by the Company in good order and condition.
- 4.4 Lightweight pallets supplied by the Company will be non-chargeable and non-returnable.

## **5. PRICES**

- 5.1 The Price Delivery dates or other terms relating to any Goods are based upon the Company's assessment of materials labour and buy-in prices from manufacturers and are subject to revision by the Company in respect of any increased cost to the Company in respect thereof.
- 5.2 The Company shall have the right at any time to withdraw any discount previously given, from its normal prices.
- 5.3 Where Delivery of Goods shall be other than at the Company's premises the agreed Price shall include Delivery and the mode of Delivery shall be at the Company's discretion. If the Buyer wishes the Company to deliver by any means other than its usual mode of transport the cost of Delivery shall be charged to the Buyer. The cost of Delivery of Goods to locations outside the United Kingdom may be added to and not included in the Price.

## **6. LIABILITIES AND INDEMNITIES**

- 6.1 All Goods will be carefully inspected by the Company before Delivery to ensure freedom from defects and general compliance with the Order. A proof of Delivery document shall accompany a Delivery to the Buyer.
- 6.2 Samples must only be regarded as a general indication of the Goods to be supplied. It is the responsibility of the Buyer to satisfy itself as to the suitability for the purpose for which the material is required and that it complies with the specification of the employing authority. Any samples colour charts supplied and/or exhibited to the Buyer are supplied solely for information and in no way import any express or implied conditions or warranties as to quality, description, fitness for purpose or merchantable quality and the Buyer shall be deemed to have satisfied itself as to such matters prior to ordering the Goods. The supply and/or exhibition of such samples models or colour charts shall not cause any contract concluded to be a contract by way of sample.
- 6.3 The Buyer must examine the Goods immediately upon Delivery and within 7 days thereafter notify the Company in writing of any defects and return any allegedly defective part or parts of the Goods to the Company or as the Company shall direct at the Buyer's expense within 14 days of Delivery and pay to the Company the costs of any test carried out to such part or parts (such cost to be certified by the Company) together with costs of return thereof to the Buyer in the event that no liability attaches to the Company in respect of defects. In default the Buyer will be deemed to have examined and accepted the Goods.
- 6.4 Save as set out in the Order in the absence of specific written agreement signed by the Company's duly authorised representative:-
- 6.4.1 The Buyer accepts that he is not relying upon the Company's judgement as to the fitness of the Goods for any specific purpose of the Buyer.
- 6.4.2 The Buyer accepts that he is not placing an Order in reliance upon any promise from any representative or inducement on the part of the Company. This term shall apply to the written recommendation made to the Buyer as to the type and quantity of exterior render to be applied to a building. The Company shall not be liable in relation to such written recommendations.

- 6.4.3 The Company shall not be liable for any consequential loss or loss of profit however arising (including by negligence) to the Buyer the Buyer's staff or any third party.
- 6.4.4 The Company shall not be liable for any loss expense or damage howsoever arising (including any negligence) to any property of or furnished by the Buyer and the Buyer must insure it as hereunder provided.
- 6.4.5 The Company shall not be liable and the Buyer shall indemnify and hold the Company not liable in relation to any claim or any loss or damage to any person or property occasioned directly or indirectly by or arising from the use or operation (otherwise than by the Company) or possession of any part of the Goods and from negligence (including the use of any part of the Goods otherwise than in accordance with the Company's operating instructions and manuals) or default (including any non-compliance with any obligation imposed by these terms and conditions or any delay wrong information or lack of required information) or misuse by or on the part of the Buyer or any person or persons other than the Company and this indemnity shall extend to any costs and expenses incurred by the Company and shall continue in force notwithstanding the termination of any agreement between the Buyer and the Company.
- 6.4.6 Until the payment in full by the Buyer of all monies:
- 6.4.6.1 The Company's representative shall have a full and free right of access to the Goods.
- 6.4.6.2 The Buyer shall properly maintain the environment for the Goods so as to comply with the Company's specifications.
- 6.4.6.3 The Buyer shall on request enter into the Company's Standard Form of Health and Safety Undertaking.
- 6.5 The Buyer shall conform with all instructions and labelling prescribed by the Company in relation to the Consumer Protection Act 1987 or other health and safety legislation. Where the Company incurs a liability whether by court proceedings or by a bona fide out-of-court settlement as a result of a claim against the Company in respect of an alleged defect in the Goods then the Buyer shall indemnify the Company against all related works and expenses (except to the extent the Company would be liable to indemnify the Buyer in respect thereof under these terms and conditions).
- 6.6 Each exclusion or limitation of liability in this condition 6 or any sub-clause or paragraph thereof:-
- 6.6.1 Shall be construed as separate distinct and severable.
- 6.6.2 Shall not apply to direct claims for death or personal injury arising from the Company's negligence as defined in the Unfair Contract Terms Act 1977 but the Buyer shall have no claims to indemnify in respect of and shall fully indemnify the Company its employees agents and representatives against any claims by third parties (and all related costs and expenses) in respect of death or personal injury (save that the Company otherwise accepts liability therefore).

## **7. PATENTS ETC**

The Buyer covenants with the Company that it shall forthwith notify the Company of any allegation of infringement of any patent registered design trade mark copyright or other intellectual property right enjoyed by the Company or by the manufacturer or supplier of the Goods or any part thereof.

## **8. PAYMENT**

- 8.1 VAT and all indirect taxes duties and levies are unless otherwise shown payable in addition to the Price.
- 8.2 Any sums paid by deposit retainer or repayments are not in any circumstances returnable.
- 8.3 Unless otherwise provided in the Order the Company will invoice at the end of the month in which despatch takes place.
- 8.4 Payment in full shall be due to the Company 30 days after the end of the month in which the Company's invoice was dated and time is the essence for payment.
- 8.5 If the Buyer (being a company) enters into administration liquidation or receivership or (being an individual) becomes bankrupt in either case makes any arrangement with his creditors or commits a material or serious breach of this agreement (and in the case of such a breach being remediable fails to remedy it within seven days of receiving notice to do so) he will be deemed to have repudiated the contract.
- 8.6 Interest is payable at 2% per month or part thereof on any late payment.
- 8.7 The Company reserves the right any time at its discretion to demand security for payment before continuing with or delivering any Order.

## **9. CONFIDENTIALITY**

All information supplied by the Company in any form (other than information in the public domain) is supplied in confidence and must not be used by the Buyer for any other purpose than the Order and must not be disclosed to any other party without the Company's express written consent and then only on conditions equivalent to this condition and with an express notification that the information was provided for the Buyer only and is not intended to be relied upon by any other party.

The Buyer shall take all necessary precautions to ensure that all such information is treated as confidential by the Buyer, his staff, agents and subcontractors.

The Company may use its connection with the Buyer in advertising of its Goods and Services.

## **10. ASSIGNMENT AND SUB-CONTRACTING**

The Company may assign or sub-contract such part or parts of any Order as it sees fit.

## **11. TITLE AND RISK IN GOODS**

The title in Goods shall not pass from the Company to the Buyer until one of the following events occur:-

The later of Delivery and receipt by the Company in full of all sums due or owing to the Company from the Buyer on account.

The Buyer sells the Goods in accordance with the Company's agreement in which case ownership of the Goods will pass to the Buyer immediately before the Goods are delivered to the Buyer's customer.

The Company waives its right in respect of specified Goods whereupon ownership of those Goods will immediately vest in the buyer.

Before title has passed to the Buyer and without prejudice to any of its other rights the Company shall have the right to recover and resell the Goods or any of them and may enter upon the Buyer's premises for that purpose.

The risk in the Goods shall pass to the Buyer on Delivery at the Company's works immediately prior to loading onto appropriate transport or if the Company has agreed in writing to deliver to the Buyer on Delivery by the Company at the Buyer's premises. As soon as the risk passes to the Buyer he shall keep the Goods insured in the amount at which the Goods were sold to the Buyer against all insurable risks. Any sums paid by such insurance prior to the Goods being paid for in full and all other accounts being paid to the Company by the Buyer shall be paid to the Company.

**12. LIEN**

Until the Company has received payment in full for any Goods from the Buyer the Company shall have a general and specific lien on all the Buyer's Property in the possession or control of the Company for all monies due to the Company from the Buyer.

**13. MATTERS BEYOND COMPANY'S CONTROL**

The Company shall not be liable for any loss damage or expense howsoever arising from any delay or failure of performance arising from circumstances beyond its control including but not limited to earthquake, flood, storm, act of God, or of public enemies, national emergency invasion, insurrection, riots, strikes, picketing, boycott interruption of services rendered by any public utility or interference from any government agency or official.

**14. LAW**

Any contract or Order to which these terms and conditions apply shall in all respects be governed by and construed in accordance with the laws of Northern Ireland. The Buyer submits to the jurisdiction of the Northern Irish courts.