

TERMS AND CONDITIONS – Byrne Bros Quarries 1.12.2008

A. PRICE & PAYMENT

1. The price stated is based on current costs for transport, labor and materials and the Company may adjust the price accordingly in the event of any variation to any of these costs prior to delivery.
2. The Company reserves the right to charge for any additional costs and expense incurred by it by reason of any required variation or variations thereof provided always that the Company shall not be bound to consent to any such variation or variations and further reserves the right to charge for any additional costs or expense incurred by it by reason of any delay experienced by it in completing any delivery in the commencement and carrying on of work, or provision of services arising from any cause whatsoever save and except any such delay occasioned by the default of the Company.
3. The Purchaser shall pay the price to the Company prior to delivery or within any credit period agreed in writing. All amounts not paid within the agreed credit period shall bear interest at the overdraft rate charged by the Company's principal bankers. All amounts received by the Company will be credited first against interest.
4. If the Purchaser fails to make due payment or if any other dispute arises, the Company shall have the right at its option;
 - i. to suspend further performance of its obligations hereunder until the later of payment (plus interest as aforesaid) or settlement of the dispute and/or
 - ii. to terminate the contract at any time. In either case without affecting any right or remedy of the Company whether arising before, after, or as a result of the dispute of the Purchaser's failure to make due payment.
5. Until payment in full the Company retains legal and equitable title to, and the Purchaser remains bailee of, the material supplied and, to the extent of the Company's interest, and other objects into which the materials supplied may be incorporated and any proceeds from the sale of the materials supplied or the other objects.
6. In the event of any dispute arising between the Company the Purchaser, the Purchaser shall forthwith pay to the Company for the amount claimed by the Company to be held by the Company until the determination of the dispute.

B. QUARRIED MATERIALS

All Materials extracted from the Company's Quarrying operations are naturally occurring Products and the Company has no control whatsoever over the average mineral composition, which may vary from time to time to that stated in our published Petrographic Report. Additionally the Company will not warrant that the Product to be free from naturally occurring impurities.

C. DELIVERY

1. The delivery of quarry, gravel and sand Products and premixed materials incorporating quarry, gravel and sand Products shall be in full truck loads. Should delivery be requested in smaller loads the Company reserves the right to charge for any increased cartage occasioned thereby, such charges shall be at the Company's ruling rate of cartage.
2. Terms and date of delivery or the commencement and carrying on of work or the provision of services as the case may be, shall be performed within the usual working hours of the quarrying industry.
3. Delivery will only be made to the kerbside. If, at the request of the Purchaser, the delivery vehicle enters the job area, the Company shall not be liable for and is hereby indemnified by the Purchaser in respect of any claims made by or through the Purchaser or any third party, which arises out of effecting such entry or by the presence of the vehicle in the job area.
4. The Company shall not be liable in any manner whatsoever for delay or non-delivery (or any costs associated therewith) which is attributable to transport delays, plant or equipment breakdown, unavailability or shortage of materials, industrial stoppages or any other cause whatsoever, which is beyond the direct control of the Company.
5. The amount charged shall be based upon the quantities shown on the face of the delivery docket. Prior to delivery the Purchaser shall sign the delivery docket and by signing the Purchaser becomes bound by the information shown thereon and any claims in relation to the quantity and/or quality of the Product delivered must be made in writing to the Company within 7 days of delivery.
6. In the event of any material supplied by the Company under this contract being defective, the liability of the Company (if any) shall be limited to the replacement of such defective material. The Purchaser will be deemed to have accepted material as complying with specifications upon discharge of Quarry Products at site or collection of Quarry Products at the Company's works, and thereafter will not be entitled to reject material or claim for alleged defects.
7. All other guarantees, warranties, undertakings, of representatives express or implied whether arising by statute or otherwise, are hereby expressly excluded (except to the extent only that such exclusion is prohibited by statute). Subject to the last mentioned exception, these Terms and Conditions are the only Terms and Conditions of Contract between the Company and the Purchaser, and cannot be altered except in writing by the Company's authorised representative.

D. GENERAL

1. A statement signed by the Company's authorised representative certifying the amount of any increased costs or other claim by the Company shall in the absence of manifest error be conclusive and binding.
2. The Purchaser shall not, and shall not be entitled to, claim against the Company in connection with any act, omission or event arising hereunder, unless the claim made to the Company in writing within the time period specifically stipulated, in these terms and conditions or if no such period is stated, within 7 days of the occurrence of the act, omission or event giving rise to the claim.
3. Any reference to the Purchaser in these terms and conditions includes the employees, agents, sub-contractors, successors, assignees of, and any entity claiming through or under the Purchaser. The actions or signature of any person appearing to have the authority of the Purchaser so to do shall bind the Purchaser.
4. In the event of any materials supplied by the Company under this contract being defective, the liability of the Company (if any) shall be limited to the replacement of such defective material. All other guarantees, warranties, undertakings of representatives express or implied, whether arising by statute or otherwise are hereby expressly excluded (except to the extent only that such exclusion is prohibited by statute). Subject to the last mentioned exception, these terms and conditions are the only terms and conditions of contract between the Company and the Purchaser, and cannot be altered except in writing by the Company's authorized representative.
5. The Company shall not in any circumstances in any dispute be liable for any indirect or consequential loss or damage of any nature whatsoever.
6. The Company will not be liable for any claim resulting from the use of the Product by the Purchaser, or any improper, defective or damaged materials.
7. All reasonable steps and precautions are taken by the Company and its employees to comply and abide by all health and safety laws, anti discrimination laws and equal opportunity laws and it is assumed that the Purchaser and its employees do likewise.

E. GUARANTEE

1. The guarantor hereby guarantees the due performance by the Purchaser of its obligations to Byrne Bros Quarries pursuant to the supply by Byrne Bros Quarries to the Purchaser of the goods, and the guarantor hereby guarantees the payment of monies becoming due from the Purchaser to Byrne Bros Quarries in accordance with Byrne Bros Quarries normal terms and conditions of the sale.
2. The guarantor shall, upon request by Byrne Bros Quarries so to do, execute a mortgage over any real property owned by him/her.
3. This guarantee shall be a continuing guarantee to the Company for all debts whatsoever and whensoever contracted by the Purchaser with Byrne Bros Quarries in respect of goods to be supplied to the Purchaser.
4. The Company will not be liable for any claim resulting from the use of the Product by the Purchaser or any improper, defective or damaged materials.
5. Byrne Bros Quarries shall be at liberty without notice to the guarantor at any time and without in any way discharging the guarantor from any liability hereunder to grant time or other indulgences to the Purchaser and to treat the guarantor in all respects as though he were jointly and severally liable with it to the supplier instead of being merely surety for it.
6. The guarantor(s) agree(s) that Byrne Bros Quarries may seek from any referees or credit providers named in the attached Credit Application and any referees or fit providers that may be named in a credit report agency, information about the guarantor's credit arrangements. The guarantor understands that this information can include any information about his credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.
7. The guarantor understands the information may be used for the following purpose:
 - a. To access an Application by the guarantor for credit
 - b. To access the guarantor's worthiness
8. The guarantor declares the particulars contained herein to be true and correct. The guarantor agrees that the supply by Byrne Bros Quarries of the goods shall always be on the terms and conditions of sale contained herein.
9. The parties hereto agree to the payment terms of Byrne Bros Quarries contained herein and acknowledge that credit facilities may be withdrawn on any account at Byrne Bros Quarries discretion. The guarantor agrees that interest at the rate of 2% above the bank's indicator rate together with collection expenses including costs of Mercantile agents or solicitors shall be payable on overdue accounts.