**1. Definitions**

In these Conditions

**“The Company”** shall mean DC Eikefet Aggregates As, DC Halsvik Aggregates As, DC Seljestokken Aggregates As, Dansk Naturstein As and its agents.

“**Company Director**” means a duly appointed Director of the company.

**“The Conditions”** shall mean the terms set out in this document and any special terms agreed in writing between the Company and the Customer.

 **“A Consumer”** means a consumer as defined by the Norwegian Consumer Purchase Act of 2002.

**“The Contract”** means the contract for the supply of Goods incorporating these Conditions.

“**The Customer”** shall mean the party with whom the Company contracts.

“**Defect**” shall mean the condition and/or any attribute of the Goods and/or any other circumstances which but for the effect of the conditions in section 9 would have entitled the Customer to damages.

“**The Goods”** shall mean the goods or where the context permits the services to be supplied by the Company.

“**Insolvent**” shall mean the Customer becoming unable to pay its debts within the meaning of section 61, 62 and 63 of the Bankruptcy Act of 1984; the levying or the threat of execution or distress on any property of the Customer; the appointment of a receiver or administrative receiver over all or any part of the Customer’s property; a proposal for a voluntary arrangement or compromise between the Customer and its creditors whether pursuant to the Bankruptcy Act of 1984 or otherwise; the passing of a resolution for voluntary winding up or summoning a meeting to pass such a resolution otherwise than for the purposes of a bona fide amalgamation or reconstruction; the presentation of a petition for winding up of a Customer or for an administration order in relation to the Customer; the Customer ceasing or threatening to cease to carry on its business.

THESE TERMS DO NOT APPLY IF YOU ARE A CONSUMER.

**2. Basis of sale**

**2.1** The Goods are sold by the Company only under these Conditions. Any amendments shall be made in writing and signed by a Company Director on behalf of the Company.

**2.2** Quotations and estimates by the Company are open for acceptance for 30 days from their date and thereafter shall be automatically withdrawn.

**2.3** Cancellation of the Contract by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the moment of cancellation and all loss or damage resulting to the Company by reason of such cancellation will be paid by the Customer to the Company forthwith.

**2.4** A charge will be made for any costs incurred by the Company due to suspension or deferment of the Contract by the Customer or in the event that the Customer defaults in collecting, or giving instructions for the delivery of any Goods.

**2.5** Health and Safety information relating to the Goods is available on request. The Customer warrants that it will pass on to all third parties to whom it may supply the Goods all information as to the use and safe handling of the Goods as may have been passed on to the Customer by the Company.

**3. Representation**

**3.1** The Company shall not be liable in respect of any misrepresentation made by the Company, its servants or agents to the Customer, its servants or agents as to the condition of the Goods their fitness for any purpose or as to quantity or measurements unless the representation is:-

 **(a)** made or confirmed in writing by a Company Director; and/or

 **(b)** deemed to bewilful misconduct or gross negligence.

**3.2** Catalogues, technical circulars, price lists and other are for the Customer’s general guidance only and statements made therein (in the absence of wilful misconduct or gross negligence on the part of the Company) shall not constitute representations by the Company and the Company shall not be bound by them.

If the Customer requires advice in relation to the Goods, a specific request for advice should be made. Any advice made or confirmed in writing in response to such a request shall amount to a representation and the Company shall be liable accordingly.

**3.3** The Company’s liability for damages for misrepresentation (other than for wilful misconduct and gross negligence) is excluded or limited by Clause 9 of these Conditions.

**4. Price**

**4.1** Quoted prices are based on costs prevailing at the time when they are given or agreed and are exclusive of VAT. The Company shall be entitled to adjust the price of the Goods as at the time of delivery of the Goods or each instalment of Goods as the case may be:-

**(a)** to take account of any direct or indirect price increases sustained by the Company; and/or

**(b)** if there is any change in the delivery date, quantities or specifications for the Goods requested by the Customer; and/or

(c) any delay caused by any instructions of the Customer; and/or

(d) failure of the Customer to give the Company adequate information or instructions.

**5. Payment**

**5.1** Unless the sale is for cash, payment shall be made by the Customer not later than the last day of the month following the date of invoice. Time for payment shall be of the essence of the Contract. Without prejudice to any other rights of the Company, interest will be payable on all over-due accounts in accordance with the Norwegian Penalty Interest Act of 1976.

**5.2** The Company reserves the right without incurring any liability whatsoever to refuse to execute the Contract or part thereof if the Customer refuses to accept a price variation under Clause 4.

Further the Company has the right to refuse to execute the Contract or part thereof if the arrangements for payments are, or the Customer’s credit status is, in the Company’s opinion insufficient or not satisfactory. The Company has the right to refuse to perform or continue to perform the Contract with any Customer whose account or part thereof is or becomes overdue for payment.

**5.3** The Customer shall not be entitled to withhold payment of any amount payable under the Contract by reason of any dispute or claim by the Customer in connection with the Contract or any other ground whatsoever. Further, the Customer shall not be entitled to set-off against any amounts payable to the Company under the Contract any amount which is not then due and payable by the Company to the Customer.

**5.4** The Company shall be entitled at all times to set-off any debt or claim whatsoever nature which the Company may have against the Customer against sums due by the Company to the Customer.

**6**. **Delivery**

**6.1** Delivery dates are given in good faith but are estimates only.

**6.2** Time for delivery shall not be of the essence of the Contract.

**6.3** For the avoidance of doubt and without derogation from any other provision of these Conditions, the Company shall not be liable for any damages whatsoever whether direct or consequential (including any liability to any third party) resulting from any delay in delivery of the Goods or failure to deliver the Goods within a reasonable time unless such delay or failure is caused by the Company’s gross negligence or wilful misconduct.

**6.4** The Company reserves the right to make delivery by instalments and tender a separate invoice for each instalment. 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.

**6.5** The price of the Goods is based on:-

**(a)** the Customer requiring delivery during the Company’s normal working hours or days (such hours or days are available on request). If the Customer requires delivery at any other time then the Customer shall give at least seven working days notice in writing to the Company and, if the Company agrees to such delivery, the Customer shall pay all additional expenses as determined by the Company occasioned by such delivery; and

**(b)** delivery being made in loads of twenty tonnes or more. Delivery in loads of lesser quantity shall be subject to a premium on haulage. Details of such premium are available upon request.

**6.6** It is a condition of the Contract that proper assistance is given by the Customer to the driver of the delivery lorry in unloading the Goods and that the Company’s delivery vehicles or those of its agents will be held on site for not more than half an hour. Any period in excess of these times will be charged as waiting time to the Customer at the rate determined by the Company, and such rate is available from the Company upon request.

**6.7** Delivery by the Company’s road vehicles shall be made on the nearest good hard road to site with adequate turning space at the point of delivery. The truck driver is empowered to refuse delivery if, in his opinion, the point of unloading is unsafe or is likely to prove dangerous to a vehicle. If the delivery vehicle is required to deliver at any point off a public road, the Customer will be responsible for any damage to vehicles, pipes, manholes or any other property of any sort resulting there-from and hereby indemnifies the Company against any loss, damage, claims, costs, including legal costs on an indemnity basis or demands which the Company may incur as a result of such delivery.

**6.8** In the event that the Customer requests that any Goods be deposited on a street or public highway, the Customer shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property. The Customer shall indemnify the Company in respect of all costs, claims, losses or expenses including legal costs on an indemnity basis which the Company may incur as a result of such delivery.

**7. Inspection and shortages**

**7.1** The Customer shall inspect the Goods at the place and time of unloading but nothing in these Conditions shall require the Customer to break packaging and/or unpack Goods which are intended to be stored before use.

**7.2** The Customer must inform the Company by telephone or facsimile as soon as reasonably practical and in any event must give the Company written notice within two working days of unloading of any claim for short delivery. If the Customer does not give the Company such written notice, the Goods will be deemed to have been delivered in the quantities shown in the delivery documents. The Customer shall not be entitled to reject the Goods or claim any damages, unless caused by gross negligence or wilful misconduct.

**7.3** The Company’s liability for short delivery is limited to making good the shortage.

**7.4** Where it is or would have been apparent on a reasonable inspection that the Goods are not in conformity with the Contract or, if the Contract is a contract for sale by sample that the bulk does not compare with the sample, then the Customer must inform the Company by telephone or facsimile as soon as reasonably practical and in any event must give the Company written notice within 7 working days of unloading of any claim to that effect. If the Customer fails to give the Company such written notice the Goods will be deemed to have been accepted by the Customer.

**8. Risk and title**

**8.1** The risk in the Goods shall pass to the Customer upon delivery.

**8.2** The Company has the right to obtain security for unpaid purchase (No: Salgspant). Such agreement shall be entered into between the Company and the Customer at the Company’s request and at the terms and conditions set by the Company.

**9. Liabilities**

**9.1** The Company’s responsibility towards the Customer in accordance with this agreement is, as long as the Company cannot be held responsible for gross negligence or wilful misconduct, limited to in it’s sole discretion repair the Goods at its own expense or supply replacement Goods free of charge or refund all (or where appropriate, part) of the price for the relevant Goods.

**9.2** The Company will not be liable for any Defect if

(a) the Defect arises from “fair wear and tear”, and/or

(b) the Defect arises from wilful damage, negligence, abnormal working conditions, misuse, alteration or repair of the Goods failure to follow proper professional standards relevant to the Goods, or storage of the Goods in unsuitable conditions (but this sub-Clause shall not apply to any act or omission of the Company), and/or

(c) the Defect would have been apparent on a reasonable inspection under Clause 7.1 of these Conditions at the time of unloading, and written notice of any claim is not given to the Company within 7 working days of the time of unloading; or

(d) the Defect is not discovered within 2 months from the date of delivery and/or the Company is not given written notice of the Defect within 7 working days of it being discovered.

**9.3** The Company will not be liable unless, after discovery of the Defect, the Company is given a reasonable opportunity to inspect the Goods before they are used or in any way interfered with. This clause shall not apply to any works affecting the Goods which may be reasonably necessary to carry out in the interests of safety and/or as emergency measures.

**9.4** The Company has under no circumstances responsibility for loss of production, lack of profit, damage during delivery, or other indirect losses that may be sustained by the Customer or his customers.

**9.5** If the Goods are manufactured processed or mixed by the Company to the design quantity measurement or specification of the Customer or its agents then.

(a) The Customer will unconditionally fully and effectively indemnify the Company against all loss damages costs on an indemnity basis and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patents copyright design trademark or any other industrial or intellectual property rights of any other person.

(b) The Customer will further unconditionally fully and effectively indemnify the Company against all loss damages costs on an indemnity basis and expenses awarded or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any other claim arising from any such manufacturing processing or mixing including but not limited to any Defect in the Goods. This indemnity will be reduced in proportion to the extent that such loss damages costs and expenses are due to the negligence of the Company.

**9.6** If the Goods are not manufactured by the Company or have been processed by a third party whether or not at the request of the Company or the Customer, the Company’s liability in respect of any defect in workmanship or materials of the Goods will be limited to such rights against the manufacturer or the third party as the Company may have in respect of those Goods. The Company will on written request provide details of its rights against the manufacturer or third party and any other terms and conditions imposed by the manufacturer or the third party and so far as possible will on request assign to the Customer any such rights.

**9.7** Without prejudice to any other provisions in these Conditions in any event the Company’s total liability for any one claim or for the total of all claims arising from any one act of default of the Company (whether arising from the Company’s negligence or otherwise) shall not exceed the purchase price of the Goods the subject matter of any claim.

**10. Default**

**10.1** If the Customer fails to pay the Company for any Goods on the due date or the Customer becomes Insolvent or if the Customer is in breach of any Condition of this Contract and fails to remedy such breach after being so requested to do, the full balance outstanding on any account between the Company and the Customer shall become immediately payable and the Company shall be entitled to do one or more of the following (without prejudice to any other rights or remedy it may have):-

**(a)** require payment in cash or cleared funds in advance of delivery of undelivered Goods;

 **(b)** cancel or suspend any further delivery to the Customer under any contract;

**(c)** sell or otherwise dispose of any Goods which are the subject of any contract with the Customer;

**(d)** charge the Customer interest on the balance of monies due at the rate in accordance with the Norwegian Penalty Interest Act of 1976 from the date the payment became due until actual payment is paid whether before or after Judgement;

**(e)** without prejudice to the generality of Clause 8 of these Conditions exercise the powers there set out.

**11. Data protection**

If the Customer is an individual or group of individuals the Customer agrees the Company may process the Customers personal data in accordance with the Norwegian Name Indices Act of 2000 and the Company’s Data protection Policy – copy available on request.

**12. Call recording**

The Company reserves the right to record or monitor telephone calls for training or security provided in compliance with the Norwegian Name Indices Act of 2000.

**13. General**

**13.1** This Contract shall be governed by and interpreted in accordance with Norwegian law**.**

Disputes arising out of this contract, and which are not resolved by mutual agreement, shall be settled by court proceedings before Bergen City court (No: Bergen tingrett), unless the parties agree otherwise.

**13.2** The headings of these Conditions are for convenience only and shall have no effect on interpretation.

**13.3** The Company shall not be liable for any delay or failure to perform any of its obligations in relation to the Goods due to any cause beyond its reasonable control including industrial action.

**13.4** If any Clause or sub-Clause of these Conditions is held by any court or other competent authority to be void or unenforceable the validity of the other Clauses or sub-Clauses of these Conditions shall not be affected and they shall remain in full force and effect.

**13.5** The waiver by the Company of any breach or default of these Conditions shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.

**13.6** Termination of this Contract shall not effect the rights and obligations whatsoever accrued at the time of termination.