

BAV CRUSHERS TERMS AND CONDITIONS OF SUPPLY

1. Unless otherwise agreed in writing these are the only conditions upon BAV Crushers Limited, registered office; Power Park, Towers Business Park, Rugeley, Staffordshire WS15 1UZ ("BAV Crushers") agree to supply goods ("Products") to any person, firm company or other body placing an order ("Customer") with BAV Crushers. Any contract between the Customer and BAV Crushers ("the contract") - however formed - shall include these terms.

PLACING AN ORDER AND CANCELLATION

- 2.1 An order to supply Products ("the Order") shall, unless otherwise agreed in writing, be placed whenever a request for the supply of Products is received by BAV Crushers and accepted by BAV Crushers by being recorded/logged in writing by one of BAV Crushers authorised representatives.
It shall be the responsibility of the Customer to ensure the accuracy of the terms of any Order and to satisfy him/her/itself that his/her/its request has been communicated to a BAV Crushers authorised representative. For its part, BAV Crushers authorised representative(s) shall NOT be required to verify enquiries beyond or otherwise investigate the bona fides of the request to supply products but shall be entitled to assume and contract on the basis that the request is made by a person with lawful and actual authority to contractually bind the Customer in accordance with the terms set out herein or otherwise agreed in writing. Care should therefore be taken by the Customer in authorising permitting or otherwise suffering requests for the supply of products to be made on its behalf. The Order shall be saved in the case of manifest error be final and binding upon the Customer and BAV Crushers shall in accordance therewith be entitled to request that payment be made in accordance with the terms herein or otherwise agreed in writing.
- 2.2 The description or specification of products in BAV Crushers' catalogues and invoices is given by way of identification only and use of such description shall not mean that any supply or sale covered by these terms and conditions is a sale by description.
- 2.3 The Customer has no right under any circumstances to cancel the contract or any instalment or order of PRODUCTS without prior written consent of BAV Crushers. If BAV Crushers gives such consent (and it shall not be obliged to) BAV Crushers may make it a condition of such consent that the Customer pays such compensation as BAV Crushers may reasonably require. Nothing in this Clause shall be construed as implying that BAV Crushers conducts business on a sale or return basis.

PRICES

- 3.1 Prices given by BAV Crushers at the time of the order are those then prevailing. If before delivery of the Products there occurs an increase in the costs to BAV Crushers of supplying those Products which have not yet been delivered. The price payable may be subject to amendment without notice at BAV Crushers' discretion.
- 3.2 All prices are exclusive of VAT and any similar taxes. All such taxes are payable in addition by the Customer at the rates in force at the tax point date.

PAYMENT TERMS

- 4.1 BAV Crushers' invoices are payable in full in advance by the Customer, unless otherwise agreed by BAV Crushers when payment in full shall be made within 30 days from the date of the invoice. Interest will be charged on any overdue invoice until it is paid at the rate of 4% per annum above National Westminster Bank PLC base rate. Such interest will accrue on a daily basis and be payable after as well as before judgement.
- 4.2 Only when all prices, taxes, and charges due in respect of the Products and any Products supplied previously to the Customer have been paid in full, shall title to Products pass to the Customer.
- 4.3 If the Customer fails to make any payment on the due date then without limiting any other right or remedy that may be available BAV Crushers may:-
 - (1) cancel the contract or suspend any further deliveries to the customer
 - (2) appropriate any payment made by the Customer to such of the Products (or the Product supplied under any other contract between BAV Crushers and the Customer) as BAV Crushers may think fit.

RISK AND TITLE

- 5.1 Risk shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration to the Products:
 - 5.1.1 If BAV Crushers delivers the Products by its own transport or arranges the transport, at the time when the Products or a relevant part thereof arrive at the place of delivery, or
 - 5.1.2 In all other circumstances, at the time when the Products or part thereof leaves the premises of BAV Crushers.
- 5.2 Title to and the ownership of all Products supplied by BAV Crushers to the Customer whether paid or not shall remain with BAV Crushers until payment for all Products supplied has been received in full. Until such payment is received BAV Crushers reserves the right to dispose of all Products supplied except only such Products as the Customer may have resold by bona fide sale at market value to the Customer's customers and accordingly:-
 - 5.2.1 until such payment is received, BAV Crushers may without prejudice to any other right or remedy recover possession of all such Products supplied and whether paid for or not.
 - 5.2.2 for that purpose, BAV Crushers may enter the premises of the Customer, forcibly if necessary and without legal process;
 - 5.2.3 If BAV Crushers resells the Products so recovered (and BAV Crushers shall not be under any obligation to resell or if it does resell, to sell at any particular price) any surplus proceeds of sale after deduction of BAV Crushers's expenses (including legal expenses) in connection with the recovery of all Products supplied by BAV Crushers to the Customer shall be for the account of the Customer.
- 5.3 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of BAV Crushers, but if the Customer does so, all monies owing by the Customer to BAV Crushers shall (without prejudice to any other right or remedy of BAV Crushers) forthwith become payable.

TIME and DELIVERY

6. While BAV Crushers will use its reasonable endeavours to supply Products at the time requested by the Customer, time of delivery shall not be the essence of the contract.
- 6.1 Stated dates or times for delivery are approximate only. BAV Crushers may at its sole discretion deliver orders in instalments, part or otherwise.
- 6.2 The Customer will be responsible for taking delivery of Products including the provision of any necessary personnel and facilities. If the Customer fails to take delivery of the Products or fails to give BAV Crushers adequate delivery instructions at the time stated for delivery then without limiting any other right or remedy available to BAV Crushers, BAV Crushers may:-
 - (1) store the goods until actual delivery and charge the customer for the reasonable costs (including insurance) of storage (and abortive delivery costs) or
 - (2) sell the goods at the best price reasonably obtainable and (after deducting all reasonable storage and selling expenses) account to the customer for any excess over the price under the contract which has been paid or charge the customer for any shortfall below the price under the contract.
- 6.3 The Customer will be responsible for checking the Products on delivery following which the Products will be deemed to be in accordance with the order and no claim for missing items will thereafter be accepted by BAV Crushers.

TERMINATION

- 7.1 BAV Crushers shall be entitled without prejudice to its other rights and remedies, either to terminate wholly or in part the contract or any other contract with the Customer or to suspend any further deliveries under the contract, or any such other contract in the following events:-
 - 7.1.1 If any debt due and payable by the Customer to BAV Crushers under any contract is unpaid.
 - 7.1.2 If the Customer has failed to take delivery of any goods under the contract or any other contract as aforesaid otherwise than in accordance with the Customer's contractual rights;
 - 7.1.3 If the Customer becomes insolvent, or suffers any Writ, Claim or other proceeding to be taken for debt, or being a corporate body has a Receiver appointed or passes a resolution for winding up, or a Court makes an Order to that effect, or being an individual or partnership makes any composition or arrangement with his or their creditors, or has a Receiving Order made against him or them.
 - 7.1.4 If the Customer ceases or threatens to cease to carry on business or BAV Crushers reasonably apprehends that any of the events mentioned in 7.1 above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 7.2 On termination under the foregoing provisions, the price of all Products sold and delivered by BAV Crushers to the Customer or to a carrier for delivery to the Customer and all other sums outstanding from the Customer to BAV Crushers on any account whatsoever shall immediately become due and payable notwithstanding any credit period previously agreed.
- 7.3 In addition to any right or lien which BAV Crushers may have BAV Crushers shall in any of the events described in paragraph 7.1.3 above have a general lien over any goods of the Customer then in the possession of BAV Crushers for the unpaid price of any Products provided by BAV Crushers to the Customer under any contract.

SPECIFICATION OF PRODUCTS

- 8.1 Unless otherwise agreed the Products are supplied in accordance with the manufacturer's standard specifications from time to time. BAV Crushers reserves the right to change specifications or descriptions shown in BAV Crushers catalogue and invoices without notice. Products delivered will be the specification current at the time of delivery, which may have been changed from that at the time of the order.
- 8.2 BAV Crushers will not be liable in respect of any loss or damage caused by, or resulting from any variation for any reason in the manufacturer's specification or technical data, and will not be responsible for any loss or damage resulting from cessation of supply following such variation. BAV Crushers will use its reasonable endeavours to advise the Customer of any impending variation as soon as it receives any notice of it from the manufacturer.
- 8.3 Where a Customer is unable to specify a part number for any Product, BAV Crushers will use reasonable care and skill in supplying Products which are fit for the Customer's purpose as disclosed by the Order.
- 8.4 The customer agrees that:
 - 8.4.1 Any Product will be fitted to its machinery by a suitably qualified fitter ("the Fitter")
 - 8.4.2 Products will be suitably and regularly maintained in accordance with the manufacturer's recommendations.
 - 8.4.3 If any Product supplied by BAV Crushers under 8.3 above is not fit for purpose as certified by the Fitter in writing before installation of the Product, then the Customer will - if he wishes to claim an exchange under 8.5 below - notify BAV Crushers within 7 days of the supply.
- 8.5 If 8.3 and 8.4.3 above apply, and the Customer returns the unused Product to BAV Crushers within 14 days of supply, BAV Crushers will refund the price paid by the Customer.
- 8.6 Signature by the Customer on a delivery note will constitute acceptance of the products.

WARRANTIES & LIMITATIONS OF LIABILITY

- 9.1 BAV Crushers warrants that it has good title to or licence to supply all Products to the Customer.
- 9.2 BAV Crushers EXCLUDES LIABILITY FOR BREACH OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES AS TO DESCRIPTION, DESIGN, SATISFACTORY QUALITY AND FITNESS FOR ANY PARTICULAR PURPOSE WHETHER DISCLOSED TO DIGBITS OR NOT".
- 9.3 In no event shall BAV Crushers be liable to the Customer for special, indirect or consequential damage including loss of profits in connection with the use or resale of the Products.
- 9.4 Save so far as defects in the Product(s) cause death injury or damage to personal property or where death or injury is caused by the negligence of BAV Crushers, its employees or agents, BAV Crushers liability for any loss or damage shall, where found notwithstanding any term to the contrary herein, be limited to the invoice value of the contract actually paid by the Customer.
- 9.5 The Customer agrees that the allocation of risk contained in this clause 9 is reflected in the price to be paid by it and recognises that Products cannot be tested in every possible situation and thus BAV Crushers does not warrant that the operation of the Products will be uninterrupted or error free and it is not within BAV Crushers's control how and for what purpose the Products are used by the Customer.
- 9.6 BAV Crushers give no warranty in respect of parts materials or equipment which have not been manufactured by BAV Crushers in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to BAV Crushers.

GENERAL

- 10.1 The headings in these terms are for ease of reference only and shall not affect its interpretation or construction.
- 10.2 All rights and remedies available to BAV Crushers under these terms shall be in addition to, and not to the exclusion of its other legal rights.
- 10.3 In the event of any of these terms or any part of them being judged illegal or unenforceable for any reason, the continuation in full force and effect of the remainder of them shall not be prejudiced.
- 10.4 BAV Crushers shall not be liable to the Customer for any delay in or failure to perform its obligations hereunder where such delay or failure results from force majeure, act of God, fire, explosion, accident, industrial dispute or any other cause beyond its reasonable control.

NOTICES

11. Any documents or notices given hereunder by either party to the other must be in writing and may be delivered personally or by post and in the case of post will be deemed to have been given on the second day after posting. Documents or notices shall be delivered or sent to the addresses of the parties overleaf or to any other address notified in writing by either party to the other for the purpose of receiving documents or notices.

WAIVER

12. Any failure by BAV Crushers to enforce any of the contract terms and conditions shall not be construed as a waiver of any of BAV Crushers's rights hereunder.

LAW

13. These terms and conditions shall be governed and construed in accordance with English Law.

AGREEMENT

14. Subject to 1 above these TERMS AND CONDITIONS OF SUPPLY embodies the entire understanding of the parties in respect of the matters contained or referred to in it and there are no promises, terms, conditions or obligations oral or written express or implied other than those contained herein. The Customer irrevocably and unconditionally waives any right it may have to claim damages or rescind this agreement for any misrepresentation whether or not contained herein or for any breach of any warranty not contained herein unless the misrepresentation or warranty was made fraudulently.