

# MARCHINGTON STONE LIMITED

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www.marchingtonstone.co.uk



**The National Trust  
High Peak Estate Office  
Edale Road  
Hope  
Hope Valley, S33 6RF**

**QUOTATION**

**0000919172**

**10 Dec 2012**

**For the attention of : Helen**

**Quoted Site Address  
PIKE LOW AND  
DERWENT EDGE  
EDALE**

Dear Sirs,

We thank you for your recent enquiry and are pleased to quote the following:-

Marchington 200 Gritstone

tonne

20mm-Dust Marchington Buff

tonne

Prices quoted in Pounds Sterling. All materials are offered subject to approval.

**DELIVERY:** In minimum 17 Tonne loads. In certain areas 6 wheeled vehicles are of limited availability and may be subject to surcharge.

**TERMS:** Nett Monthly plus V.A.T. on all items.

We trust the above will be of interest to you and we await your favourable reply.

Yours faithfully,

**Chris Byatte**

MARCHINGTON STONE LIMITED.

Registered No.0977250 England Directors: J.A.Marchington L.Marchington S.G.Hughes J.M.Marchington A.D.Marchington

The Customer's attention is in particular drawn to the provisions of condition 10.4.

**1. Interpretation**

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Customer** means the person, firm or company who purchases the Goods from the Company.

**Company** means Marchington Stone Limited.

**Contract** means any contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these conditions.

**Delivery Point** means the place where delivery of the Goods is to take place under condition 4.

**Goods** means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them).

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

**2. Basis of Sale or Contract**

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract. Performance of the Contract by the Company does not amount to acceptance of any terms and conditions sought to be imposed by the Customer.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods subject to these conditions.

2.5 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Customer.

2.6 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Customer. Any quotation is valid for a period of [30] days only from its date, provided that the Company has not previously withdrawn it.

2.8 The Customer may only cancel an order (or any part of an order), which the Company has already accepted, with the Company's prior agreement in writing and provided that the Customer indemnifies the Company in full in accordance with condition 11.1.

2.9 Any advice or recommendation given by the Company or any of its employees or agents to the Customer or its employees or agents as to the strengths or use of the Goods by the Company is followed or acted upon entirely at the Customer's own risk.

2.10 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

**3. Description**

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

**4. Delivery**

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall be deemed to have been effected:

4.1.1 Where the Goods are delivered at a Delivery Point specified by the Customer, at the delivery address specified by the Customer prior to unloading (unless the Company has agreed to unload the Goods in which case delivery shall be effected upon completion of the unloading);

4.1.2 Where the Goods are collected by the Customer, at the Company's place of business prior to loading.

4.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.3 Where the Company delivers the Goods to the Customer's premises and the Company is kept waiting to deliver the Goods beyond a period of 30 minutes, the Company reserves the right to make an extra charge for all of the waiting time.

4.4 Where the Company delivers the Goods to the Customer's premises, the Customer shall indemnify the Company against any loss suffered during unloading or as a result of the accessway being unsuitable. The Company shall not be liable for any damage caused on delivery save in the event of the Company's negligence. The Customer will provide and clearly indicate to the driver of the delivery vehicle a safe route from the public highway to the Delivery Point and shall indemnify the Company, (for itself and as agent and trustee for any other person operating a vehicle making a delivery) against any damage or loss resulting from any failure to do so.

4.5 The Goods shall be inspected by the Customer on delivery or on collection as the case may be to ensure as far as practically possible that the goods delivered are the goods ordered and the Customer will ensure that an authorised person signs the delivery docket in confirmation of this. Except where the defects or shortages in relation to the goods are not apparent upon reasonable inspection at the time of delivery the Customer must notify the Company in writing of any alleged defects or shortages as soon as reasonably practicable and in any event within 24 hours.

4.6 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.7 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

4.7.1 the Goods shall be deemed to have been delivered; and

4.7.2 the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.8 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods. Where the Delivery Point is at a place specified by the Customer, the Customer shall ensure that the Company shall have proper access to the Delivery Point to enable the Company to unload the Goods. In the event that the Company considers that the accessway, approach road or Delivery Point is unsafe or may cause damage to the delivery vehicle, the Company shall be entitled to refuse delivery and the Customer shall indemnify the Company against any loss or damage resulting from the non-delivery.

4.9 If the Company delivers to the Customer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

4.10 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.11 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

4.12 In the event that the Customer requests that any goods be deposited on a street, public highway and/or public footpath, the Customer shall be responsible for compliance with all statutes and regulations relating to public highways and byways including, without limitation, obtaining all necessary licences and/or orders, and for all steps which need to be taken for the protection at all times of persons or property and shall indemnify the seller in respect of all costs, claims, fines, losses or expenses (including legal costs) on an indemnity basis (other than in respect of death or personal injury caused by the negligence or breach of duty of the Company or its carrier) which the Company may incur as a result of a breach of this condition by the Customer.

**5. Non-delivery**

5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 10 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

**6. Risk/title**

6.1 The Goods are at the risk of the Customer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

6.2.1 the Goods; and

6.2.2 all other sums which are or which become due to the Company from the Customer on any account.

6.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

6.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company.

On request the Customer shall produce the policy of insurance to the Company.

6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

6.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and

6.4.2 any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

6.5 The Customer's right to possession of the Goods shall terminate immediately if:

6.5.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

6.5.2 The Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade, or its credit insurance is removed; or

6.5.3 the Customer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold or used all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 6 shall remain in effect.

#### 7. Price

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's quotation, price list, delivery or invoice documentation published on the date of delivery or deemed delivery. The Company's price list, quotation, delivery or invoice documentation is based on the costs of the Goods or materials, labour and maintenance of machinery and in the event of the expense to the Company of performing the Contract being increased or reduced, directly or indirectly, by reason of any subsequent fluctuation in such costs, the Company reserves the right to make a corresponding increase or reduction in its prices to meet any such fluctuations.

7.2 The price for the Goods shall be inclusive of the current aggregate levies but exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods. Any increase in the aggregate levies imposed at the date of delivery or deemed delivery may be added to the price by the Company.

7.3 The Company reserves the right to levy a "part load" charge, such amount to be determined by the Company, where the Customer orders less than a full load. Details of load capacities can be obtained from the Company upon request.

7.4 The Company's prices are quoted on the basis of normal working days and during normal working hours. All deliveries made at the Customer's request on public holidays, Saturday afternoons or Sundays or at any other time outside normal working hours shall be subject to an extra charge.

#### 8. Payment

8.1 Subject to condition 11.2, payment of the price for the Goods is due in pounds sterling on the last working day of the month following the month in which the Goods are invoiced.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 Any credit facility given to the customer by the Company may be altered or withdrawn by the Company at any time.

8.6 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer, save that the Customer shall be entitled to make set-off in relation to Goods provided that are proven to be defective.

8.7 The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

#### 9. Quality

9.1 The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

9.2 The Company shall not be liable for a breach of the warranty unless:

9.2.1 the Customer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 24 hours of the time when the Customer discovers or ought to have discovered the defect; and

9.2.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods.

9.3 The Company shall not be liable for a breach of the warranty in condition 9.1 if:

9.3.1 the Customer makes any further use of such Goods after giving such notice; or

9.3.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, use or maintenance of the Goods or (if there are none) good trade practice; or

9.3.3 the Customer alters or repairs such Goods without the written consent of the Company.

9.4 Subject to condition 9.2 and condition 9.3, if any of the Goods do not conform with the warranty in condition 9.1 the Company shall replace such Goods (or the defective part).

9.5 If the Company complies with condition 9.4 it shall have no further liability for a breach of the warranty in condition 9.1 in respect of such Goods.

9.6 It is the Customer's responsibility to satisfy itself that it has purchased the correct goods which are suitable for the intended use.

#### 10. Limitation of Liability

10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

10.1.1 any breach of these conditions;

10.1.2 any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and

10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes or limits the liability of the Company:

10.3.1 for death or personal injury caused by the Company's negligence; or

10.3.2 under section 2(3), Consumer Protection Act 1987; or

10.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

10.3.4 for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

10.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the replacement and delivery of the Goods; and

10.4.2 the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

#### 11. Cancellation / Suspension of Deliveries

11.1 In the event of a cancellation by the Customer of any Contract (which is accepted by the Customer), the Customer shall indemnify the Company against all charges, costs and losses sustained by the Company.

11.2 The Company may (without prejudice to any other rights) suspend or cancel further deliveries to the Customer under any Contract or require the Customer to pay for Goods prior to despatch or collection from the Company's place of loading in the event that the Customer fails to make payment of any sums owing to the Company or if any of the matters referred to in condition 6.5 above occur without any liability and any outstanding amounts under all Contracts shall become immediately due and payable.

#### 12. Assignment

12.1 The Company may assign the Contract or any part of it to any person, firm or company.

12.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

#### 13. Force Majeure

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of [180] days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

#### 14. General

14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

14.7 Any communication between the parties related to the obligation of this contract must be in writing and delivered by hand (when delivery shall be deemed to be the day of delivery) or sent by prepaid first class post (when delivery shall be deemed to be 48 hours after posting) or sent by fax (when delivery shall be deemed to be the time of transmission provided that any normal confirmation of fax communication shall have been received) to the address, or such change of address as shall be notified to either party by the other.

14.8 The contract sets out the entire agreement and understanding between the customer and the Company in connection with the sale of the Goods and shall supersede and replace all documentation previously issued to the Company purporting to set out its terms and conditions of sale of the Goods