

# MCCALLUM BROS. LTD

Established 1904

747 Rosebank Rd, Avondale. Auckland.  
Box 71-031 Rosebank

Telephone (09) 828 5202 Fax (09) 820 3587

Quarry Operators • Ship Owners • Suppliers of: Premium Quality Sand, Red Metal Aggregates and Concrete

## TERMS of TRADE for EQ Arena Sand

### DEFINITIONS

**"Agent"** means any person(s) under our direct employ, and excludes third-party contractors.

**"Arena"** means any facility for the purpose of accommodating, training or competing equids, especially horses.

**"Customer"** means the party(s) who execute these Terms of Trade. If the Customer comprises more than one person or entity, each of those persons or entity's liability is joint and several.

**"Delivery"** means the collection of Product ordered by you or one of your employees, contractors or agents from our premises, unless we have agreed to dispatch your Product order for you, in which case delivery shall mean the despatch of the Product to the destination we have agreed with you.

**"Product"** means EQ1, EQ2 or EQ3 Arena Sand, manufactured by us.

**"Grading Curves"** means the graph at Appendix 1, which shows the upper and lower tolerances for the particular batch of Product to be supplied by us to you, in terms of the proportion of different grain sizes that it is composed of.

**"We", "Us" and "Our"** means McCallum Bros Limited®.

**"You"** means our Customer

Words importing the singular include the plural and vice versa.

Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms.

References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.

### THE PRODUCT

1. Product is sold on a per tonne basis and is currently measured at a conversion of 1.32 tonne per cubic meter. Conversion is subject to change.
2. Calculation of tonnage for an order will be based on dimensions provided by the Customer for the area (including, but not limited to, Arenas, paddocks or any other area) for which the order is intended. We take no responsibility or liability in the event that you supply us with incorrect dimensions or depth.
3. The Product is a natural resource and will inevitably show some variation in substance.
4. Each batch of the Product is assigned a Grading Curve, either EQ 1, 2 or 3, depending on what you select to purchase. The sole purpose of this is to aid you in your own independent

testing of a sample of the Product, should you choose to obtain one, prior to paying for the Product in full.

5. Whether we are able to fulfil your order of the Product is dependent on the amount of Product we hold. We reserve the right to alter the date which your order is Delivered, should our stocks be insufficient to fulfil the order. If we do so, we will advise you accordingly.

## **PRICE**

6. All prices are in NZD and includes GST. Any quote we provide to you is valid for three months from its date, after which we reserve the right to either amend or cancel the quote.
7. The price will be calculated on the basis of the amount of the Product ordered and, if so required by you, the cost of the despatch of the Product to the destination we have agreed with you.

## **PAYMENT**

8. You must pay for the Product you order in full, prior to Delivery.
9. Failure to pay in full on the agreed date will be a deemed cancellation of your order with us.
10. Any additional fee(s) incurred as a result of your method of payment is incurred solely at your expense.

## **CANCELLATION**

11. You may cancel your order no later than three working days before the scheduled date of Delivery and receive a refund in full from us.
12. If you cancel within and up to three working days from the scheduled date of Delivery it will result in a 50% refund.
13. If you cancel on the scheduled date of Delivery, you will receive no refund.
14. We reserve the right to cancel the order at any time and refund you in full.

## **RISK**

15. Risk in all Product passes to you when the Product order is Delivered.

## **DELIVERY**

16. If we deliver your Product order to you by truck or truck and trailer transport, the terms of such Delivery are as follows:
  - (a) Delivery will be at your sole cost.
  - (b) Delivery will be made at the location provided by you and agreed by us.
  - (c) If the agreed Delivery location is an Arena, our employees and/or Agents will ensure their best effort to tip and spread the ordered Product on the Arena evenly. We take no responsibility for an uneven spread.

- (d) We will give you reasonable notice of the time the order will be Delivered to the agreed location on the agreed date; such time is approximate only and time is not deemed to be of the essence. We take no liability for any loss on your part resulting from late Delivery of the ordered Product.
- (e) We may reasonably alter the agreed date of Delivery of the ordered Product.
- (f) We may deliver the ordered Product ourselves or through engaging third-party contractor(s).
- (g) The agreed Delivery location is fit for purpose for a truck or truck and trailer unit (whichever has been agreed in prior correspondence between you and us).
- (h) You must provide reasonable roadways or other approaches that permits the safe and unimpeded access of the truck or truck and trailer to the agreed Delivery location, before the agreed date of Delivery. We reserve the right to refuse such deliveries in the event that the access to the agreed Delivery location is not at the level of satisfaction required by us and/or our third party contractors. A refusal in this manner will not constitute a breach of these Terms of Trade and no refund of the Delivery portion of the price will be payable by us to you.
- (i) You grant us, or any engaged third-party contractor, an implied license to enter the agreed Delivery location. It is assumed that you have express authority to authorise such implied license upon us or a third-party contractor.
- (j) Should our or our Agent's truck or truck and trailer have to wait at the agreed Delivery location for longer than 30 minutes through no fault of their own, we reserve the right in, our sole discretion, to charge you a standby rate of \$180 per hour for truck and \$220 per hour for truck and trailer. Standby rates are subject to change at our sole discretion.
- (k) Should our or our Agent's truck or truck and trailer cause damage to your property upon Delivery, we agree to pay such costs of repair, upon receipt of an invoice for the repairs. Should we disagree with the invoice, you agree that we can obtain a quote to compare. Payment of the invoice will be to the cheaper invoice so long as the repair is engaged by an agent who is reasonably fit and proper for the purpose of the repair required.

## CUSTOMER ACKNOWLEDGEMENTS

### 17. You acknowledge and agree that:

- (a) Prior to executing these Terms of Trade, you have been given the opportunity to take a sample of the Product from us to assess its suitability for your intended use. Regardless of whether you obtained a sample or waived your opportunity to do so, you are deemed to have accepted the Product in all respects once you execute these Terms of Trade.
- (b) It is your sole responsibility to ensure that the Product is suited to your Arena.
- (c) Specialist independent advice from an appropriate expert should be obtained by you as to the Product being fit for your intended purpose.
- (d) The Product is not tailored to any specific Arena, and we do not accept any liability for its in-situ performance therein, whether upon Delivery, or at any time in the future.

- (e) Arenas themselves are a system and, inadequacies in any of the following can result in unsatisfactory performance of the Arena, including, but not limited to, its base construction, end use, drainage system, age, site location, local environment and the level to which it has been maintained.
- (f) The Product must be worn in before optimal performance of the Product can be reached. The required time will vary depending upon the use of the Arena and other factors out of our control.

- 18.** In making the above acknowledgements in clause 17, you expressly agree that we cannot be liable for any perceived non-performance of the ordered Product on your Arena as part of its system, and that you were given ample opportunity to undertake due diligence in the form of your own independent testing of a sample of the Product to assess its fitness for purpose, prior to executing these Terms of Trade.

#### **LIMITATION OF LIABILITY**

- 19.** To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms of Trade or for any other reason, such liability is limited to the amount of the price of the ordered Product concerned.
- 20.** For the avoidance of doubt, any clauses purporting to limit our liability in these Terms of Trade survive cancellation.

#### **INTELLECTUAL PROPERTY**

- 21.** www.mccallumbros.co.nz, McCallum Bros Limited®, and/or other information, images and logos are either copyright, trademarks, registered trademarks, or subject to other intellectual property rights and are the exclusive property of us, The McCallum Group and related companies. Such intellectual property is protected by New Zealand and international copyright laws. Any rights not expressly granted herein are reserved.

#### **NOTICES**

- 22.** Any notice may be given by phone, in person, posted, or sent by facsimile or email to you or where you are a company, to any of your directors.

#### **CONFIDENTIALITY**

- 23.** You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent.

#### **COSTS**

- 24.** You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms of Trade.

#### **JURISDICTION**

- 25.** These Terms are governed by the laws of New Zealand.

#### **FORCE MAJEURE**

- 26.** We shall not be liable for delay or failure to perform our obligations under these Terms of Trade if the cause of delay or failure is beyond our reasonable control.

## GENERAL

27. You shall not transfer or assign your rights or obligations under these Terms of Trade without our prior written consent.
28. No failure or delay by us in insisting upon the strict performance of these Terms of Trade or exercising any right under these Terms of Trade will operate as a waiver of those matters.
29. We may change these Terms of Trade at any time.
30. Should any part of these Terms of Trade be unenforceable such parts shall be severed and the remainder of these Terms shall remain binding.

Signed for and on behalf of the Customer

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Name:  
Company / Trust name (if applicable):

Director / Trustee / Authorised Signatory / Attorney  
*Delete the options that do not apply*  
*If no option is deleted, the signatory is signing in their personal capacity*

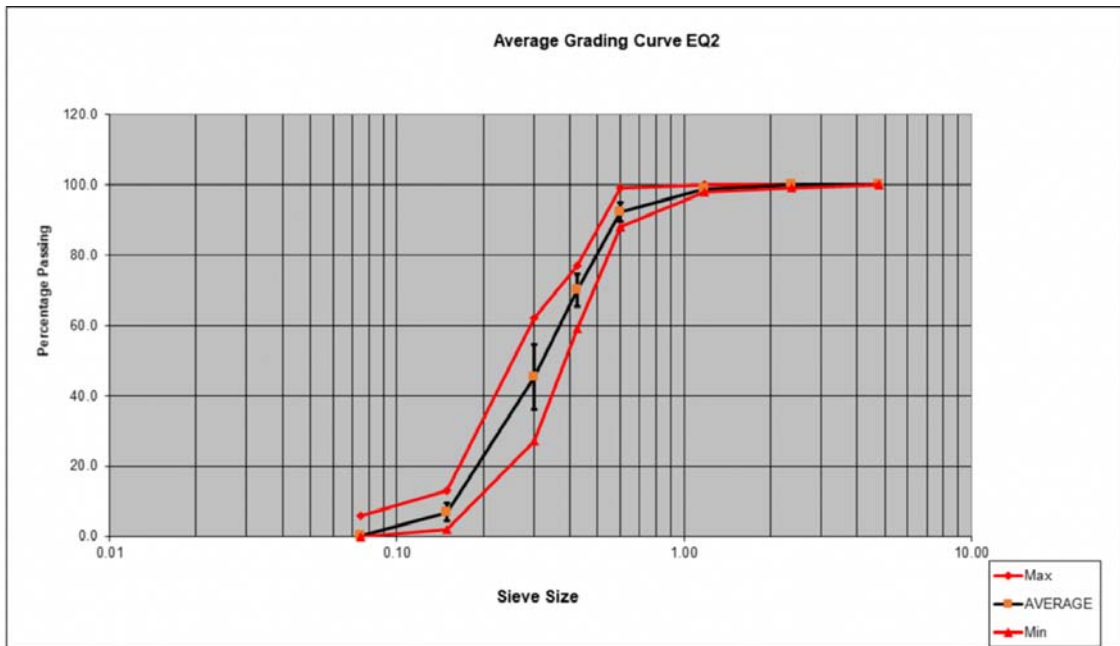
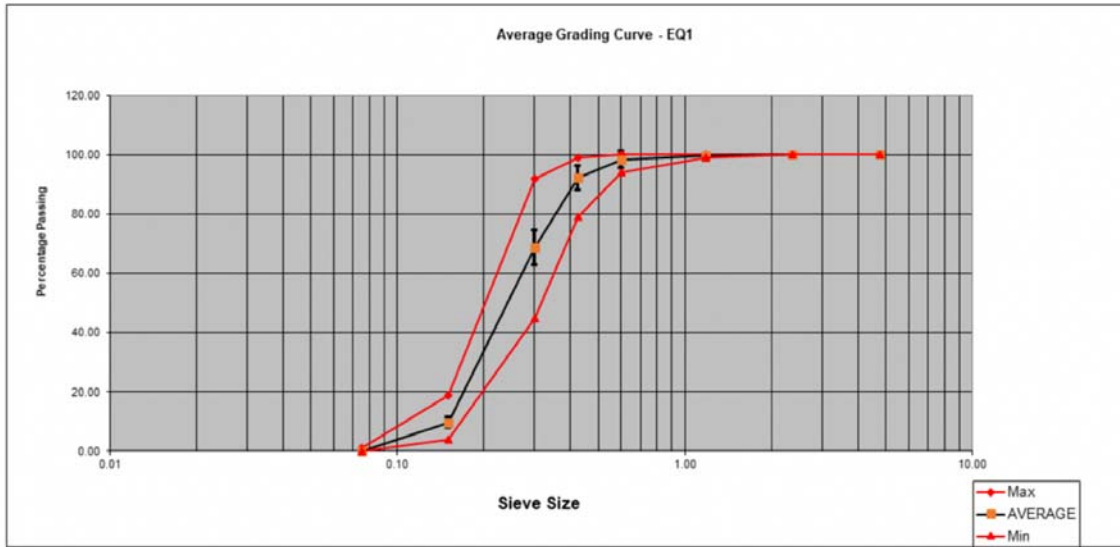
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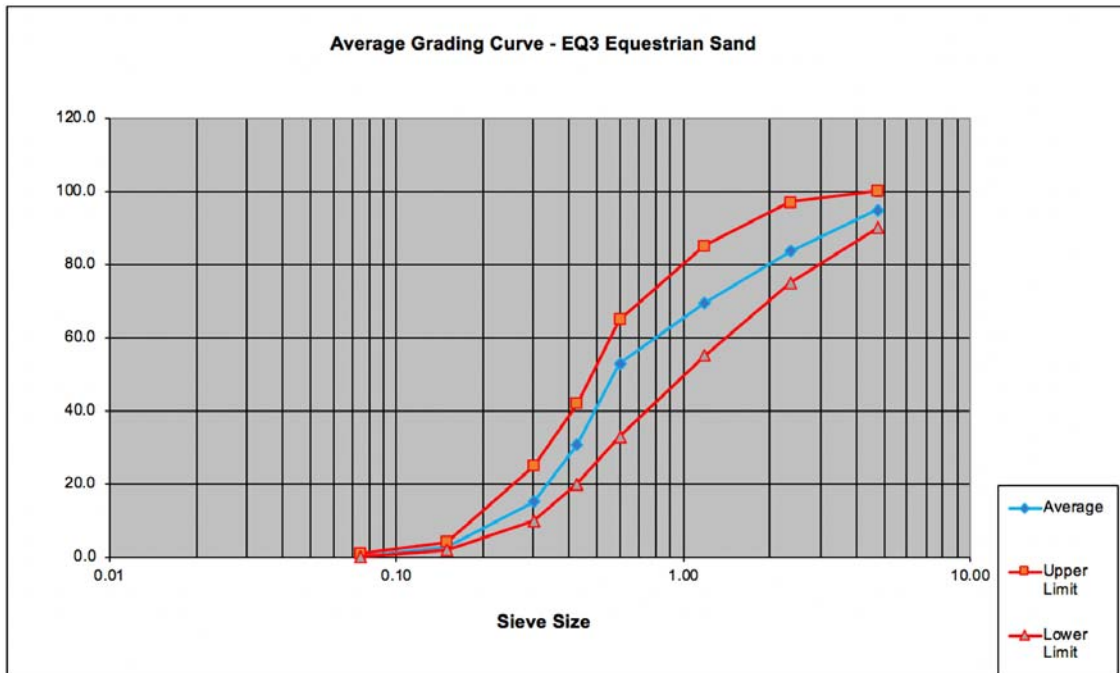
Name:  
Company / Trust name (if applicable):

Director / Trustee / Authorised Signatory / Attorney  
*Delete the options that do not apply*  
*If no option is deleted, the signatory is signing in their personal capacity*

Date:

# Appendix 1: Grading Curve's





The above Grading Curve relates to our EQ products for Arena Sand batch. **Please note that these are an average curve for a batch of a particular EQ product. We will supply you with an up-to-date Grading Curve for your particular batch.**

The above Grading Curves are a representation of a sand or aggregate based on where the various particle sizes within the Product are retained on a series of screen sizes.

A sample of the Product is dried and passed through a series of sieves. These sieves are as specified in the New Zealand Standard NZS 3111: Methods of Test for Water and Aggregate for Concrete.

The sand retained on each sieve is then weighed and the data is entered into a spreadsheet that calculates the percentage passing through each layer of sieve. From this the Grading Curve can be established to represent the coarseness of the Product.