

Each order constitutes an offer by the Customer to purchase materials ("Goods") from the Company on the following terms and conditions and the contract between the Company and Customer is made by the Company's acceptance of the Customer's offer. All other terms and conditions imposed by statute or which the Customer may purport to apply and all other representations and warranties (if any) are excluded EXCEPT

- (a) as otherwise expressly agreed in writing by the Company and
- (b) where contracting out is forbidden by statute

CONDITIONS

1. DEFINITION

In these Conditions "Delivery Point" means the location for delivery of the Goods specified in the Company's quotation or, if none, that specified in the Customer's enquiry leading to the quotation.

2. GOODS

- 2.1 All orders are accepted by the Company subject to the Goods ordered being available to the Company and by accepting an order the Company does not warrant that the Goods are available to it.
- 2.2 Where the Goods comprise or contain natural, marine dredged or quarried materials they are as such liable to natural defects and are sold subject to those natural defects.

3. PRICE

- 3.1 The price of the goods is the price stated in the Company's quotation or such other price as shall be expressly agreed between the Company and the Customer. The price is exclusive of VAT which shall be payable in addition.
- 3.2 Any quotation given by the Company is valid for the period stated or if none then for 60 days unless withdrawn earlier, but the quotation applies only to:-
 - (a) the total quantity for which the quotation is given and
 - (b) delivery to the Delivery Point and
 - (c) delivery by the full load
- 3.3 If between the date of the order and delivery there is an increase in costs in relation to the Goods the Company may pass on those costs by an equivalent increase in the price. In this context "costs" means costs to the Company of materials labour transport and compliance with statutory or quasi statutory obligations or British Standards.
- 3.4 If the Customer cancels the contract he shall pay compensation to the Company for its loss. If the cancellation is made after batching mixing or loading has taken place that compensation shall be payment in full of the contract price plus the costs to the Company of disposing of the Goods. The Customer cannot vary the contract except on terms agreed with the Company in writing.
- 3.5 Unless otherwise stated prices include delivery to the Delivery Point and an allowance for waiting time of the delivery vehicle at the Delivery Point. If the waiting time allowance is exceeded the price will be increased by a reasonable amount at the discretion of the Company. In the case of ready mixed concrete the waiting time allowance is ten minutes plus five minutes for each cubic metre or part thereof of such delivery.
- 3.6 Unless otherwise expressly agreed by the Company in writing, the price will be increased by a reasonable amount at the discretion of the Company for all deliveries made or work done at the Customer's request outside normal working hours, for the time being of the Company.

4. DELIVERY

- 4.1 Delivery shall be deemed to take place at the moment of discharge from the delivery vehicle at the Delivery Point or in the event that the Customer collects and/or transports the Goods from the Company the moment of loading into the Customer's vehicle or container.
- 4.2 The Company may deliver by separate instalments each of which may at the Company's option be invoiced and paid for as a separate contract.
- 4.3 Statements as to the time and date for delivery of the Goods shall be treated as estimates only and the Customer shall not be entitled to refuse delivery or to compensation because of any delay.
- 4.4 The Company may refuse to deliver any Goods over roads or other ground which the Company considers unsuitable and any resultant abortive costs incurred will be paid by the Customer to the Company.
- 4.5 The Customer is to provide free of charge reasonable assistance in unloading at the Delivery Point.
- 4.6 Whilst upon Company premises the Customer (including his contractor or agent or employee) shall comply with all regulations and directions issued by the Company or otherwise which are applicable to the conduct of personnel and operation of vehicles plant and equipment on the premises.
- 4.7 In any case where delivery by the Company is to be made by water
 - (a) The above conditions shall apply substituting where appropriate "ship" or "vessel" for vehicle or container and "wharf" for site or premises and
 - (b) The Customer shall provide free of charge the Company's vessel with a safe and clear berth at the wharf of delivery and facilities for immediate discharge of the Goods
 - (c) In case of any delay to the berthing discharge or departure of the vessel attributable to the act or default of the Customer (including breach of sub paragraph (b) of this Clause) the Customer shall pay to the Company demurrage at the rate previously agreed or if not agreed at a reasonable rate.

5. PAYMENT

- 5.1 Unless otherwise agreed the Customer shall pay the price of the Goods in full on or before the last day of the calendar month following that in which delivery takes place
- 5.2 The Customer shall not withhold payment by reason of any claim to right of set off or counterclaim and if he defaults the Company may
 - (a) Charge interest on overdue accounts
 - (b) Withhold the supply of the Goods and any other goods due to the Customer during the default
 - (c) Appropriate any payment made by the Customer to such of the Goods (including goods supplied under any other contract with the Customer) as the Company thinks fit.
- 5.3 Where interest is charged it shall be at the rate of 4% per annum above National Westminster Bank plc base lending rate from time to time and calculated from day to day from the date the sum became due until payment
- 5.4 If the Company in its absolute discretion agrees to accept the return of any goods, a credit note will be given for those goods but a rehandling charge may be levied

6. TITLE

- 6.1 In this Clause "payment in full" means payment by the Customer to the Company in full for the Goods and for all other goods which the Company has supplied to the Customer.
- 6.2 Upon delivery the Goods shall be at the Customer's risk but shall remain the property of the Company until
 - (a) payment in full or
 - (b) the Goods lose their separate identity or
 - (c) the Goods are sold to a third party
- 6.3 If the Customer sells the Goods before payment in full he shall hold the proceeds of sale on trust for the Company or, if unpaid and the Company so requires, assign to the Company the Customer's rights to recover the price from its purchaser
- 6.4 If the Company wishes to recover its Goods it may enter any premises where it has reason to believe they are stored and may repossess and resell the same

7. SPECIAL SAMPLING AND TESTING CONDITIONS

If the Customer shall require the product(s) supplied to be tested for compliance to the Specification defined by the Order, sampling and testing shall be carried out jointly with the Company and in accordance with the appropriate British Standard(s) or other sampling and testing specification (if applicable) previously accepted by the Company in writing. Compliance to the Specification defined by the Order shall be discharged by the Company if the product(s) meet such Specification at the time of supply to the Customer.

8. WARRANTIES AND CONDITIONS

- 8.1 In addition to any other warranty or condition previously agreed in writing the Company warrants that the Goods are of satisfactory quality and correspond, within reasonable tolerance levels to the quantity ordered and to the Company's standard specification of the Goods current at the time of production and to all statutory requirements applicable to the Goods
- 8.2 Except as provided in Clause 8.3 all terms, conditions, warranties or descriptions implied by law or expressed orally by the Company's employees or agents or otherwise, as to the quantity, quality or fitness for the purpose of the Goods or any of the Goods or their conformity to any samples or description provided by or on behalf of the company are expressly excluded.
- 8.3 Clause 8.2 does not apply where the Goods are of a type ordinarily bought for private use and the Customer is not buying or holding himself out as buying the same in the course of a business

9. CLAIMS

- 9.1 In case of any claim arising out of breach of warranty or condition (including any statutory warranty or condition which is not excluded by these Conditions) the Company will (subject to Clause 9.2) at its own expense make good any shortfall and repair any such goods or (if the Company shall in its absolute discretion so decide) remove them to allow replacement and replace them free of charge with goods which conform to the contract.
- 9.2 The liability under Clause 9.1 does not extend to meeting any cost incurred by the Customer in removing and/or replacing the Goods himself or by others (unless the Company shall have previously otherwise agreed in writing) and in any case is conditional upon
 - (a) there having been no unauthorised alteration or addition to the Goods
 - (b) notice of the complaint having been given in writing to the Company immediately it became apparent and in any case within 40 days of delivery (except in the case of coated stone or where the quantity of ready mixed concrete is in issue when in each case the period is 48 hours) and
 - (c) the Company being allowed all reasonable facilities to investigate the complaint and comply with Clause 9.1.
- 9.3 The Customer shall have no right of rejection of the goods and the Company shall have no liability for breach of warranty or condition except as provided in Clauses 9.1 and 9.2.

10. OTHER COMPANY LIABILITY

Subject and without prejudice to the provisions of Clauses 8 and 9:

- 10.1 The Company shall have no liability for ascertaining whether the Goods are suitable or reasonably fit for the purpose for which they were ordered or for any advice it may give whether by itself, its employees or agents as to the application or suitability of Goods for any purpose whatsoever.
- 10.2 The Company shall not be liable for breach of contract attributable directly or indirectly to circumstances beyond the Company's reasonable control
- 10.3 The Company shall have no liability in contract or in negligence or otherwise for consequential loss, indirect loss, or economic loss, howsoever arising. This would include but is not limited to loss of profit, loss of contracts, damage to the property of the Customer or of a third party

11. CUSTOMER LIABILITY

- 11.1 The Customer shall accept liability for and indemnify the Company against all expense loss damage and costs sustained by the Company and all claims and demands whatsoever upon the Company for expense loss damage and costs arising from or associated with
 - (a) any liability from which the Company is expressed to be relieved under the terms of Clause 10.3 or
 - (b) the presence of a vehicle or container and personnel on the Company's premises in course of collecting Goods upon the instructions of the Customer or at the Delivery Point or on land outside the public highway on route to and from the Delivery Point and the public highway in course of delivering Goods to the Customer upon the instructions of the Company
- 11.2 The liability of the Customer and the indemnity which he gives under Clause 11.1 does not extend to any liability of the Company:
 - (a) arising from or associated with the presence of a vehicle owned by the Company whilst upon the Company's premises or
 - (b) for the Company's own negligence except in relation to a claim for damage to access roads formations or approaches thereto outside the Company's premises when the liability and indemnity shall be complete and absolute irrespective of the Company's negligence.

12. DEATH INJURY OR TITLE

Clauses 8 9 10 and 11 do not apply to claims for death or personal injury to persons arising out of the Company's negligence or to claims for breach of warranty of title implied by law

13. TERMINATION OF CONTRACT

- 13.1 In addition to any other remedy the Company may terminate all or any of its contracts with the Customer if he is in default under any such contract or he is insolvent within the meaning of clause 13.2 whereupon all amounts owing for Goods sold to the Customer shall become immediately due and payable.
- 13.2 Insolvent in Clause 13.1 means has made a voluntary arrangement with his creditors executed a bill of sale or a distress or execution has been issued against him, or
 - (a) in the case of a company it goes into liquidation, an administrative receiver is appointed of it, or an administration order is made in respect of it
 - (b) in the case of an individual or any individual comprised in a firm, he is adjudicated bankrupt or an interim receiver is appointed of his property

14. SEVERANCE

If a Court finds that any clause or subclause of these Conditions fails the requirements of reasonableness or fairness under the Unfair Contract Terms Act 1977 and/or the Unfair Terms in Consumer Contracts Regulations 1994, the Company nevertheless excludes the relevant liability to the extent that the Court finds reasonable or fair.

15. ARBITRATION

Any dispute or difference of any kind whatsoever which arises or occurs between the parties in relation to any thing or matter arising under, out of or in connection with this contract shall be referred to arbitration under the Arbitration Rules of the Chartered Institute of Arbitrators

16. PROPER LAW

The contract shall be governed by English Law and the jurisdiction of the English Courts

17. INTERPRETATION

The singular includes the plural and vice versa and one gender includes another and where the Customer comprises two or more persons or companies or any combination of them their obligations are joint and several.