

Terms of Business

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 ("the Contract"). 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
1. DEFINITIONS
In these terms "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. "The Price" means the price of the Goods defined in clause 3.
 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 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 - 3.2 Any quotation given by the Company is valid for the period stated or if none then for 60 days unless withdrawn earlier, but the quotation applies only to:-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 it 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 of the Price in full 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 the Price includes 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. 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 the Company's normal working hours.
 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 on the 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.
 5. PAYMENT
 - 5.1 Unless otherwise agreed the Customer shall pay the Price 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 it 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 of the 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 Customers risk but shall remain the property of the Company until
 - (a) Payment in full
 - (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 Customers 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 located and may repossess and resell the same.
 7. SAMPLING
All identity testing by the Customer shall be carried out by an accredited body at the Customer's expense and in accordance with BS EN 12350, BS EN 12390 and BS EN 12504.
 8. SPECIFICATION AND WARRANTY
 - 8.1 In addition or subject to any other warranty or condition previously agreed in writing, the Company warrants that the Goods are of satisfactory quality and conform with BS 8500-2.
 - 8.2 Except as provided in clause 8.1 all terms, conditions, warranties or descriptions implied by law or expressed orally by the Company's employees or agents or otherwise, as to the quality or fitness for the purpose of the Goods or their conformity to any samples or description provided by or on behalf of the Company are expressly excluded, except where the Goods are of a type ordinarily bought for private use and the Customer is not buying or holding out as buying the same in the course of a business.
 9. LIABILITY
 - 9.1 Subject to clause 9.3, if the Goods are not in accordance with the Contract, the Company's liability to the Customer shall be limited to one of the following options, which shall be at the Company's sole discretion:
 - (i) repayment of or credit for the Price (or a proportionate part of the Price), or

- (ii) repair of the Goods by the Company, or
 - (iii) delivery of replacement goods in all other respects in accordance with the Contract
- 9.2 The Customer shall have no right of rejection of the Goods and the Company shall have no liability for negligence or breach of Contract except as provided in clause 9.1, which clause is in substitution for any other legal remedy of the Customer.
 - 9.3 Liability under clause 9.1 does not extend to meeting any cost incurred by the Customer in removing and/or replacing the Goods by itself or by others (unless the Company shall have previously otherwise agreed in writing) and in any case is conditional upon
 - (a) the Company being allowed all reasonable facilities to investigate the complaint and comply with clause 9.1.
 - (b) in the event of a non conformity within the meaning of BS 8500-2 the Company being entitled to carry out tests in accordance with EN 12504, BS 6089 and Concrete Society Technical Report No 11 ("the tests") and liability under clause 9.1 only arising in the event of the results of the tests falling outside the parameter of the tests, and
 - (c) there having been no unauthorised alteration or addition to the Goods, and
 - (d) notice of the alleged defect having been given in writing to the Company immediately it may become apparent on reasonable inspection and in any event no later than 40 days from the date of delivery.
 - 9.4 The Company shall have no responsibility or liability for ascertaining whether the Goods are suitable for the purpose for which they were specified by or on behalf of the Customer or intended to be used by the Customer or for any advice it may give whether orally or in writing (including data sheets) by its employees or agents as to the use or suitability of the Goods for any purpose.
 - 9.5 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.
 - 9.6 The Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever including but not limited to on-site or central overheads, supervision costs, delay, disruption, and/or liquidated damages (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the Price, except as expressly provided in these terms.
 10. CUSTOMER LIABILITY
 - 10.1 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 Clauses 8 and 9 and/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 en 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.
 - 10.2 The liability of the Customer and the indemnity which is given under clause 10.1 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 Customer's indemnity shall be complete and absolute irrespective of the Company's negligence.
 - 10.3 The Customer undertakes to draw to the attention and ensure compliance of its servants, agents or other persons handling or using the Goods or having access to the Goods whilst in the Customer's possession or to whom the Goods are sold any instructions, warnings or other information ("product information") concerning the methods whereby or the conditions whereunder the Goods should be used, handled or stored which are contained or referred to in any literature relating to the Goods or which are clearly displayed at the Delivery Point. The Customer shall indemnify the Company against any loss or liability by reason of any breach by the Customer of its obligations under this sub-clause or by reason of any failure by the Customer itself to comply with the product information.
 11. EXCLUSIONS FROM LIMITATION
 - 11.1 Clauses 8, 9 and 10 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.
 - 11.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these terms.
 12. TERMINATION OF CONTRACT
 - 12.1 In addition to any other remedy the Company may terminate all or any of its contracts with the Customer if it is in default under any such contract or it is insolvent within the meaning of clause 12.2 whereupon all amounts owing for goods sold to the Customer including Goods supplied under the Contract shall become immediately due and payable.
 - 12.2 Insolvent in Clause 12.1 means has made a voluntary arrangement with its creditors executed a bill of sale or a distress or execution has been issued against it, 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.
 13. SEVERANCE
If a Court finds that any clause or subclause of these terms 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.
 14. ARBITRATION
Any dispute or difference of any kind whatsoever which arises or occurs between the parties in relation to anything 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.
 15. PROPER LAW
The contract shall be governed by English Law and the non-exclusive jurisdiction of the English Courts.
 16. 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.