

CONDITIONS OF SALE

- 1.0 DEFINITIONS**
- 1.1 Ebor Concretes Limited is herein called 'the Company'.
- 1.2 'Buyer' means any person at whose request the Goods are supplied to and / or provided by the Company.
- 1.3 'Goods' shall mean the goods, materials, labour and transport provided by the Company.
- 1.4 The headings are for convenience only and shall not affect construction of these Conditions.
- 2.0 APPLICATION OF THESE CONDITIONS**
- 2.1 These Conditions shall apply to any order or instruction and shall override any terms and conditions, which the Buyer may seek to impose during any negotiations and the ordering of the said Goods provided by the Company.
- 2.2 The Company's employees, servants or agents are not authorised to make any representations unless notified and confirmed in a written notice by the Managing Director of the Company.
- 2.3 These Conditions have been drawn up in the light of the Unfair Contract Terms Act 1977 and the Company's prices reflect the limitation of the liability of the Company which they contain. If a Buyer wishes to contract otherwise than on these Conditions the Company will issue a revised quotation.
- 3.0 QUOTATIONS**
- 3.1 Quotations are submitted by the Company on the understanding that, should any order be placed, it will include all the materials and quantities quoted for, and, should selected items be ordered, or should the quantities of any item ordered be less than the quantity on which the Company's quotation for that item was based, new prices may be submitted where applicable.
- 4.0 INCREASE & DECREASE IN THE COSTS OF THE GOODS**
- 4.1 Where the Buyer's order, specification, drawings and / or description of Goods ordered differ in any details from the description upon which the Company's quotation was based the Company reserve the right to revise the Company's quotation, and where a difference in volume is involved the adjustment in respect of this will not necessarily be on a pro rata basis.
- 4.2 The Company's prices are based on market prices of Goods at the date of the Company's quotation or offer. The Company reserves the right to increase or decrease the cost of the said Goods occurring after the date of the Company's quotation and may notify the Buyer as soon as it is reasonable to do so and thereafter the associated increase or decrease will be adjusted on the Company's final invoice to the Buyer.
- 5.0 CARRIAGE OF THE GOODS**
- 5.1 Unless otherwise agreed in writing the Company's minimum load for delivery is 23 tonnes, and where an order is placed for Goods weighing less than 23 tonnes collectively, or the Buyer makes a specific request for a load or loads less than 23 tonnes, an extra charge for additional haulage shall be made on the basis of the tonnage by which the Company's minimum load exceeds the weight of the consignment, or alternatively the Company reserves the right to deliver at the Company's discretion as and when the Company's transport is in the area.
- 5.2 Where Goods are offered, "delivered to site", the Buyer is to provide sufficient access on a suitable hard road.
- 5.3 The Buyer is to take delivery, unload, and be responsible for any loss or damage to persons, vehicles or goods suffered in connection with such unloading.
- 5.4 Unless specifically agreed all units may be delivered on 45° articulated lorries.
- 5.5 The Company shall not be liable for damages caused by delivery vehicles to buildings, roads, walls, pipes or cables resulting from limited or restricted access or bad ground conditions. The actual offloading point is at the discretion of the driver of the delivery vehicle.
- 5.6 The Buyer shall be responsible for any expenditure incurred by the Company due to delay in unloading vehicles in excess of 1½ hours for which vehicle from the time of its arrival.
- 5.7 Every effort will be made by the Company to provide an accurate estimated time of arrival however a precise time of arrival cannot be guaranteed and the Company shall not be liable for waiting time for cranes or other equipment arising from circumstances beyond the Company's control.
- 5.8 Where delivery is offered "ex stock" such offers are subject to Goods remaining unsold upon receipt of the Buyers order.
- 5.9 The time stated for delivery shall be valid from the date the Company receives the Buyers written acceptance and instructions to proceed, subject to receipt of all necessary information to enable the Company to do so. Delivery times offered are current at time of quotation and are subject to review upon receipt of the Buyers order. Any revision of such time shall be notified to the Buyer before acceptance of the order.
- 5.10 The Company shall not be responsible for non-delivery or delayed delivery caused by an act of God, war or civil commotions, strikes, lockouts or stoppages at the Company's works or the sources from which the Company's raw materials are obtained, or interruption in transport or breakdown of machinery or by the abnormal conditions or consequences arising from any such causes or by any other impediment affecting such delivery.
- 6.0 TESTS & INSPECTIONS**
- 6.1 Tests and inspections may be made at the Company's premises by appointment before despatch. The Company shall not be liable for subsequent defects or breakages during or after unloading.
- 7.0 WARRANTIES**
- 7.1 The Company warrants that the Goods shall be of sound workmanship and materials and shall comply with specification but no representation or warranty is given as to the suitability or fitness of the Goods for any particular purpose and the Buyer shall be totally responsible therefore and acknowledges that it has not relied on the skill or judgement of the Company in selecting the Goods for any purpose. The Buyer shall have no right of action in respect of any terms or representations made by or on behalf of the Company whether orally or in writing or otherwise which may have been made prior to any contract.
- 7.2 Only Goods of the Company's own manufacture are guaranteed against defective materials or faulty workmanship and the Company's liability and obligation under any such guarantee shall be limited to free replacement or repair, or at the Company's option, to refunding the purchase price or a fair proportion thereof, and any liability in respect of consequential damage or loss sustained by the Buyer howsoever arising is expressly excluded.
- 7.3 Any Goods not of the Company's manufacture (including proprietary articles of equipment and accessories supplied with or incorporated in Goods sold by the Company) shall be deemed sold subject to the terms of guarantee, if any, given by the actual manufacturers, and the Company shall be under no personal liability whatsoever in respect thereof otherwise than to afford the customer any reasonable assistance in obtaining such redress as may be available to him against such manufacturers.
- 8.0 LIQUIDATED & ASCERTAINED DAMAGES**
- 8.1 Penalty and liquidated & ascertained damages clauses of any kind, unless specifically stated in the Company's quotation, are not acceptable by the Company, and shall be deemed to have been struck out from all enquiries, orders and the like.
- 8.2 Where the Company undertakes to carry out work or provide services of any kind on premises other than the Company's own, whilst every care will be taken the Company shall be under no liability whatsoever for any loss or damage occasioned to any other party or its contractors, servants, employees, invitees, or otherwise arising from any cause connected in any way with the execution of such services, and the Buyer shall indemnify the Company against any claim by third parties under any statute or at common law.
- 9.0 PAYMENT**
- 9.1 The Conditions of payments are those as specified in the Company's quotation. Payment to the Company's terms shall be the essence of the contract, and the Company may withhold deliveries in the event of any default on the part of the Buyer.
- 9.2 If for any reason, delivery cannot be accepted of any Goods, as and when they are offered, payment of ninety per cent (90%) of the quoted price or revised price as the case may be is to be made, and upon such payment the Goods are to be treated as the Buyer's property (provided always that the Company's Retention of Title under Condition 12 of these Conditions shall apply), but after such offer and before such payment the Goods shall be held at the risk of the Buyer and its expense. The Company undertakes to have any such Goods marked with a distinguishing mark, and has the right to charge for storage at a rate of £1.20 per tonne per week or part thereof.
- 9.3 If the Buyer fails to make payment on the due date then, without limiting any other right or remedy available to the Company, the Company may:
- 9.3.1 cancel the contract or suspend any further deliveries to the Buyer;
- 9.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and
- 9.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 10.0 CANCELLATION**
- 10.1 The suspension or cancellation of any order and / or contract, for any reason whatsoever, shall not, in any way, release the Buyer from unpaid accounts, or from liability under such order and / or contract, to pay the Company for the products manufactured or Goods ordered prior to suspension or cancellation.
- 10.2 Without prejudice to any of the Company's other rights or remedies, the Company shall be entitled forthwith upon the happening of any of the events detailed herein to cancel the contract (at the Company's absolute discretion), suspend further deliveries under this or any other contract with the Buyer, without liability, and if the Goods have been delivered, but not paid for, the price for the Goods thereof shall become immediately due and payable, notwithstanding any previous agreements or arrangement to the contrary.
- 11.0 RETENTION OF TITLE**
- 11.1 All orders in whatever terms are accepted subject to the following Conditions which no person in the Company's employment, or acting in any way as the Company's agent, or purporting so to do, has power to vary. Acceptance of the Goods by the Buyer shall be conclusive evidence before any court of law or arbitrator that these shall apply:
- 11.1.1 The Company's acceptance of any order for Goods shall constitute an agreement to sell the Goods and not a sale of them and no title to the said Goods shall pass to the intending Buyer by reason of delivery or acceptance of same.
- 11.1.2 The Company shall remain the sole and absolute owner of the Goods until such time as the agreed price of the Goods has been paid to the Company by the intended Buyer.
- 11.1.3 Goods the subject of any agreement by the Company to sell shall unless provided otherwise in these Conditions be at the risk of the intending Buyer as soon as they are delivered by the Company to his premises or the agreed delivery address.
- 11.2 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company, and be identified as the Company's property, but the Buyer may resell or use the Goods in the ordinary course of its business.
- 11.3 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so all monies owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) immediately become due and payable. The Company shall be entitled to payment for the Goods as set out above notwithstanding that ownership of any of the Goods has not passed from the Company.
- 11.4 The intending Buyer's right to possession of the Goods shall cease at whichever is the earliest of the following dates:
- 11.4.1 On the expiration of the agreed payment of credit, if any
- 11.4.2 If the intending Buyer makes any voluntary arrangement with its creditors, or (being an individual or firm) becomes bankrupt, or (being a company) becomes subject to an administration order, or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or an emburance takes possession, or a receiver is appointed of any of the property or assets of the Buyer, or the Buyer ceases or threatens to cease to carry on business; or the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 11.5 If Condition 11.4.2 applies, then without prejudice to any other right or remedy available to the Company, the Company may terminate the contract or suspend any further performance under the contract without any liability to the Buyer, and if the Goods have been delivered but not paid for, the Price or revised Price shall become immediately payable notwithstanding any previous agreement or arrangements to the contrary.
- 11.6 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Company may at any time require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, the Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises of the Buyer or any third party where the Goods are stored and repossess the Goods at the Buyers expense.
- 11.7 The intending Buyer shall not apply to the Court under Section 13 of the Insolvency Act 1986 for the appointment of an administrator without giving 14 days notice to the Company, from the date of the said notice the intending Buyer shall not be entitled to remain in possession of any of the Company's Goods.
- 11.8 The intending Buyer shall be at liberty to incorporate the Company's Goods into another of its products or chattels subject to the condition that if Goods, the property of the Company, are admixed or united in any way with those of the intending Buyer, the products thereof shall be deemed for all purposes to be the Company's property.
- 11.9 If Goods, the property of the Company, are united in anyway with the property of any person or persons other than the intending Buyer, the product thereof shall be deemed for all purposes to be owned in common with that other person or those other persons. If a receiver is to be appointed to the intending Buyer and at the time thereof the intending Buyer or the receiver, as agent for the intending Buyer, shall assign to the Company within 7 days all right against the person or persons to whom the Goods have been sold.
- 11.10 If a receiver, manager or any other person acting on behalf of the intending Buyer shall in any way seek to challenge the Company's title to the said Goods, or shall seek to claim that this conditional sale amounts to a charge on the intending Buyer's asset, he shall pay to the Company damages for slander of title.
- 12. INDEMNITY**
- 12.1 The Buyer shall indemnify and keep indemnified the Company against all actions, claims, costs, damages, demands and expenses or other loss arising out of:
- 12.1.1 defects in the Goods to the extent occasioned or contributed to by any act or omission of the Buyer its servants, agents or persons under its control; or
- 12.1.2 any claim by any third party of any intellectual property rights of such third party arising from the use, modification, adaptation of the Goods or incorporation of the Goods into other products by the Buyer.
- 13. WAIVER**
- 13.1 No waiver of any of the Company's rights under these Conditions shall be effective unless notified in writing. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of a Company's right(s) in relation to different circumstances or the recurrence of similar circumstances.
- 14. NOTICES**
- 14.1 Any notice under these Conditions shall be properly given by either party to the other shall be in writing and may be sent by pre-paid first class post or facsimile transmission addressed to that other party at its registered office or principal place of business or such other address as may have been notified in writing pursuant to this provision to such other party and (if sent by post) shall be deemed to have been served in the normal course of the post and (if sent by facsimile transmission) shall be deemed to have been served upon transmission.
- 15. THIRD PARTIES**
- 15.1 No provision of this contract shall be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16. ADJUDICATION**
- 16.1 Any dispute or difference between the Company and the Buyer may be referred by either party to adjudication at any time in accordance with the provisions of Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.
- 17. CONSTRUCTION & JURISDICTION**
- 17.1 English Law shall govern the construction and operation of these Conditions and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts. Each of these Conditions and each paragraph herein shall be construed as a separate Condition.