

## 1. DEFINITIONS

In these Conditions:

**BS EN 206** and **BS 8500**: the European and British Standard, covering the methods of specifying and producing Goods, as amended from time to time.

**Business Day**: a day other than a Saturday, Sunday or public holiday when banks in London are open for business.

**Conditions**: these conditions of sale and any variation of them which is agreed in accordance with these Conditions.

**Contract**: the contract between the Supplier and the Customer for the sale and purchase of the Goods.

**Customer**: the person or company whose order for the Goods is accepted by the Supplier in accordance with these Conditions.

**Goods**: the concrete, mortar or screed goods which the Supplier is to supply under this Contract in accordance with these Conditions.

**Specification**: the specification for the Goods based on BS EN 206 part 1 and BS 8500 part 2 unless otherwise agreed in writing by the Customer and the Supplier.

**Supplier**: Aggregate Industries UK Limited T/A London Concrete.

## 2. BASIS FOR SALE

2.1 These Conditions (and any additional terms contained in the quotation and/or mix design supplied by the Supplier) apply to all sales of the Goods to the exclusion of all other terms and conditions. No terms or conditions written upon, delivered with, or contained in the Customer's purchase order, specification or similar document or which are implied by trade, custom, practice

or course of dealing will form part of the Contract.

2.2 Each order for the Goods by the Customer to the Supplier constitutes an offer by the Customer to purchase the Goods subject to these Conditions and shall be only be deemed accepted by

the Supplier either by issuing an acknowledgement of order or (if earlier) delivering the Goods.

2.3 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

2.4 The Customer is responsible for ensuring that the terms of any order and any applicable Specification are complete and accurate.

2.5 Any recommendation, statement or representation relating to any use, strength, storage or handling of the Goods made by the Supplier either in sales and technical literature or in response to

a specific enquiry or otherwise is given in good faith but it is strictly for the Customer to satisfy itself of the suitability of the Goods for its own particular purposes. The Customer acknowledges

that it has not relied on any such recommendation, statement or representation and they shall not form part of the Contract or have contractual force.

2.6 The quality, description and Specification of the Goods shall be those set out in the Supplier's quotation, or as otherwise set out in the delivery note at delivery. The quantity shall be set out in

the delivery note.

## 3. DELIVERY

3.1 Subject to Condition 3.7, the Customer shall specify the time as well as the date of delivery and shall have the facilities prepared for the acceptance of the Goods.

3.2 The Customer must provide safe, unhindered and adequate access to the point of discharge of the Goods away from the metalled highway, including adequate manoeuvring space for the delivery vehicle. Failure to comply shall entitle the Supplier to refuse to make delivery and to charge the Customer for any costs incurred.

3.3 The Customer shall indemnify the Supplier and its drivers against any damage or injury caused by the acts and/or omissions of the Customer, its employees, sub-contractors or agents while

the delivery vehicle is present on or accessing the Customer's site.

3.4 Delivery of the Goods shall take place either on discharge into the Customer's vehicle at the Supplier's premises or on discharge from the Supplier's vehicle at the Customer's site or as otherwise agreed by the parties.

3.5 On any delivery (howsoever effected), a person authorized by the Customer must sign the delivery note to acknowledge and record in writing:

- the quantity and Specification on the note describes the Goods required by the Customer;
- the arrival time and completion of discharge of the Goods at the Customer's site and any delay after the arrival, including waiting time; and
- the authorisation of any addition to the Goods of water or of any other materials, after they have been declared by the Supplier's driver as being ready for acceptance.

3.6 Where the Customer fails to comply with any of the conditions contained in this Condition 3 or the Supplier is unable to deliver the Goods on time because of the Customer's default then:

- the Goods will be deemed to have been delivered with risk passing to the Customer; and
- the Supplier may sell or dispose of the Goods whereupon the Customer will be liable for all related costs and expenses.

3.7 Any time, period or date specified by the Supplier for delivery of the Goods is an estimate only. The Supplier shall not be liable for any damages or losses arising out of failure to meet such time, period or date. Time for delivery shall not be of the essence of the Contract.

3.8 The "Arrived on site" time recorded on the delivery note refers to the start time of discharge, with the "Left site" time referring to the end of discharge, therefore separate start or finish time of discharge is not recorded. All other information as per EN 206-2: 7.3 is recorded.

3.9 The Additional Minutes recorded on the delivery note represents any time that the driver has incurred between arrival on site and discharge of the goods or between discharge of the goods and departure from site.

## 4. RISK AND TITLE

4.1 Ownership of and the risk in the Goods shall pass to the Customer on delivery as provided by these Conditions.

## 5. PRICE

5.1 The price payable for the Goods shall be the price stated in the quotation or the Supplier's applicable prices at the date of delivery where no quotation is given. The price quoted for the Goods

is exclusive of any value added tax. The Customer shall pay any such VAT or any other form of taxation imposed from time to time on the Goods.

5.2 The price in any quotation may be varied by the Supplier at any time upon giving written notice (including by email) and the varied price shall apply to all orders delivered after the date specified in the notice.

5.3 Without prejudice to the generality of Condition 5.2, the Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the

cost of the Goods that is due to:

- any factor beyond the Supplier's control (including increases in aggregate levy, taxes and duties, and increases in labour, materials and other manufacturing or transportation costs and compliance costs to meet statutory obligations or British Standards);
- any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

5.4 The Supplier reserves the right to charge the Customer the following additional charges where:

- Out of hours charge**: the delivery of Goods is required by the Customer outside the Supplier's normal working hours of Monday-Friday 07.30 to 17.30 and Saturday 07.30 to 12.00;
- Part load charge**: the Customer requests delivery of the Goods in part loads rather than full loads;
- Waiting time charge**: for any reason and irrespective of load size, the delivery vehicle is unable to discharge its load within 30 minutes of arrival at the Customer's site;
- Cancellation charge(s)**: the Customer cancels the order for the Goods for any reason (i) within less than 24 hours of delivery; or (ii) at any time after batching has commenced; or (iii) the customer prevents discharge of the Goods within two hours of batching (or as otherwise agreed at the Supplier's discretion but at the Customer's sole risk), the Customer will

be charged for the goods, its delivery, return and disposal (as applicable);

- Surplus removal charge**: the Customer requests the Supplier to remove surplus Goods; and/or
- Hot Water charges**: the Customer requests hot water to be added to the mix of the Goods.

5.5 The Supplier may invoice the Customer for the Goods on or at any time after delivery.

5.6 In the event of the Customer varying, cancelling or refusing to accept delivery of an order the Customer shall pay all additional costs that may be incurred by the Supplier. Where a cancellation instruction is received by the Supplier after batching of the Goods has started, the Customer shall pay the Supplier for the Goods in full plus a charge for safe disposal.

## 6. PAYMENT

6.1 For customers with an agreed credit facility (granted upon fulfilment of our strict application criteria but may be withdrawn at London Concrete's discretion), the Customer shall pay the invoice

in full and in cleared funds by no later than 30 days following the month of the date of invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

6.2 The Supplier may refuse (under this Contract or other contracts with the Customer or any of its associated companies) to accept or complete any order, suspend supplies, impose special conditions or cancel the Contract if the Customer's credit limit is or will be exceeded on delivery; or where the Customer fails to comply with these Conditions; or if the Customer becomes

- subject to any of the events listed in Condition 8.2.
- 6.3 In the case of late payment the Customer shall pay the Supplier interest on the net payment due at the rate set by the then current order made in accordance with section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (or any re-enactment of that section made from time to time).
- 6.4 Whether in relation to this Contract or other contracts between the parties, the Customer shall not have any right of set-off, counterclaim, discount, abatement or otherwise, nor to withhold any payments due to the Supplier in the event of any dispute.
- 6.5 In the event of any breach of these Conditions by the Customer, or dispute between the parties relating to this Contract or any other contract between them, the Supplier shall be entitled to suspend, withdraw or terminate any discount or rebate agreement between the Parties, affecting this Contract or any other contract between them.

## 7. QUALITY

- 7.1 The Supplier warrants that the Goods shall conform in all material respects with the Specification. However the Supplier shall have no liability in respect of any minor deviations from any Specification if the Goods are still compliant with applicable regulations or an independent expert has adjudicated that the Goods are still suitable for uses appropriate with such Specification.
- 7.2 Subject to the provisions of Conditions 7 and 9, where Goods supplied by the Supplier are proved to not conform to the warranty in Condition 7.1 or are otherwise not in accordance with the Contract ("**Defective Goods**"):
- (a) the Supplier will at its sole discretion either (i) replace the Defective Goods as promptly as practicable; or (ii) refund the price paid for the Defective Goods; and
  - (b) the Supplier shall reimburse the Customer the cost of physically removing the Defective Goods.
- 7.3 In any event, the Supplier shall not be liable under Condition 7.2 for any Defective Goods unless the Customer:
- (a) notifies the Supplier in writing of the alleged defect or failure as soon as reasonably practicable after discovery of the Defective Goods and in any event within 10 Business Days of delivery, or where the defect or failure was not apparent on reasonable inspection at the time of delivery, within 10 Business Days of the time when the defect or failure ought reasonably to have been discovered or two Business Days of delivery if the volume of Goods delivered does not correspond to the volume shown on the delivery note; and
  - (b) allows the Supplier all reasonable facilities to investigate any such defect or failure in situ and test the Defective Goods or samples promptly and to advise the Customer of any remedial action which may be appropriate; and
  - (c) follows any reasonable remedial action recommended to it by the Supplier; and
  - (d) provides documentary evidence satisfactory to the Supplier that the Goods do not meet the Specification; and
  - (e) within six months after the delivery of the Goods or within a reasonable longer period which the Customer may show to be necessary due to circumstances beyond its control, the Customer shall submit to the Supplier in writing a final claim giving details of each item of cost or the repair or reinstatement necessitated as a result of the Defective Goods.
- 7.4 The Supplier shall not be liable for Defective Goods in any of the following events:
- (a) the Customer makes any further use of such Defective Goods or the Customer continues works or further constructions after giving notice in accordance with Condition 7.3;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the specification, mix design or installation of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the Customer authorises the alteration of the design mix or the Specification or adds anything whatsoever to the Goods or fails to keep appropriate records relevant to its receipt and use;
  - (d) the defect arises as a result of the Supplier following any mix design or specification supplied by the Customer;
  - (e) the Goods are assessed applying tests which do not comply with the principles set out in Condition 7.6;
  - (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal load or working conditions or unsuitable application, wrongful handling or placing of the Goods; or
  - (g) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
  - (h) the total price for the Goods has not been paid by the due date for payment.
  - (i) the defect was apparent at the time of delivery
- 7.5 No warranty or representation is given that the Goods are suitable for any particular purpose or application (even if the Supplier has knowledge of that particular purpose or application) and 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 (as amended)) are, to the fullest extent permitted by law, excluded from the Contract.
- 7.6 Any sampling and testing shall be carried out in accordance with such British Standard or European Standard or specification as is accepted by the Supplier to be appropriate. Compliance with such standard or specification shall be discharged by the Supplier at the time of supply of the Goods to the Customer and on the basis that the Supplier is the supplier and not the user of the Goods. No liability is accepted by the Supplier for surface finish.

## 8. TERMINATION AND SUSPENSION

- 8.1 If the Customer becomes subject to any of the events listed in Condition 8.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.
- 8.2 For the purposes of Condition 8.1, the relevant events are:
- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
  - (d) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
  - (e) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
  - (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
  - (g) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - (h) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - (i) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
  - (j) the Customer fails to pay any amount due under this Contract on the due date for payment; or
  - (k) the Customer commits a breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 20 Business Days after being notified in writing to do so.
- 8.3 Without limiting its other rights or remedies, the Supplier may cancel or suspend the provision of the Goods under the Contract or any other contract between the Customer and the Supplier and sell or otherwise dispose of any such Goods, if the Customer becomes subject to any of the events listed in Condition 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 9. LIMITATION OF LIABILITY

- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - (d) defective products under the Consumer Protection Act 1987; or
  - (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to Condition 9.1:
- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, liquidated and/or unliquidated damages attributable to delay and/or disruption, or any indirect or consequential loss arising under or in connection with the Contract; and
  - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed three times the price of the Defective Goods save that in the event that such sum is less than the cost of physical removal provided for in Condition 7.2 above, the Supplier shall be liable for the additional cost of physical removal of the Defective Goods up to a maximum of a further sum of £50,000.00.

9.3 The Customer acknowledges that it bears the risk of all additional expenses, costs, losses, damages and liabilities which may be incurred in excess of the £50,000 in Condition 9.2 (b).

The Customer acknowledges that it can obtain insurance to cover such potential expenses, costs, losses, damages and liabilities. Should the Customer wish the Supplier to have a higher limit of liability this must be raised with the Supplier at the earliest opportunity and expressly agreed by the Supplier in writing.

9.4 The Customer shall be under a strict duty to mitigate its loss arising from the supply of Defective Goods.

## 10. GENERAL

10.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including without limitation strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, non-availability of material, breakdown of plant or machinery, explosions, collapse of building structures, fires, floods, storms, earthquakes, accidents, transport difficulties or delays, epidemics or similar events, natural disasters or adverse weather conditions, or default of suppliers or subcontractors.

10.2 Any notice to be given by either party to the other shall be in writing addressed to the party's registered office or principal place of business or such other address as may be notified to the other party from time to time.

10.3 The benefit of this Contract may not be assigned or transferred by the Customer. The Supplier may assign or subcontract or deal in any manner with all or any of its rights or obligations under the Contract.

10.4 Any provision of the Contract held to be illegal, invalid, void, voidable or unenforceable, in whole or in part, shall be deemed severable and all remaining conditions of the Contract shall not be affected.

10.5 No waiver or variation to these Conditions is effective unless expressly confirmed in writing by a director of the Supplier. No failure or delay by the Supplier to exercise any right or remedy shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

10.6 A person who is not a party to the Contract shall not have any rights to enforce its terms.

10.7 The Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts for any dispute in respect of these Conditions.

10.8 Concrete may contain hydration controlling admixture.

### WARNING

Concrete can cause injury by burning. Protective clothing must be worn at all times. If contact is made with the skin the affected area must be washed immediately.