



## Terms Conditions

Bagforce 2 Ltd Terms & Conditions which apply to all sales are stipulated in the contents below.  
**The customers attention is drawn in particular to the provisions of paragraph 10 : Limitation of Liability.**

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### 1. Definitions

#### 1.1 In these Conditions:

**Additional Charge** means any additional charges payable in addition to the Contract Price pursuant to these Conditions.

**Applicable Laws** means all applicable laws, statutes, secondary legislation, byelaws, regulations, directors, common law, judgements, orders or decisions of any court, codes of practice, guidance notes and circulation (which have legal effect) and directions by any regulatory authority as amended, modified or varied and in force from time to time.

**Company** means Bagforce 2 Ltd : Company Registration No 9026706 Registered Address: Unit 2, Kimberley, Statham Lane, Harby, Leicestershire LE14 4DA

**Conditions** means the terms and conditions set out in this document and includes any special terms and conditions set out in the Company's quotation or otherwise agreed in writing between the Company and the Purchaser.

**Consumer** means a UK Consumer

**Consumer Contract** means a contract between the Company and a Consumer (but excluding a Trader) for the sale of Materials incorporating these Conditions.

**Consumer Laws** means the UK Consumer Laws

**Consumer Rights Directive** means the European Directive on Consumer rights (Directive 2011/83/EU).

**Contract** means the contract between the Company and the Purchaser for the sale of Materials incorporating these Conditions.

**Contract Price** means the amount payable by the Purchaser to the Company pursuant to the Contract in respect of the supply of the Materials.

**Defect** means any material shortcoming or material non-conformity in the condition and/or attributes of the Materials as compared with the requirements of the Contract.

**Delivery** means (in the case of collected Materials) the time when the Purchaser is notified that the Materials are available for collection or (in the case of delivered Materials) the time when the Materials arrive at the Delivery Destination, subject to Clause 6 as the context permits.

**Delivery Destination** means (in the case of collected Materials) the place where the Materials are available for collection or (in the case of delivered Materials) the Purchaser's nominated site for Delivery and the point of discharge of the Materials.

**Delivery Ticket** means the proof of delivery/collection ticket to be signed by the Purchaser or the Purchaser's authorised representative and returned to the Company setting out various details including the Purchaser's details and a description of the product type and quantity, delivery date and purchase order number (and which may also include reference to and confirmation of acceptance by the Purchaser of these Conditions).

**Depot** means the place from where the Materials are delivered or collected.

**Due Date** means the end of the month following the month of delivery/invoice of the Materials to the Purchaser, or their collection by the Purchaser – whichever is the sooner.

**Losses** means all and any costs claims damages or liabilities whether direct or indirect suffered or incurred by the Company.

**Materials** means any goods, construction materials or products agreed in the Quotation to be supplied by the Company to the Purchaser (including any part or parts of them) whether supplied in bulk or bags or a form of container and shall (in the context of exclusions or limitations of the Company's liability contained in the Conditions or where the context admits or requires) include goods, materials or products as aforesaid which are defective or otherwise non-compliant with the obligations of the Company pursuant to the Contract or otherwise.

**Minimum Load** means such minimum loads as may be specified in the Quotation.

**Purchaser** means either a UK Consumer, an ROI Consumer or a Trader (whether person, firm or company) who purchases the Materials from the Company.

**Quotation** means the quotation, estimate or price for the sale of the Materials given by the Company to the Purchaser.

**Recommendations** means the recommendations relating to the Materials including the handling, transportation, storage, use, mixing, preparing, finishing, discharge, loading or health and safety of the Materials either made available by the Company or generally known in accordance with good industry practice or customs or contained in the corresponding Industry Certification, Specification, or as set out on the Website or literature relevant to the Materials, or otherwise as notified to the Purchaser orally or in writing.

**Relevant Currency** means the currency applicable being pounds sterling

**Relevant Jurisdiction** means in England & Wales.

**Safety Data Sheet** means the relevant safety data sheet for the Materials available on the Website or delivered with the Materials.

**Site Rules** means all or any rules regulations or procedures relating to a Delivery Destination, a Depot and/or a Third- Party Site including approvals, procedures, health and safety policies or action plans in relation to incidents as notified by the Company or the Third Party from time to time.

**Specification** means the specification for the Materials are described in the Safety Data Sheet and in the relevant British, Irish or European standard applicable to the Materials in the Relevant Jurisdiction with any minor changes which do not materially affect the quality and performance of the Materials or which is required by law or applicable regulatory requirements as set out in the relevant British, Irish and/or European standards applicable to the Materials in the Relevant Jurisdiction.

**Third Party** means any person firm or company other than the Purchaser or the Company.

**Third Party Site** means in the case of Materials which are to be collected by the Purchaser from a Third Party, the site belonging to the Third Party from which the Materials are made available for collection.



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**Trader** means a person acting for purposes relating to that person's trade, business, craft, or profession, whether acting personally or through another person acting in the Trader's name or on the Trader's behalf in accordance with Consumer Laws and shall not include a UK Consumer or an ROI Consumer.

**Unsafe** means such matter, act or thing posing a risk, actual or potential, to persons, property or the environment, and for such purpose the environment means all or any of the following media namely air, water and land, and any natural organisms supported by any of those media.

**UK Consumer** means an individual whose permanent place of residence is in the United Kingdom who is acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession in accordance with section 2(3) of the Consumer Rights Act 2015.

**UK Consumer Laws** means the UK's Consumer Rights Act 2015 and the UK's Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

**Website** means [www.bagforce.co.uk](http://www.bagforce.co.uk)

### 1.2 Interpretation:

a) A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

b) A reference to a party includes its personal representatives, successors and permitted assigns.

c) A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

e) A reference to **writing** or **written** excludes fax but not e mail.

### 2. Basis Of The Contract

All Materials sold by the Company shall be subject to these Conditions, and any Contract shall be on the basis of these Conditions to the exclusion of all other terms & conditions and any terms implied by law, trade, custom, practice or course of dealing.

2.1 Any Quotation issued by the Company may be withdrawn at any time before the acceptance of an order – (ie where there is a clear acceptance of the Terms of the Quotation and an intention to proceed whether implied or confirmed verbally or in writing), and shall be deemed to be withdrawn if an order is not received within 30 days of the date of Quotation. The Purchaser is responsible for ensuring the terms of any Quotation are complete and accurate.

2.2 A Quotation does not constitute an offer to supply the "Materials" on any other basis than a contract incorporating these conditions and no contract shall exist until there has been an order from the Purchaser which has been accepted by the Company and any such order shall be deemed to be an offer by the Purchaser to buy the Materials subject to these conditions.

2.3 The quantity and description of the "Materials" shall be as set out in the Delivery Ticket or the Quotation.

2.4 The Company reserves the right to make any change to the specification of the "Materials" which does not materially affect the quality and performance of the "Materials" or which is required by law or applicable regulatory requirements.

2.5 Any purported amendment or variation to these Conditions or purported cancellation by the Purchaser of the Contract in whole or in part shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.

2.6 The Purchaser acknowledges that it has not relied on any statement, promise or representation in relation to the Materials including the use, strength, fitness for any purpose, surface area yield, storage or handling of such Materials made or given by or on behalf of the Company either before or after the date of the Contract which is not set out in the Contract.

2.7 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's literature or on the Website are issued for the sole purpose of giving product information in relation to the Materials described in them. They shall not form part of the Contract or be treated as a description of the Materials unless expressly stated in writing in the Quotation. Where the Company provides a sample of the Materials which are later supplied in bulk the Company does not guarantee that every item in the bulk corresponds with the sample. No Materials are sold by sample.

### 3 PRICE

3.1 Unless otherwise agreed by the Company in writing, the Contract Price for the Materials, whether delivered to or collected by the Purchaser, shall be calculated by reference to the prices set out in the Quotation in GBP only. The Contract Price for any order which is made by reference to weight or volume, or cubic metre only shall be calculated accordingly.

3.2 The Contract Price may be increased at any time by the Company upon giving to the Purchaser at least one month's notice in writing. Any orders accepted by the Company after the expiry of the one-month period referred to in this Clause 3.2, shall automatically be determined by reference to the increased rate.

3.3 Clauses 3.1 and 3.2 shall override any other provision relating to price in any estimate given by the Company or which the Purchaser seeks to impose, or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.4 The Contract Price shall be exclusive of any VAT or other applicable sales taxes (save for those provided for in Clause 3.6) applicable in the Relevant Jurisdiction and of any Additional Charges, all of which amounts the Purchaser shall pay in addition to and on the same due date as the Contract Price for the Materials.

3.5 Without prejudice to any other rights or remedy available to the Company, an Additional Charge may be made if:

3.5.1 The Purchaser incurs any of the additional charges set out in the Quotation; or

3.5.2 The Purchaser is notified prior to or at the time of acceptance of the order that an additional charge will be made for a delivery below the Minimum Load or where two different types of the Materials are loaded onto one vehicle; or

3.5.3 delivery is made outside the Company's normal working hours or on a bank or public holiday in the Relevant Jurisdiction; or

3.5.4 The Purchaser re-directs, refuses or fails to take or permit a delivery or fails to give sufficient delivery instructions or delays delivery; or

3.5.5 The Purchaser returns part of the delivery having failed to accept the full ordered quantity of Materials; or

3.5.6 The unloading of the delivery vehicle is delayed, or the Materials are not discharged within the times permitted as are set out in the Quotation (time being of the essence for the purposes of this Clause 3.5.6 or

3.5.7 The delivery is aborted due to unsuitable or unsafe access to the Delivery Destination; or

3.5.8 The Purchaser makes a request to change the delivery dates, address, quantity or types of Materials ordered, or to change the Specification; or

3.5.9 The Purchaser varies or cancels any delivery without giving at least 48 hours' notice to the Company; or

3.5.10 The Purchaser changes a date for delivery of the Materials without giving at least 48 hours written notice to the Company; or

3.5.11 The rate of aggregate levy or carbon levy increases

3.6 Unless stated otherwise on the Quotation, the Contract Price is inclusive of the aggregates levy and/or carbon levy due and payable at the appropriate rate (if any) in the Relevant Jurisdiction.

### 4 MATERIALS: Specifications & Use



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- 4.1 The specification and suggested use and application of the Materials are described in the Specification. The Company shall have no liability to the Purchaser as to the suitability of the Materials for any particular purpose and the Purchaser must rely on its own skill and judgment.
- 4.2 The Company does not accept any responsibility or liability for the design of the Materials and the Purchaser must independently verify that its choice of Materials and proposed use of the Materials is suitable for its purpose, and the Purchaser must rely on its skill and judgement.
- 4.3 The Company shall not be liable for any Losses arising out of any failure to comply with all and any Recommendations.
- 4.4 The Company shall not be liable for (or for the characteristics of) any of the Materials which are, at the request of the Purchaser, not manufactured in accordance with the Specification.
- 4.5 The Purchaser acknowledges that the Materials may contain substances which may be Unsafe, and the Purchaser shall take all necessary steps in the use of the Materials to ensure no such harm or damage is caused.
- 4.6 The Purchaser undertakes to the Company that it has in place all necessary permits, licences, consents and authorisations of any type whatsoever, in relation to the activities carried out by the Purchaser for which the Materials are required (Authorisations) or related to the nature and type of the Delivery Destination and its surrounding areas and habitat including without limitation, any engineering works in or around water courses at or near to the Delivery Destination. The Purchaser shall supply to the Company on request and prior to Delivery, copies of all Authorisations. The Company shall not be liable for any failure of the Purchaser to obtain or comply with the Authorisations.
- 4.7 The Company is under no obligation to do so, but if, in its absolute discretion, the Company provides sketches, plans, diagrams or similar documents in advance of the provision of the Materials, then any such material is intended for illustrative purposes only and is not intended to provide any form of Specification nor to guarantee specific results and shall not form part of the Specification. For the avoidance of doubt the Company is not liable for the design of the Specification or all or any part of the Materials.
- 4.8 Each provision of this Clause 4 which states that the Company shall not be liable for a matter or thing shall include an obligation on the part of the Purchaser fully and effectually to indemnify the Company from and against all Losses arising from or in consequence of that matter or thing.
- 5 INVOICING, PAYMENT AND DEFAULT**
- 5.1 An invoice will be raised as per the Quotation/Order immediately after delivery of the said materials unless otherwise stated on the Quotation/Order.
- 5.2 Any issues relating to the invoice contents or discrepancies affecting the agreed Quotation/Contract price, must be raised immediately by contacting the relevant depot, and within 10 days of receipt of invoice in writing by e-mail to accounts@bagforce.co.uk stating the nature of the discrepancy.
- 5.3 Save where Clause 5.2, 5.4 applies and subject to Clause 5.5, payment of the Contract Price for the Materials shall be made in the Relevant Currency in cleared funds on or before the Due Date.
- 5.4 Time for payment shall be of the essence and notwithstanding any other provision of the Contract all sums owing to the Company under the Contract shall become due and payable immediately on its termination.
- 5.5 The Purchaser shall make all payments due under the Contract without deduction for set off, counterclaim, abatement or otherwise.
- 5.6 Where the Purchaser is a Consumer payment of the Contract Price for the Materials shall be made in the Relevant Currency in cleared funds on or before the Delivery of the Materials.
- 5.7 The Company reserves the right in its absolute discretion to require payment by the Purchaser for any Materials that have already been supplied by way of cleared funds before further Materials are supplied notwithstanding any previous agreement to provide credit to the Purchaser.
- 5.8 If the Purchaser:
- 5.8.1 fails to make any payment to the Company on the Due Date; or
  - 5.8.2 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
  - 5.8.3 exceeds any credit limit assigned to the Purchaser from time to time by the Company; or
  - 5.8.4 commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts; or
  - 5.8.5 has a petition filed, notice given, resolution passed, or order made, for or in connection with its winding up or bankruptcy; or
  - 5.8.6 is the subject of an application to court or order for the appointment of an administrator or similar or analogous proceedings in the Relevant Jurisdiction; or
  - 5.8.7 has a receiver or an administrative receiver or administrator appointed over any of its assets or similar or analogous proceedings in the Relevant Jurisdiction; or
  - 5.8.8 is in breach of any term of this Contract and (where such breach is capable of remedy) fails to remedy such breach within 14 days of being so requested to do so by the Company; or
  - 5.8.9 (being an individual) is the subject of a bankruptcy petition or order or similar or analogous proceedings in the Relevant Jurisdiction; or
  - 5.8.10 (being an individual) dies or by reason of illness or incapacity (whether physical or mental), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
  - 5.8.11 suspends, or threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 5.8.12 suffers deterioration in its financial position to such an extent that in the Company's reasonable opinion the Purchaser's capability adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
  - 5.8.13 is in breach of the Contract or these Conditions;
- then the full balance outstanding on any account between the Company and the Purchaser shall become immediately payable and the Company shall be entitled to do one or more of the following (without prejudice to any other right or remedy it may have):
- (i) require payment in cash or cleared funds in advance of delivery of any undelivered Materials; or
  - (ii) immediately and without notice cancel or suspend any further delivery to the Purchaser under the Contract; or
  - (iii) immediately and without notice sell or otherwise dispose of any Materials which are subject of the Contract; or
  - (iv) terminate the Contract with immediate effect by giving notice to the Purchaser.
- 5.9 Where any payments or sums due to the Company under the Contract are not paid by the Due Date then the payments or sums remaining due shall carry interest at the rate of 4% per annum above Barclays Bank Plc base rate in force from time to time from the Due Date until the date on which the payment is made, whether before or after judgment. The Purchaser shall pay the interest together with the overdue amount
- 6 DELIVERY INCLUDING SUB CONTRACTOR DELIVERY**
- 6.1 The Purchaser shall ensure that the Company has reasonable prior notice (which shall not be less than 5 Business/Working Days ie Monday to Friday only) of the required time and date of delivery or collection, and where the Materials are being delivered, that the Company is given sufficient particulars of the Delivery Destination
- 6.2 If the Company is unable to deliver or prevented or delayed in delivering Materials because of inadequate instructions, insufficient storage capacity of the Purchaser at the Delivery Destination, unsuitable personnel at the Delivery Destination at the time of delivery to receive the Materials, inadequate or unsafe discharge conditions at the Delivery Destination, the Purchaser fails to take or permit delivery of the Materials, the Purchaser fails to obtain appropriate licences or authorisations, Delivery shall be deemed to take place at the time when the Company has tendered delivery of the Materials.



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- 6.3 The Company shall use reasonable efforts to comply with any time or date agreed by the Company for delivery of the Materials, but any dates and times are intended for guidance purposes only and shall not be of the essence and shall not be capable of being made of the essence by notice from the Purchaser. If no times or dates are agreed, subject to Clause 6.10 the Materials shall be delivered to the Purchaser within a reasonable time of the acceptance of the order. The Company may deliver the Materials earlier as well as later than any dates and times agreed by the Company, and the Purchaser must accept the delivery of the Materials accordingly.
- 6.4 The Company may deliver the Materials by separate instalments and each instalment shall be invoiced and paid for in accordance with the Contract. Each instalment shall for the purpose of delivery be treated as a separate supply and a failure to deliver any instalment or any claim by the Purchaser in respect of any instalment shall not entitle the Purchaser to repudiate, cancel or terminate the Contract.
- 6.5 The Company, its agents and/or contractors shall not be obliged to deliver any Materials to the Delivery Destination if the Company or its agents or contractors suffer failure of any of the safety equipment designed for use in the course of delivery by the Company, its agents or contractors; or where the access to the Delivery Destination, equipment at the Delivery Destination or onsite manoeuvrability of the Delivery Destination is unsuitable, hazardous or inadequate for the proper and safe unloading of the Materials, or where personnel at the Delivery Destination are rude, offensive or abusive to the Company's employees, contractors or agents. The Purchaser shall indemnify and keep the Company indemnified against any Losses arising from the access to the Delivery Destination, equipment at the Delivery Destination or onsite manoeuvrability of the Delivery Destination being unsuitable, hazardous or inadequate or the Purchaser's personnel being rude, offensive or abusive.
- 6.6 The Company shall not be obliged to deliver any Materials to any Delivery Destination where, in the opinion of the Company (in its absolute discretion), the Delivery Destination or route to the Delivery Destination is Unsafe or where the conditions for safe delivery have not been met (including the condition and state of repair of the receptacle for the Materials (if any) or in the event of any such receptacle suffering any blockage in whole or in part or any other factor relevant to the rendering discharging of the load, in the reasonable opinion of the Company or the delivery driver, Unsafe.
- 6.7 The Company shall have no obligation to provide any Materials to the Purchaser if the Company has no availability of Materials due to, without limitation, any of the following:
- 6.7.1 Lack of mineral or material at any Company site whether due to operational issues or otherwise; or
  - 6.7.2 Lack of any other materials which are necessary for the Company to provide the Materials; or
  - 6.7.3 Lack of hauler services necessary to transport the Materials to the Purchaser
- 6.8 Any operational issues which may prevent the Company being able to supply the required volumes shall be notified to the Purchaser as soon as practicable.
- 6.9 If the Materials are requested by the Purchaser to be delivered and left on a street or public highway the Purchaser is responsible for compliance with all laws and regulations applicable in the Relevant Jurisdiction and the Purchaser shall take all measures required to ensure the safety and protection at all times of persons or property. The Purchaser shall be responsible for all damages, liabilities, costs, claims, losses or expenses incurred or paid by any other person (including the Company) in connection with the Materials being left on a street or public highway.
- 6.10 The Purchaser shall ensure that it provides to the Company the correct address for the Delivery Destination and contact names for Delivery, and the Company shall have no liability to the Purchaser where the Company is not given sufficient information to enable it to deliver the Materials to the Delivery Destination, or where a neighbouring site to the Delivery Destination accepts the Materials intentionally or unintentionally.
- 6.11 The Company may terminate the Contract if there is a material delay or failure to collect the Materials. For the purposes of this Clause 6.9, *material delay or failure* means a delay or failure of the Purchaser to collect, manage or move Materials from a Depot which (a) has a serious effect on the benefit the Company would otherwise derive from a substantial portion of the Contract or (b) is a continuing or repeated delay or failure.
- 6.12 Subject to Clause 6.11, the Company shall not be liable to a Purchaser for any Losses whether:
- 6.12.1 direct; or
  - 6.12.2 indirect or consequential including, for the avoidance of doubt:
    - 6.12.2.1.1 any liability to any third party
    - 6.12.2.1.2 pure economic loss
    - 6.12.2.1.3 loss of profits
    - 6.12.2.1.4 loss of business
    - 6.12.2.1.5 loss of goodwill; or
  - 6.12.3 costs, charges or expenses resulting from any delay in the delivery of the Materials or failure to deliver the Materials within a reasonable time (whether such delay or failure is caused by the Company's negligence or otherwise) subject to Clause 6.11. No delay or failure to deliver the Materials shall entitle the Purchaser to terminate the Contract unless it continues for 30 days or more.
- 6.13 Should the Purchaser not terminate the Contract under Clause 6.11, then any liability of the Company for continued non-delivery shall be limited to either:
- 6.13.1 supplying Materials equivalent to the delayed or non-delivered Materials, free of charge; or
  - 6.13.2 issuing a credit note in respect of the delayed or non-delivered Materials at the pro rata Contract Price.
- 6.14 Where the Purchaser signs a Delivery Ticket or advice note this shall be conclusive evidence that the Materials have been inspected and accepted in full by the Purchaser.
- 6.15 Any claimed discrepancy in quantities or sizes or quality must be reported by the Purchaser to the Company within 48 hrs of delivery/collection or as reasonably practical and in all cases, and the Purchaser must give written notice by e-mail in order for any claim to be considered by the Company.
- 7 Inspection & Shortages**
- 7.1 The Company shall use reasonable endeavours to supply the quantity of Materials provided for by the Contract and to notify the Purchaser of any surplus or shortfall in the quantity of Materials delivered. The Purchaser shall not be entitled to object to or reject the Materials (or part) by reason of any such surplus or shortfall.
- 7.2 If the Purchaser has a claim for short delivery, it must telephone the Company as soon as reasonably practicable and shall then advise the Company in writing within 48 hours of Delivery of any such claim (the Notice Procedure).
- 7.3 If the Notice Procedure is not followed the Materials will be deemed to have been Delivered in the quantities shown on the Delivery Ticket or, where there is no Delivery Ticket containing such details, the quantities shown on the consignment note, and the Purchaser shall not be entitled to make a claim in respect of an alleged shortfall in the Material.
- 7.4 Subject to Clauses above, the Company's liability to a Purchaser for any shortfall is limited to:
- 7.4.1 making good the shortfall within a reasonable time; or
  - 7.4.2 issuing a credit note for the shortfall at the pro rata Contract Price.
- 7.5 The Purchaser must also follow the Notice Procedure where it is or would have been apparent on a reasonable inspection at the time of Delivery that the Materials are not in conformity with the Contract. If the Purchaser fails to follow the Notice Procedure the Materials will be deemed to have been accepted and the Purchaser shall not be entitled to reject the Materials.



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7.6 The Company shall not be obliged to provide to the Purchaser copies of any Delivery Tickets which are, at the time of the request from the Purchaser, more than six months old.

### 8 Risk & Title

8.1 Risk in the Materials shall pass to the Purchaser on delivery or collection.

8.2 Ownership of the Materials shall not pass to the Purchaser until the Company has received payment in cleared funds of all sums owed by the Purchaser to the Company under the Contract and under any other contract between the Company and the Purchaser in respect of which payment has become due.

8.3 The Company shall be entitled at any time to recover any or all of the Materials in the Purchaser's possession to which the Company has title and for that purpose the Company, its servants or agents may with transport as is necessary enter upon any premises occupied by the Purchaser or to which the Purchaser has access and where the Materials may be or are believed to be situated.

8.4 The Company shall be entitled to recover payment for the Materials (and VAT, other sales taxes and Additional Charges applicable in the Relevant Jurisdiction) from the Purchaser even though the ownership of the Materials has not passed from the Company to the Purchaser.

8.5 The Company shall be entitled at any time to inspect or recover any or all of the Materials in the Purchaser's possession to which the Company has title and for that purpose the Purchaser hereby permits the Company or its servants, agents or contractors to enter upon any premises occupied by the Purchaser or to which the Purchaser has access and where the Materials may be or are believed to be situated.

8.6 On termination of the Contract, the Company's rights under this Clause 8 shall remain in effect.

8.7 The Contract will be deemed to be terminated on completion as per the fulfilment of the Quotation/Order or by variance to these Terms as determined by the Company & agreed by the Purchaser.

### 9 Quality

9.1 The Company warrants that (subject to the other provisions of the Conditions) on Delivery the Materials shall:

9.1.1 be of satisfactory quality and manufactured in all material respects in accordance with the Specification to be free from Defect in all material respects; and

9.1.2 be reasonably fit for any particular purpose for which the Materials are being bought if the Purchaser has made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Purchaser to rely on the skill and judgment of the Company in that regard.

9.2 Whilst every effort is made to maintain consistency in the characteristics of the Materials, the Purchaser may find that the Materials are affected by the following matters or variances, and the Purchaser hereby agrees to such matters or variances and acknowledges that they shall not constitute a Defect:

9.2.1 variations in the colour, consistency, texture, and size of the particles forming all or part of the Materials; and/or

9.2.2 the surface finish or visual appearance of the Materials; and/or

9.2.3 the presence in the Materials of lignite, carbonaceous particles or organic material, or the consequences of such presence; and/or

9.2.4 variations arising from permitted tolerances to the formula to which the Materials are manufactured; and/or

9.2.5 any other specific variances that are drawn to the Purchaser's attention before entering.

9.3 The Company does not guarantee any weight of Materials will cover any area or yield any volume. Any product calculator forming part of the Website or sale is intended as a general guide as to volume requirements. The Purchaser must take specialist advice to ascertain its precise requirements as to quantity of Materials it requires for a specific task or project.

9.4 Subject always to Clause 9.2, the Company shall not be liable for a breach of Clause 9.1 (in whole or in part) unless:

9.4.1 the Purchaser gives written notice of any Defect to the Company within 48 hrs of either discovery of the Defect or when the Purchaser ought reasonably to have discovered the Defect; and

9.4.2 the Company is thereafter given a reasonable opportunity of examining the Materials and in any case before the Materials are further used, interfered with added to or constructed upon in any way.

9.5 Subject always to Clause 9.2 to 9.4, the Company shall not be liable for a breach of Clause 9.1 in any case where the Defect has arisen because of:

9.5.1 the Purchaser's failure to use the Materials in accordance with the Specification or the Recommendations; or

9.5.2 failure to comply with the information and instructions which accompany the Materials, including any Safety Data Sheets in respect of the Materials (available on the Company's website from time to time) or the Specification relevant to the Materials concerning use, mixing and consistency, storage, safety, laying, finishing, curing or sealing and recommended applications of the Materials; or

9.5.3 the Purchaser mixing the Materials with an incompatible product or any product which is not consistent with the normal and proper use of the Materials or any admixture or fibre forming part of the Materials; or

9.5.4 the Materials being manufactured processed or mixed by the Company to the specification of the Purchaser which is not consistent with the Specification or to a specification which has been withdrawn; or

9.5.5 the use of the Materials by the Purchaser after the end of their recommended shelf life or use by date; or

9.5.6 fair wear and tear; or

9.5.7 the failure of the Purchaser to stop the offloading of the Materials where a Defect is apparent on inspection of unloading; or

9.5.8 the failure of the Purchaser to ensure it has good quality equipment and/or sufficiently qualified personnel at the Delivery Destination to offload and receive, cure, lay and/or finish the Materials. The Company is not liable for the offloading of the Materials at the Delivery Destination; or

9.5.9 the Purchaser requesting more than one type of Materials being loaded onto the same delivery vehicle or the use of loading shovels to transfer Materials and cross contamination of the Materials occurring; or

9.5.10 the ground conditions into which the Materials are to be unloaded not being suitable or appropriate to receive them.

9.6 Subject always to the above clauses 9.3, 9.4, 9.5 and 9.6, if the Materials do not conform with Clause 9.1, and are consequently the subject of a Defect, then the Company shall at its option:

9.6.1 re-supply such Materials free of charge; or

9.6.2 issue a credit note at the pro rata Contract Price.

9.7 The Company shall use reasonable endeavours to deliver Materials to the Purchaser within a reasonable period after the date of manufacture and in any event within a reasonable time before the expiry of the recommended shelf life.

9.8 The Company shall have no liability to the Purchaser for the use of Materials following the expiry of the recommended shelf life or if the Materials are not stored in the recommended conditions.

9.9 If the Company either re-supplies the Materials or issues a credit note under Clause 9.6 then it shall have no further liability for a breach of Clause 9.1. This Clause does not affect any other rights or claims of the Purchaser arising out of any other provision of the Contract.

9.10 Nothing in this Clause 9 shall affect any statutory remedies of a Consumer pursuant to these Conditions or a Consumer's rights of cancellation under the Consumer Laws.



## Terms Conditions

### 10. Limitation of Liability

10.1 Nothing in these conditions shall limit or exclude the liability of the Company for death or personal injury resulting from the negligence of the Company, its employees or agents or for fraudulent misrepresentation. Save as specified in condition 9.1, the Company shall not be liable whether in contract, tort (including negligence or breach of statutory duty), or otherwise to the Purchaser for any form of damage, loss, cost or expense, whether direct, indirect, consequential, physical or economic (including but not limited to loss of profit and liquidated and/or unliquidated damages attributable to delay and/or disruption), which arises out of or in connection with the supply of the Goods or their use by the Buyer.

10.2 The maximum aggregate liability of the Company arising out of Condition 9.1 or in connection with the supply of Goods or their use by the Purchaser (including any refund made pursuant to Condition 9.1 (ii) above and/or any reimbursement made pursuant to Condition 9.1(b)) shall be limited to 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 9.1 above, the Company 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. The Purchaser acknowledges that it bears the risk of all additional expenses, costs, losses, damages and liabilities which may be incurred. The Purchaser acknowledges that it can obtain insurance to cover such potential expenses, costs, losses, damages and liabilities. Should the Purchaser wish the Company to have a higher limit of liability this must be raised with the Company at the earliest opportunity and expressly agreed by the Company in writing.

10.3 The Company's maximum aggregate liability for all other matters in relation to this Contract (but excluding in respect of Defective Goods) shall be limited to £100,000.00

10.4 The Company will use reasonable endeavours to inform the Purchaser if the Company is prevented or hindered from supplying or delivering the Goods due to breakdown of plant, non-availability of material, energy shortage or Triad, labour disputes, fire accident or inclement weather, transport difficulties, delays or circumstances outside the Company's control but shall have no liability to the Purchaser for failure to deliver in such circumstances. Company shall have no liability to the Purchaser for failure to deliver due to the impact of Covid-19 on the Company's business and the Company may request extra time and costs from the Purchaser to deliver in such circumstances.

### 11. Severance

11.1 If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any English court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

### 12. Governing Law & Jurisdiction

Governing Law: The Contract and any dispute or claim (including non-contractual dispute or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

Jurisdiction: Each party irrevocably agrees that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.