

Smiths Concrete Standard Conditions of Sale

The Buyer's attention is drawn in particular to Conditions 7 (Quality) and 8 (Limitation of liability)

1. DEFINITIONS

In these Conditions "Buyer" means the person or company whose order for the Goods is accepted by the Company in accordance with these Conditions; "Company" means Smiths Concrete Limited; "Conditions" means these conditions of sale and any variation of them which is agreed in accordance with these Conditions; "Contract" means the contract between the Company and the Buyer for the sale and purchase of the Goods; and "Goods" means the goods which the Company is to supply under this Contract in accordance with these Conditions.

2. BASIS FOR SALE

2.1 These Conditions (and any additional terms contained in the quotation and/or mix design supplied by the Company) 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 Buyer's purchase order, specification or similar document will form part of the Contract. No variation or addition to these Conditions (including the Buyer's own terms) is effective unless expressly confirmed in writing by a director of the Company. In the absence of such express confirmation in writing, acceptance of delivery of the Goods or any quantity of them shall be deemed to be acceptance by the Buyer of these Conditions.

2.2 Each order for the Goods by the Buyer to the Company shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions and shall be accepted by the Company either issuing an acknowledgement of order or (if earlier) delivering the Goods. Any quotation is given by the Company on the basis that no Contract will come into existence until the Company accepts the order by either sending an acknowledgement of order to the Buyer or (if earlier) delivering the Goods.

2.3 The Company reserves the right to charge the Buyer an additional charge where (i) the delivery of Goods is required by the Buyer outside the Company's normal working hours; (ii) delivery of the Goods is required in part loads rather than full loads; (iii) for any reason, the delivery vehicle is unable to discharge its load within 30 minutes of arrival at the Buyer's site and (iv) the Buyer purchases quantities of the Goods which are substantially different from any quantity specified in the quotation.

2.4 The Buyer is wholly responsible for ensuring the accuracy of the terms of any order and any applicable specification. Any recommendation or suggestion relating to any use, storage or handling of the Goods made by the Company 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 Buyer to satisfy itself of the suitability of the Goods for its own particular purposes and the Buyer accepts it does not rely on any such recommendation, suggestion or representation.

2.5 The quantity, quality, description and specification of the Goods shall be those set out in the Company's quotation, otherwise as set out in the conveyance note at delivery. The Company reserves the right to change the source of materials and the type and dosage rate of any admixtures and additives, from those set out in the quotation.

2.6 If the Buyer varies, cancels or refuses to accept delivery of an order then the Buyer shall pay all additional costs that may be incurred by the Company. In respect of concrete, where a cancellation instruction is received by the Company after batching has started, the Buyer shall pay the Company for the concrete in full plus a charge for safe disposal.

3. DELIVERY

3.1 Delivery of the Goods shall take place either on discharge into the Buyer's vehicle at the Company's premises or on discharge from the Company's vehicle at the Buyer's site or as otherwise agreed by the parties. Buyer shall comply with the Company's site policies.

3.2 The Buyer must provide safe and adequate access to the point of discharge of the goods, including adequate manoeuvring space for the delivery vehicle and ensuring the Company's employees and/or agents are safe on the Buyer's site. Failure to comply shall entitle the Company to refuse to make delivery and to charge the Buyer for any costs and/or losses incurred.

3.3 The Buyer shall indemnify the Company and its employees, drivers and agents against any damage or injury caused by the acts and/or omissions of the Buyer, its employees, sub-contractors or agents while the delivery vehicle is present on or accessing the Buyer's site or while the Buyer is collecting the Goods from the Company's site.

3.4 On any delivery (howsoever effected), the Buyer must (i) satisfy itself as to the condition of the Goods; (ii) allow unhindered delivery of the Goods; (iii) sign the delivery note; (iv) sign any record produced by the Company or its drivers in respect of any delay after the arrival of the Goods at the Buyer's site, including standing time, or other records.

3.5 Where the Buyer fails to comply with any of the conditions contained in Condition 3.4, or the Company is unable to deliver the Goods on time because of the Buyer's default then (i) the Goods will be deemed to have been delivered; and (ii) the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

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

4. RISK AND TITLE

4.1 The risk in the Goods shall pass on delivery as provided by these Conditions.

4.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full all sums due to it in respect of the Goods. If the Buyer fails to pay the contract price by the due date, the Company shall be entitled to enter the Buyer's site to recover the Goods and the Buyer shall indemnify the Company against all and any cost incurred in so doing.

5. PRICE

5.1 The price payable for the Goods shall be the price stated in the quotation or the Company'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 Buyer 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 Company 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.

6. PAYMENT

6.1 Payment for the Goods must be received by the Company not later than the 28th day of the month following the month the Goods are delivered by the Company to the Buyer. The Company may refuse (under this Contract or other contracts with the Buyer or any of its associated companies) to accept or complete any order, suspend supplies, impose special conditions or cancel the Contract if (i) the Buyer's credit limit is or will be exceeded on delivery; or (ii) where the Buyer fails to comply with these Conditions; or (iii) if the Buyer is subject to any form of insolvency procedure; or (iv) where the Buyer wishes to pay in cash.

6.2 In the case of late payment the Buyer shall pay the Company interest on the net payment due at the rate set by the then current order pursuant to section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (or any re-enactment thereof).

6.3 Whether in relation to this Contract or other contracts between the parties, the Buyer shall not have any right of set-off, counterclaim, discount, abatement or otherwise, nor to withhold any payments due to the Company in the event of any dispute. The Company shall be entitled to set off without notice any liability of the Buyer to the Company against any liability of the Company to the Buyer, whether arising under this Contract or any other contract between the Company and the Buyer.

6.4 All sums payable to the Company by the Buyer in respect of any Goods delivered by the Company to the Buyer, shall become due immediately on termination of the Contract, on commencement of legal or dispute resolution proceedings against the Buyer or upon any failure by the Buyer to make payment for the Goods by the due date for payment.

6.5 In the event of any breach of these Conditions by the Buyer, or dispute between the parties relating to this Contract or any other contract between them, the Company 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 Company warrants that the quality of the Goods shall be in accordance with the specification quoted by the Company; however the Company 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 opined that the Goods are still suitable for uses appropriate with such specification. Subject to Conditions 7.2 and 8, where Goods supplied by the Company are proved to be defective or otherwise not in accordance with the Contract ("Defective Goods"): (a) the Company 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 Company shall reimburse the Buyer the cost of physically removing the Defective Goods, subject always to the limitations on liability in Conditions 7.2 and 8 below. The Buyer shall be under a strict duty to mitigate and minimise the adverse consequences, damages, loss, costs and expense arising from the supply of Defective Goods.

7.2 In any event, the Company shall not be liable under Condition 7.1 for any defect or failure in the Goods unless the Buyer (i) notifies the Company in writing of the alleged defect or failure within 14 days of delivery, or where the defect or failure was not apparent on reasonable inspection at the time of delivery, within 14 days of the time when the defect or failure ought reasonably to have been discovered; and (ii) allows the Company all reasonable facilities to investigate any such defect or failure promptly and to advise the Buyer of any remedial action which may be appropriate; and (iii) follows any reasonable remedial action recommended to it by the Company; and (iv) provides documentary evidence satisfactory to the Company that the Goods do not meet the applicable specification. If any Goods are known by the Buyer to be outside of specification or the terms of any order, under no circumstances shall the Company ever be liable for costs or liabilities relating to the continuance of works or further constructions, any such works or constructions at the sole risk of the Buyer.

7.3 No warranty or representation is given that the Goods are suitable for any 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.

7.4 Any sampling and testing shall be carried out in accordance with such British Standard or European Standard or specification as is accepted by the Company to be appropriate. Compliance with such standard or specification shall be discharged by the Company at the Buyer's cost at the time of supply of the Goods to the Buyer and on the basis that the Company is the supplier and not the user of the Goods. No liability is accepted by the Company for surface finish.

7.5 The Company shall not be liable to the Buyer for any losses or costs resulting from unsuitable application, wrongful handling or placing of the Goods or inclement weather.

7.6 Goods comprising pre-coated materials must be used immediately after delivery. The Company shall not be responsible for failure to comply with the specification by reason of temperature reduction in any pre-coated materials supplied where there has been any delay in discharge of such materials. The Buyer must satisfy itself as to the condition of the pre-coated materials on delivery, before use.

7.7 Concrete must be discharged within two hours of batching (or as otherwise agreed at the Company's discretion but at Buyer's sole risk). If the Buyer prevents such discharge, the Buyer will be charged for the concrete, its delivery, return and disposal. The Company accepts no responsibility for the workability, strength or quality of its concrete if the Buyer shall have added anything whatever to it or authorised the alteration of the mix or failed to keep appropriate records relevant to its receipt and use.

7.8 Mortar containers remain the property of the Company unless purchased by the Buyer. The Buyer shall be liable for any damage caused to the containers whilst at the Buyer's site and, unless purchased, the Company may remove the containers at any time where the Buyer does not make regular purchases of mortar from the Company so as to require their continued use. The use of the containers other than for the holding or distribution of mortar produced by the Company is strictly prohibited. Bricks or blocks should not be used when frosted or saturated with water. The Buyer should take adequate precautions against any action of frost in the finished work in which the mortar has been applied and should cover all mortar whilst in containers to reduce the effect of the weather.

8. LIMITATION OF LIABILITY

8.1 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 7.1, the Company shall not be liable whether in contract, tort (including negligence or breach of statutory duty), or otherwise to the Buyer 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.

8.2 The maximum aggregate liability of the Company arising out of Condition 7.1 or in connection with the supply of Goods or their use by the Buyer (including any refund made pursuant to Condition 7.1 (ii) above and/or any reimbursement made pursuant to Condition 7.1(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 Condition 7.1 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.

8.3 The Company's maximum aggregate liability for all other matters arising under, out of, or in relation to this Contract (but excluding in respect of Defective Goods), shall be limited to £100,000.

8.4 The Buyer acknowledges it bears the risk of all additional expenses, costs, losses, damages and liabilities which are incurred. The Buyer acknowledges it can obtain insurance to cover such potential expenses, costs, losses, damages and liabilities. Should the Buyer 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.

8.5 The Company will use reasonable endeavours to inform the Buyer if the Company is prevented or hindered from manufacturing, supplying or delivering the Goods due to breakdown of plant, non-availability of material, labour disputes, fire accident or inclement weather, transport difficulties, delays or any circumstances outside the Company's control but shall have no liability to the Buyer for failure to deliver in such circumstances.

9. GENERAL

9.1 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.

9.2 The benefit of this Contract may not be assigned by the Buyer but is fully assignable by the Company. A person who is not a party to this Contract shall not have any rights to enforce its terms.

9.3 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.

9.4 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.