

TERMS & CONDITIONS OF SALE OF CONCRETE

1. Definitions

1.1 In this document the following capitalised words shall have the following meanings:

“**Agreement**” means these Terms and Conditions together with any additional and/or amendment terms contained in the final quotation and/or mix design provided by the Supplier;

“**Supplier**” means Clarke Construction (Services) Ltd, registered address: Crestacre Barracks Lane, Brownhills WS9 9DL;

“**Buyer**” means the organisation or person whose order for the Goods is accepted by the Supplier in accordance with these Terms & Conditions;

“**Parties**” means the Buyer and the Supplier together;

“**Goods**” means the concrete which the Supplier is to supply under contract subject to these Terms & Conditions;

“**Purchase Order/Order**” means the order placed by the Buyer describing the Goods to be provided by the Supplier to the Buyer and the price quoted for the Goods; A Purchase Order/Order can be made by telephone, through the Supplier’s website or by email;

“**Contract**” means the contract between the Supplier and the Buyer for the sale, purchase and delivery of Goods, subject to these Terms & Conditions;

“**Confidential Information**” means all information in respect of the business of the Buyer including, but not limited to, know-how or other matters connected with the Works, and information concerning the Buyer’s relationships with actual or potential clients or suppliers and the needs and requirements of the Buyer and of such persons and any other information which, if disclosed, will be liable to cause harm to the Buyer.

“**Force Majeure**” means acts of God, strikes, lock outs, accidents, war, fire, flood, pandemics or industrial disputes and Government responses to these events or circumstances.

2. General

2.1 This Agreement shall apply to all contracts for the supply of Goods by the Supplier to the Buyer, pursuant to one or more Order and take precedence over any terms and conditions contained or referred to in any Order or similar documents issued by the Buyer. Any Buyer who places an order for Goods is deemed to have accepted all the Terms and Conditions detailed in this Agreement;

2.2 Each Order is deemed to be an offer by the Buyer to purchase the Goods at the price quoted and in accordance with these Terms & Conditions. No contract shall exist until the Supplier accepts the Order by either sending confirmation of the order or delivering the Goods (if earlier);

2.3 The Buyer is wholly responsible for ensuring the accuracy of the terms of any Order and any additional specification.

2.4 The quantity, quality, description and specification of the Goods shall be those set out in the Supplier’s quotation, or otherwise set out in the ticket and/or Goods Received Note. 2.5

The Supplier reserves the right to vary the source of materials and the type and dosage rate of any admixtures and additives from those set out in the quotation;

2.6 No changes or variations to these Terms and Conditions shall be effective unless agreed in writing by a Director of the Supplier.

3. Relationship of Parties

3.1 Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the Parties and nothing in this Agreement shall be deemed to construe either of the Parties as the agent of the other.

4. Assignment

4.1 The Buyer shall not be entitled to assign its rights or obligations or delegate its duties under the contract without the prior written consent of the Supplier, however the contract is fully assignable by the Supplier on notice.

5. Waiver

5.1 No failure by the Supplier to enforce any of these Terms and Conditions shall constitute a waiver of its rights hereunder.

6. Notices

6.1 Any notice to be given by either party to the other may be served by email, personal service or by post to the address of the other party given in the Purchase Order or quotation or such other address as such party may from time to time have communicated to the other in writing. Any notice, if sent by email, unless the contrary is proved, shall be deemed to be received on the day it was sent; if given by personal service shall be deemed to have been served at the time at which the letter was delivered personally; or if sent by post shall be deemed to have been delivered according to the published timescales relevant to the type of postage used.

7. Price and Payment

7.1 The price and any taxes and expenses for the goods shall be as specified in the quotation, exclusive of VAT;

7.2 The price may be varied by the Supplier at any time upon giving written notice, applicable to all orders delivered after the date specified in such notice;

7.3 The Supplier and the Buyer agree that the Supplier may increase the price stated in any quotation by such additional amount that reflects the increase and/or change in or introduction of duties, tariffs, taxes, allowances, charges, levies and/or any applicable law which have the effect of increasing the Supplier’s costs. Such increase will be in addition to the price contained in the quotation and the Buyer shall have no right of cancellation or termination due to such increase. The Supplier shall have no liability to the Buyer for any losses, costs and/or damages suffered by the Buyer as a result of such increase;

7.4 Unless the Buyer holds an account with the Supplier, the Buyer shall pay for the goods at the time of placing the Order.

7.5 In cases where the Buyer holds an account with the Supplier, payment is due fourteen days following the date of Supplier’s invoice;

7.6 The time for the payment shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

7.7 The Supplier may refuse to accept or complete any Order, suspend supplies, impose special conditions or cancel the Contract where the Buyer fails to comply with these Terms & Conditions or is, in the reasonable opinion of the Supplier, unable to pay and/or stops or suspends payment of any of its

debts as they fall due or is subject to any form of insolvency procedure;

7.8 The Supplier is not obliged to accept orders from any Buyer who has not supplied the Supplier with references satisfactory to the Supplier. If at any time the Supplier is not satisfied as to the creditworthiness of the Buyer it may give notice in writing to the Buyer that no further credit will be allowed to the Buyer in which event no further goods will be delivered to the Buyer other than against cash payment and notwithstanding sub-Clause 7.5 of these Terms and Conditions, all amounts owing by the Buyer to the Seller shall be immediately payable in cash.

7.9 In the event of late payment, the Buyer shall pay the Supplier interest on the late payment at 8% plus the Bank of England base rate applicable at the date the payment falls due;

7.10 The Buyer 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;

7.11 The Supplier shall be entitled to set off, without notice, any liability of the Buyer to the Supplier against any liability of the Supplier to the Buyer, under the Contract;

7.12 In the event of any breach of these Terms & Conditions by the Buyer, or dispute between the Parties, the Supplier shall be entitled to suspend, withdraw or terminate any discount or rebate agreement that may be agreed between the Parties from time to time, affecting this Contract or any other contract between them;

7.13 The Supplier will not notify the Buyer of a change of bank account details by electronic means. It is the Buyer's responsibility to make all payments due under the Contract to the Supplier and if, by virtue of cyber attack or error, the Buyer pays to a bank account that does not belong to the Supplier, this does not constitute valid payment. The Supplier will provide assistance where it can to recover sums lost due to cyber attack but consequences of late or non-payment will apply until such time as payment due is received in full by the Supplier.

8. Warranty & Liability

8.1 The Supplier warrants that all Goods supplied under the Contract shall conform to the specification set out in the quotation, however the Supplier shall have no liability in respect of any minor deviations if the Goods are still compliant with applicable regulations or an independent expert is of the opinion that the Goods are suitable for uses appropriate to the specification.

8.2 Subject to clauses 8.3 – 8.9, where Goods supplied are proved to be defective or otherwise not in accordance with the Contract, the Supplier will, at its sole discretion, either replace the defective Goods as promptly as practicable or refund the price paid for defective Goods. The Supplier shall, also at its sole discretion, either remove the defective Goods or reimburse the Buyer the cost of such removal, subject again to limitation of liability set out in clauses 8.3 – 8.9. At all times 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.

8.3 In any event, the Supplier shall not be liable under clauses 8.1 or 8.2 for any defect or failure in the Goods unless (a) the Buyer notifies the Supplier in writing of the alleged defect or failure within 14 days of delivery, or, where the defect or failure would not be apparent on reasonable inspection at delivery, within 14 days of the time when any defect or failure ought reasonably to have been noticed; and (b) the Buyer facilitates the Supplier's reasonable investigations of alleged defect or failure and (c) the Buyer follows any reasonable remedial

action recommended by the Supplier; and (d) the Buyer provides documentary evidence, satisfactory to the Supplier that the Goods do not meet the appropriate specification. If goods are known by the Buyer to be outside of specification, under no circumstances shall the Supplier be liable for costs/liabilities relating to the continuance of works or further constructions, which shall be the sole risk of the Buyer.

8.4 The Supplier does not give warranty or representation that the Goods are suitable for any particular purpose or application and all warranties, conditions or other terms implied by law, with the exception of those implied by s.12 Sale of Goods Act 1979 (as amended), are excluded from the Contract to the fullest extent permitted by law.

8.5 Nothing in these Terms & Conditions shall limit or exclude the liability of the Supplier for death or personal injury resulting from the negligence of the Supplier, its employees or agents or for fraudulent misrepresentation. Save as specified in clauses 8.1 or 8.2, the Supplier shall not be liable in contract, tort or otherwise to the Buyer for any form of damage, loss, cost or expense, whether direct or indirect, consequential, physical or financial, including (but not limited to) liquidated or unliquidated damages, which arise out of or in connection with the supply of Goods to or their use by the Buyer.

8.6 The maximum aggregate liability of the Supplier arising out of clauses 9.1 and 9.2 or in connection with the supply of Goods to or their use by the Buyer shall be limited to 3 times the price of the defective Goods, save that if the cost of removal of defective costs as specified in clause 8.2 is greater than 3 times the price of the defective Goods, the Supplier's liability is subject to a maximum of £5,000,000.00.

8.7 The Supplier's maximum aggregate liability for all other matters in relation to the Contract (but excluding defective Goods) shall be £5,000,000.00.

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

8.9 The Supplier shall use its reasonable endeavours to inform the Buyer if it is prevented or hindered from supplying or delivering the Goods due to breakdown of plant, non-availability of material or force majeure but shall have no liability to the Buyer for failure to deliver in such circumstances.

9. Delivery

9.1 Delivery of the goods shall be made to such location as the Buyer shall direct or as otherwise agreed between the Parties. Where delivery requires that the Buyer attend the Supplier's sites or premises, he shall comply with the Supplier's site policies.

9.2 Delivery times and dates are not of the essence of the Contract. The Supplier shall endeavour to deliver the Goods at the time and date specified but shall not be liable for any damages or losses arising out of failure to meet such date or time.

9.3 The Supplier reserves the right to charge the Buyer an additional sum where delivery of the Goods is required outside of the Supplier's normal working hours, or is required in part loads or if the delivery vehicle is unable to discharge its load within the following times of arrival at the Buyer's site or agreed location:

Up to 3 m ³	30 minutes
3.25m ³ - 6 m ³	45 minutes
Over 6m ³	60 minutes

The additional sum will be at a rate of £140 (+VAT) per hour, charged in 15 minute increments.

9.4 The Buyer must provide safe, adequate access to the point of discharge of the Goods, including adequate manoeuvring space for the delivery vehicle and ensuring the Supplier's personnel are safe. The Buyer shall provide adequate wash-out facilities if required for the delivery vehicle. Failure to comply with this clause shall entitle the Supplier to refuse to make delivery and to charge the Buyer for any costs and/or losses incurred.

9.5 The Buyer shall indemnify the Supplier and its employees, subcontractors, drivers or agents against any damage or injury caused by the acts and/or omissions of the Buyer, its employees, subcontractors or agents, while the delivery vehicle is present on or accessing the Buyer's site or agreed delivery location;

9.6 On any delivery, howsoever effected, the Buyer shall satisfy itself as to the condition of the Goods; allow unhindered delivery of the Goods; and sign a goods received note in whatever form presented, including details of any delay after arrival, or standing time or failure to deliver due to the Buyer's default. The Buyer accepts that such goods received note is conclusive evidence of the matters stated therein.

10. Cancellation of Order

10.1 The Buyer may cancel its Order for Goods in accordance with the provisions of this section 10.

10.2 If the Buyer refuses to accept delivery of an Order then this shall be deemed to be an instruction to cancel the Order. If the Buyer varies the Order after batching has started, this will be deemed to be an instruction to cancel the Order. In both cases the provisions of clause 10.3 shall apply.

10.3 Where an instruction to cancel is received by the Supplier after batching has started, the Buyer shall pay the Supplier for the batch in full, plus a charge for delivery and safe disposal.

10.4 If the Buyer provides more than 48 hours notice of cancellation, there shall be no cancellation fee and any sums paid for the Goods will be refunded to the Buyer or credited to its account as appropriate;

10.5 If the Buyer provides less than 24 hours notice of cancellation, it shall be liable for a cancellation fee of £160 (+VAT) for single deliveries and £30 (+VAT) per m³ for multiple deliveries, such fee to be deducted from any refund or credit due to the Buyer;

10.6 Where the Buyer has placed an Order the same day that delivery is to be effected, the provisions of clauses 10.4 – 10.7 shall not apply and the Supplier shall refund or credit (as appropriate) the sums paid for the Goods in full;

10.8 Where the Buyer holds an account with the Supplier and a cancellation of an Order entitles the Buyer to a refund, the Supplier reserves the right to credit the account with such refund or part of refund howsoever the payment for the cancelled Order was made.

11. Title & Risk

11.1 The Supplier warrants that it has good title to the Goods and that it will transfer such title as it may have in the Goods to the Buyer pursuant to Clause 11.3.

11.2 Risk in the Goods shall pass to the Buyer on delivery as provided by these Terms & Conditions.

11.3 Title in the goods shall pass to the Buyer when the Supplier 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 Supplier shall be entitled to enter the Buyer's site to recover the Goods and the Buyer shall indemnify the Supplier

against all and any costs incurred in so doing. This remedy is in addition to the remedies available to the Supplier in the event on non-payment as specified in section 7.

12. Usage & Testing

12.1 Concrete must be discharged within 2 hours of batching (or as otherwise agreed between the Parties but solely at the Buyer's risk). If the Buyer prevents such discharge, the Buyer will be charged for the concrete, its delivery, return and disposal.

12.2 Any sampling and testing is carried out in accordance with such British Standard or European Standard or specification acceptable to the Supplier as appropriate. Compliance with such standard or specification shall be discharged by the Supplier at the Buyer's expense at the time of delivery and is on the basis that the Supplier supplies only and is not the user of the Goods.

12.3 Any recommendation or suggestion relating to the use, storage or handling of the Goods by the Supplier 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 purpose and the Buyer accepts it does not rely on any such recommendation, suggestion or representation.

12.4 The Supplier accepts no liability for surface finish.

12.5 The Supplier shall not be liable for any losses or costs resulting from unsuitable application, wrongful handling or placing of the Goods in inclement or otherwise unsuitable weather or external conditions;

12.6 The Supplier accepts no responsibility or liability for the strength, quality or usability of concrete if the Buyer shall have added anything whatsoever to it or authorised the alteration of the mix or failed to keep appropriate records relevant to its receipt and use.

13. Force Majeure

13.1 Neither party shall be liable for any delay or failure to perform any of its obligations under this Agreement if the delay or failure results from Force Majeure, and both Parties shall be entitled to a reasonable extension of its obligations.

14. Anti-Slavery

14.1 The Supplier will not engage in any Modern Slavery Practice and will comply with Anti-Slavery Laws, the Anti-Slavery Policy and the Supplier Code of Conduct at all times.

15. Severance and amendment

15.1 If any term or condition of these Terms & Conditions is for any reason held to be invalid or otherwise unenforceable by law it shall be severed and deemed to be deleted from the Terms & Conditions and the validity and enforceability of the remainder of the Terms & Conditions shall not be affected in any way and shall remain in full force and effect. If any provision of the Terms & Conditions is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted or modified, the provision shall apply as if with such modification as may be necessary to make it valid.

15.2 No amendment to these Terms & Conditions shall be binding unless agreed in writing and authorised by the Supplier.

16. Legal Proceedings

16.1 These Conditions are subject to the laws of England and Wales and all disputes arising out of these Conditions are subject to the exclusive jurisdiction of the courts of England and Wales.