

# MIDLAND QUARRY PRODUCTS LTD-CONDITIONS OF SALE

## 1. DEFINITIONS

- 1.1 "Customer" means the person, firm or company placing an order with the Company.
- 1.2 "Company" means Midland Quarry Products Ltd.
- 1.3 "Goods" means all goods and materials which are the subject of the Customer's order or which are to be supplied to the Customer by the Company under these Conditions of Sale.
- 1.4 "Contract" means an order by the customer for the supply of goods which is accepted by the Company.

## 2. FORMATION OF CONTRACT

- 2.1 Orders placed by the Customer will be firm and cannot be withdrawn or cancelled by the Customer less than twenty four (24) hours before the delivery date except with the written consent of the Company. In the event the company agrees to the late withdrawal or cancellation of an order the company reserves the right to levy a handling charge equal to fifteen per cent (15%) of the net value of the order to the company plus V.A.T, and a charge in addition for all other expenses incurred by the Company, including but not limited to transportation committed or made when goods have been transported but delivery has been refused by the Customer.
- 2.2 All verbal orders must be confirmed to the Company in writing prior to the despatch failing which the Company shall be under no obligation for failure to deliver such order.
- 2.3 All orders are accepted subject to these Conditions of Sale. No terms or conditions put forward by the Customer shall be binding on the Company.
- 2.4 The Customer agrees that these Conditions of Sale and any specific details stated on the face of the Company's Quotation constitute the entire understanding between the parties hereto and that there are no representations, warranties, conditions, terms or obligations, between the parties, whether written or oral, express or implied by custom or otherwise other than those contained herein.
- 2.5 An order, whether in the form of an E.D.I. transmission or any other electronic form, shall not constitute acceptance by the Company of the Customer's terms and conditions and shall be processed on the conditions that the Company's Conditions of Sale apply.
- 2.6 No amendment or addition to these Conditions of Sale shall form part of the Contract unless agreed to in writing signed by the Company's duly authorised representative.

## 3. PRICE

All prices are subject to alteration at any time without notice. The price of the goods shall be the Company Quotation and maybe withdrawn if written acceptance has not been received by the Company within thirty (30) days of quotation at its registered office or (if no Quotation has been quoted) the standard trading terms as per the contract between the two parties shall apply. Prices are exclusive of V.A.T. and all other taxes and duties which will be added. Unless otherwise agreed with the Customer, prices include delivery by road transport within the UK.

- 3.1 Additional charges to the Customer will also apply if:
  - i) supply of Goods is required outside the Company's normal working hours.
  - ii) delivery is required in part loads rather than full loads.
  - iii) for any reason the delivery vehicle is unable to discharge the Company's Goods within Thirty (30) minutes of arrival at the Customer's site.
  - iiii) the Customer cancels an order or varies an order and such cancellation or variation causes the Company to incur additional costs, then such additional costs shall be paid by the Customer to the Company.
- 3.1.2 Charges for vehicles and drivers on a daywork basis are available on request. All such charges will commence at the time of arrival at the Destination.

## 4. PAYMENT

- 4.1 All accounts are strictly nett, and payment shall be due in full on or before the 28th day of the month immediately following month of supply.
- 4.2 Payment shall be deemed not to have been made until any and all cheques drafts and bills by which payment is to be effected have been cleared or honoured (as the case may be).
- 4.3 The Company shall be entitled, without prejudice to any other rights and remedies, to charge the Customer with interest at the rate of ten per cent (10%) per annum, or four per cent (4%) above the Barclays Bank Plc base lending rate from time to time, whichever is the greater, on account of any delayed payment for the period of the delay whether before or after Judgement.
- 4.4 If the Customer defaults in making any payment to the Company or executes an assignment for the benefit of its creditors or goes into any form of insolvency (voluntary or compulsory) which shall be deemed to include liquidation or having a receiver or administrative receiver or administrator appointed or is unable to pay its debts as they fall due within the meaning of Section 123 of the Insolvency Act 1986; then, without prejudice, to any other rights or remedies available to the Company, the Company may at its option cancel any undelivered or incomplete portion of the Contract and stop any goods in transit, but the Company shall nevertheless be entitled to claim against the Customer in respect of any loss or damage sustained by non-compliance with the Contract.
- 4.5 Without prejudice to the foregoing, deliveries shall at all times be subject to the approval by the Company of the Customer's credit. The Company reserves the right even after partial performance or partial payment on the account of the Contract to require from the Customer satisfactory security for the due performance of the Customer's obligations. Refusal to furnish such security will entitle the Company to defer any further deliveries until such security is furnished or to cancel the Contract or so much of it as remains unperformed without prejudice to any rights which the Company may have against the Customer in respect of breach of contract or otherwise and in such event the Customer will have no rights under the Contract or otherwise against the Company.
- 4.6 The Customer shall not be entitled to withhold or set off against payments for goods for any reason whatsoever.
- 4.7 In the event that any payment due from the Customer to the Company becomes overdue then all amounts invoiced by the Company to the Customers under any Contract shall, at the discretion of the Company, become due and payable. Interest as provided for in clause 4.3 shall forthwith become chargeable on all such amounts.
- 4.8 The Company is entitled to invoice the Customer when, or at any time after, the Goods are ready for collection.
- 4.9 The time for payment of the price for the Goods shall be of the essence of the Contract.

## 5. DELIVERY, ACCEPTANCE AND NOTIFICATION OF CLAIMS

- 5.1 The Company will use all reasonable endeavours to observe delivery times and dates but such delivery times and dates are estimates only and failure to observe them shall not give the Customer the right to terminate the Contract or any other agreement or any right to damages; nor shall it permit the Customer to withhold any payment in respect of Goods delivered whether or not forming part of the Contract.
- 5.2 The Customer must provide Safe and adequate access to the point of discharge of the Goods, including adequate manoeuvring space for the Delivery vehicle. Failure to comply may result in the Company refusing to make delivery and charging the Customer with all costs incurred.
- 5.3 In the event that the Customer requests that any Goods be deposited on a street or public highway the Customer shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property and shall indemnify the Company in respect of all costs, claims, losses or expenses including legal costs on an indemnity basis which the Company may incur as result of such delivery.
- 5.4 In the case of prepaid cash sales of Goods sold by weight the Company shall be deemed to have supplied the quantities of Goods agreed to be sold if the quantity delivered is within plus or minus 2% of the quantity agreed to be sold and the price for the Goods shall be varied accordingly so that the price payable is equivalent to the cash prepayment.
- 5.5 Except in the case of agreed negligence by the Company or driver of the Company's delivery vehicle, the Customer shall indemnify the Company and its hauliers against damage or injury caused during the presence on or access to the site of the delivery vehicle.
- 5.6 The Customer his authorised employee or Agent must promptly:
  - i) Accept delivery of the Goods when they arrive at the Customers site.
  - ii) Inspect the Goods when they are discharged.
  - iii) Sign the Company's delivery note.
  - iv) Sign and record of any delay after arrival of the Goods on site, standing time, authorised day work or other records of the Company.
- 5.7 If the Company is delayed or prevented from delivering the Goods or part thereof due to any act or omission of the Customer, its agent or employees then the Company may, at its option and without prejudice to any other rights, either:
  - i) suspend performance and, if the company thinks fit, store the Goods at the Customer's expense until the Company can deliver the Goods or until it exercises its option to cancel the Contract and another buyer for the Goods is found; or
  - ii) cancel the Contract or so much of it as remains unperformed at any time after such act or omission.
- 5.8 The Company may deliver by instalments unless otherwise agreed and failure by the Customer to accept or pay for any instalment may be treated by the Company as a repudiation of the Contract.
- 5.9 The Company liability for short delivery is limited to making good the shortage.

- 5.10 Where there is any complaint about the quality of the goods or where the Company is responsible for transporting the goods then Claims for quality , short delivery or late arrival of Goods on site must be advised by the Customer as follows:
  - i) Phone the Company's office from which the Goods were ordered on the day of delivery.
  - ii) The Customer must confirm the complaint in writing to the Company's registered office within five working days of delivery date.
- 5.10.1 The Customer will allow the Company all reasonable facilities to enable it to investigate any such complaint promptly and to advise the Customer of any remedial action which may be appropriate.

## 6. RISK

- 6.1 Where the Customer is responsible for transportation of Goods they shall be at the Customer's risk immediately on discharge to the Customer's vehicle or other container, or if the carriage is to be effected by the Company at the moment of discharge from the delivery vehicle on delivery to the Customer's site. Loss or damage to the goods after such delivery shall not relieve the Customer of its obligations hereunder.
- 6.1.1 The Company shall not be responsible for failure to comply with a specification by reason of a Temperature reduction in the materials supplied where there has been any delay in the discharge of materials at the Customers site.
- 6.1.2 The Customer must satisfy themselves as to the Conditions of pre-coated chippings on delivery and before use. The Company accepts no liability for defects in pre-coated chippings if they are not used immediately upon discharge from the delivery vehicle at the Customer's site, or on loading the Goods into the Customer's vehicle or other container.
- 6.1.3 Where cancellation of any delivery is received by the Company after coated products have started to be batched, mixed or loaded, then the Customer shall pay the Company in full for such material plus any costs of disposal of the same.
- 6.1.4 The Customer is responsible for providing tipping facilities for any excess material ordered or material rejected for reasons other than non-compliance with the specification or order by the Company. If the Customer is unable to provide tipping facilities for excess or rejected material, the Company may carry out disposal and the Customer shall pay the full delivered rate for the materials, a disposal charge and any additional mileage or other costs incurred by the Company.
- 6.2 All Goods stored by the Company pursuant to Clause 5.7 above shall be at the Customer's risk until the Company exercises its option to cancel the Contract.

## 7. RESERVATION OF TITLE

- 7.1 Title to all goods delivered by the Company to the Customer shall remain with the Company until all sums due have been paid to the Company. So long as any sum remains due to the Company then no title in any Goods shall pass to the Customer.
- 7.2 If the Customer shall sell or otherwise dispose of or make any insurance claim in respect of the Goods prior to making payment in full for the Goods it shall not give any warranties or incur any liability on behalf of the Company. The Customer shall maintain records of the persons to whom the Goods which are absolute property of the Company are sold or otherwise disposed and of the payments made by such persons for such Goods. The Company shall be entitled to trace the proceeds of sale and any Insurance proceeds in respect of the Goods which are the absolute property of the Company. Such proceeds shall be paid into a separate bank account and shall be held by the Company on trust for the Customer.
- 7.3 If the Customer shall fail to make all payments when due or shall go, or threaten to go, into any form of insolvent liquidation (whether compulsory or voluntary) which shall be deemed to include liquidation or having a receiver or administrative receiver or administrator appointed or shall make or seek to make any composition with its creditors, or if the Company has reasonable grounds to believe that the Customer is or will be unable to pay its debts as they fall due, the Company shall have the right without prejudice to any other remedy of the Company, to repossess the Goods without prior notice and to enter any premises for the purpose of such repossession.
- 7.4 Nothing in this Clause shall give the customer any right to return the Goods to be bought hereunder. The Company may sue the Customer for the price when due notwithstanding that the property in the Goods may not have passed to the Customer.

## 8. INSURANCE

From the time at which risk passes under the provisions of Clause 6 hereof, the Customer shall keep the Goods fully insured against all risks including, but not limited to, damage in shipment until final payment is made.

## 9. WARRANTIES AND LIABILITIES

- 9.1 Goods may only be returned to the Company if so agreed by the Company and shall be returned at the Customer's risk.
- 9.2 The Company will at the Company's option, replace or refund the purchase price of the defective part or parts of the Goods which its examination discloses to have been defective.
- 9.3 The Company's certificate as to the quantity and quality of the Goods shall be final. The Company reserves the right to impose any handling charge which it deems to be reasonable in respect of the Goods. Claims in respect of alleged faulty Goods shall not be a ground for withholding payments due to the Company.
- 9.4 The Company shall have no liability under this warranty for any costs other than those of replacement or refund as specified in Clause 9.2 above (nor shall the Company be liable for any labour charges involved in removal or replacement of the defective Goods or parts thereof).
- 9.5 Save as expressly provided in these Conditions of Sale, no warranties or representations are given with respect to the Goods and all other conditions, warranties, representations, or other terms, whether expressed or implied, written or oral, arising by statute, common law, or otherwise, including but not limited to any condition, warranty, representation or other term of satisfactory quality or fitness for a particular purpose are hereby excluded.
- 9.6 The Company shall under no circumstances be liable for any loss of profit or any indirect, consequential or incidental damage arising either from breach of any of the warranties contained in these Conditions of Sale or from any cause whatsoever including the Company's negligence even if the Company has been advised of the possibility of the same.
- 9.7 The Company reserves the right to make any changes in specifications which are required to conform with applicable safety or other statutory requirements or which do not materially affect the quality or performance of the Goods.
- 9.8 Goods sold by the Company shall be the type, description and/or specification as shown on the delivery note or the quotation. No warranty is given that the goods are suitable for any particular purposes unless the Customer shall first have advised the Company of all relevant factors relating to the particular purpose and the Company has confirmed in writing that the goods are suitable for that purpose.
- 9.9 Sampling and testing shall be carried out in accordance with the appropriate British Standard or specification accepted by the Company. Compliance with such standard or specification shall be discharged by the Company if the goods meet such standard or specification at the time of supply to the Customer and on the basis that the Company is the supplier and not the user of the goods.

## 10. FORCE MAJEURE

Without prejudice to any other provisions hereof the Company shall not be liable to the customer for any loss or damage, whether direct, indirect or consequential for any delay in performance or failure to perform the Contract due to force majeure plant breakdown strikes or labour troubles of any sort and whether at the Company's establishment or those of subcontractors or suppliers, war, riot, civil commotion or disturbance, fire, inclement weather, flood, Act of God, natural disasters, serious accidents, shortage of fuel power or materials, non-delivery, delay or non-performance of the Company's suppliers or subcontractors, withdrawal of rights granted to the Company, failure or breakdown of necessary components, restrictions or requests of government or similar authorities or any other unforeseen circumstances or causes beyond the Company's reasonable control whether or not of a similar nature.

## 11. COMPANY'S REMEDIES

No relaxation, forbearance or delay by the Company in enforcing any of the terms and conditions herein shall prejudice, affect or restrict the rights of the Company hereunder, nor shall any waiver by the Company of any breach operate as a waiver of any subsequent or continuing breach thereof.

## 12. SEVERABILITY

If any provision in these Conditions of Sale (or part thereof) shall be found to be invalid ineffective or unenforceable the invalidity ineffectiveness or unenforceability of such provision (or part thereof) shall not affect any other provision (or the remainder of the provision of which such invalid ineffective or unenforceable part forms part). Accordingly all provisions (or parts thereof) not affected by such invalidity ineffectiveness or unenforceability shall remain in full force and effect. The headings of these Conditions are for convenience only and shall have no effect on interpretation.

## 13. GOVERNING LAW AND JURISDICTION

All contracts incorporating these Conditions of Sale shall be governed by and construed in accordance with the laws of England and, in accepting these Conditions of Sale; the Customer agrees to submit to the exclusive jurisdiction of the English Courts.

MIDLAND QUARRY PRODUCTS LTD

Registered in England and Wales Company Number 3173418; Registered Office: Leicester Road, Whitwick, Leicestershire LE67 5GR.

V.A.T. No.679 2950 79

We accept your orders on the terms and conditions set out above.

November 2007