

## 1. DEFINITIONS

- 1.1 These Conditions set out the standard terms of sale for aggregates, asphalt, ready mix concrete and bitumen. In these Conditions:  
“the Company” shall mean any companies of the FM Conway Group selling the Goods to the Customer including its servants and/or agents;  
“the Customer” shall mean the party with whom the Company contracts;  
“the Goods” shall mean any goods, materials including aggregate, asphalt, recycled products and ready mix concrete, or where the context permits, the services to be supplied by the Company;  
“the Conditions” shall mean the terms set out in this document and any special terms agreed in writing between the Company and the Customer;  
“the Contract” shall mean the contract for the supply/sale of Goods incorporating these Conditions;  
“the Contract Price” shall mean the amount payable by the Customer to the Company in respect of the supply of the Goods.  
“Sanctions” shall mean economic or financial sanctions or trade embargoes or trade restrictions or similar or equivalent restrictive measures imposed, administered, enacted or enforced from time to time by the UN, EU or US or other applicable Sanctions authority.

## 2. BASIS FOR SALE

- 2.1 The Goods are sold by the Company only under these Conditions (and any additional terms contained in the quotation and/or mix design supplied by the Company), which may not be altered without the written agreement of a Director of the Company. Any contrary or additional terms unless so agreed are excluded.
- 2.2 Quotations and estimates by the Company are open for acceptance for 30 days from the issue dates and thereafter shall be automatically withdrawn.
- 2.3 The Company reserves the right to withdraw any offer at any time before it is accepted.
- 2.4 Cancellation of the Contract by the Customer shall only be accepted where sufficient notice of the cancellation has been provided to the Company in accordance with the timeframe stipulated in the Company’s quotations and/or as advised to the Customer over the telephone. Any cancellations made after the applicable timeframe shall be at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the moment of cancellation and all loss or damage sustained by the Company by reason of such cancellation shall be paid by the Customer to the Company forthwith. These cancellation charges are detailed on the Company’s quotations and can be made available upon request.
- 2.5 A charge shall be made for any costs incurred by the Company due to suspension or deferment of the Contract by the Customer or in the event the Customer defaults in collecting or giving instructions for the delivery of any Goods.
- 2.6 Health and safety information relating to the Goods is available on request. The Customer warrants that it shall supply all the relevant information with respect to the use and safe handling of the Goods as provided by the Company to any third parties to whom it may supply the Goods.
- 2.7 Acceptance of delivery of the Goods or any quantity of them shall be deemed to be acceptance by the Customer of these Conditions.

## 3. REPRESENTATIONS

- 3.1 The Company shall not be liable in respect of any misrepresentation made by the Company to the Customer, its servants or agents as to the condition of the Goods its fitness for any purpose or as to quantity or measurements unless the representation is fraudulent.
- 3.2 Where the Company provides you with a sample of any Goods, please note that such samples are indicative only of colour, texture, and general appearance and that the actual Goods ordered may vary from the sample. Samples shall not form part of the Contract nor have any contractual force.
- 3.3 Without prejudice to Clause 3.1 of these Conditions while the Company takes every precaution in the preparation of its catalogues technical circulars price lists and other literature these documents are for the Customer’s general guidance only. Any recommendation, statement or guidance relating to the Goods (including in respect of any use or strength of the Goods) made therein shall not constitute representations by the Company (unless fraudulent) and the Company shall not be bound by them. The Customer acknowledges that it has not relied on any representation or statement, or on any such sample, in entering into any Contract, or placing any order for Goods.
- 3.4 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 are to the fullest extent permitted by law excluded from the Contract.
- 3.5 For the avoidance of doubt the Company’s liability for damages for misrepresentation (other than fraudulent) is excluded or limited by Clause 9 of these Conditions.

## 4. PRICE

- 4.1 Subject to Clause 4.2, the Contract Price for the Goods, whether for collection or delivery, shall be the price stated in the quotation or the Company’s applicable prices at the date of delivery or collection where no quotation was provided. Quoted prices are based on costs prevailing at the time when they are given or agreed and are exclusive of VAT.
- 4.2 The Company shall be entitled to adjust the Contract Price of the Goods at any time by giving notice to the Customer to reflect any direct or indirect price increases sustained by the Company due to factors beyond its control including but not limited to changes in applicable law or introduction of any duties, tariffs, taxes, allowances, charges and/or levies which have the effect of increasing the Company’s and/or its supply chain’s costs, provided always that where the Company so increases the price:
- 4.2.1 the Customer shall be entitled to cancel any order for Goods which are the subject of such price increase (provided any cancellation is made in accordance with Clause 2.4) and shall have no obligation to make further orders for Goods under the relevant quotation; and,
- 4.2.2 neither the Company nor the Customer shall have any liability to the other party in respect of any such cancellation.
- 4.3 The Company shall be entitled to adjust the Contract Price at any time by giving notice to the Customer and the Customer shall be liable to pay and shall pay such adjusted price:
- 4.3.1 where the Customer requests any changes to the delivery date, quantities or the specifications for the Goods; and/or
- 4.3.2 there are delays caused by any instructions of the Customer or the Customer fails to give the Company adequate information or instructions.
- In any such instance, the Company shall have no liability to the Customer for any losses, costs and/or damages suffered by the Customer as a result of such adjustment to the price.
- 4.4 The price in any quotation may be varied by the Company at any time upon giving written notice (including by email), applicable to all orders delivered after the date specified in the notice.
- 4.5 The Customer agrees that the Contract Price is confidential, and that it shall not disclose the Contract Price to any third parties except its

professional advisers, agents and representatives.

## **5. PAYMENT**

- 5.1 Payment for the Goods must be received by the Company within the prescribed payment term as specified by the Company or the applicable invoice. Where payment is made by the Customer using credit cards, the Company reserves the right to invoice the Customer any processing fees incurred by the Company for each payment transaction.
- 5.2 Time for payment shall be of the essence of the Contract. Without prejudice to any other rights of the Company, interest may be payable on overdue accounts at the rate of 4% per annum above the Bank of England base rate from the date they fall due until full payment is made. The Company reserves the right to claim under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.3 The Company may refuse under the Contract with the Customer (or any of its associated companies) to accept or complete any order, suspend supplies, impose special conditions or cancel the Contract where:
  - (i) in the instance that a credit limit has been assigned to a Customer by the Company, such limit has been or shall be exceeded on delivery or collection; or
  - (ii) the Customer fails to comply with these Conditions; or
  - (iii) the Customer is subject to any form of insolvency procedure.
- 5.4 The Customer 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 Customer to the Company against any liability of the Company to the Customer under the Contract between the Company and the Customer.
- 5.5 All sums payable to the Company by the Customer with respect to the supply of Goods to the Customer, shall become due immediately either on cancellation of the Contract or upon commencement of legal or dispute resolution proceedings against the Customer.
- 5.6 In the event of any breach of these Conditions by the Customer, or dispute between the parties relating to the Contract, the Company shall be entitled to suspend, withdraw or terminate any rebate agreement between the parties whether in relation to the Contract or any other contract between them and shall be entitled to recover payment for the Goods (including VAT, sales taxes and any other applicable charges) supplied.

## **6. DELIVERY**

- 6.1 The Company shall use all reasonable efforts to comply with any date or time given or agreed by the Company for the delivery of the Goods. Delivery dates are given in good faith and are intended for guidance purposes only.
- 6.2 Delivery shall be deemed to take place either when the Customer is notified that the Goods are available for collection or at the time the Goods arrive at the delivery destination. Time for delivery shall not be of the essence of the Contract.
- 6.3 If no dates or times are specified, the Goods shall be delivered within a reasonable time of the order acceptance.
- 6.4 For the avoidance of doubt and without derogation from any other provision of these Conditions the Company shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay on delivery of the Goods or failure to deliver the Goods within a reasonable time whether such delay or failure is caused by the Company's negligence or howsoever arising.
- 6.5 The Company reserves the right to make delivery by instalments and tender a separate invoice for each instalment. Each instalment shall for the purpose of delivery constitute a separate supply and a failure by the Company to deliver any instalments in accordance with these Conditions or any claim by the Customer in respect of any instalment shall not entitle the Customer to repudiate or cancel the Contract.
- 6.6 The Company reserves the right to deliver quantities of Goods that may vary by up to 0.5 tonnes over or under the specified quantity stated in the Contract. Any such variation in quantity shall not entitle the Customer to a claim of damages or cancellation of the Contract.
- 6.7 The Customer agrees to accept the quantity delivered as being in full satisfaction of the order subject to the tolerances set out in Clause 6.6 above.
- 6.8 The price of the Goods is based on:
  - 6.8.1 the Customer requiring delivery during the Company's working hours or days (such hours or days are available on request). If the Customer requires delivery at any other time then the Customer shall give reasonable notice in writing to the Company and, if the Company agrees to such delivery, the Customer shall pay all additional expenses as determined by the Company occasioned by such delivery; and
  - 6.8.2 delivery being made in loads of nineteen tonnes or more. Delivery in loads of lesser quantity shall be subject to a premium on haulage for the un-carried amount.
- 6.9 It is a condition of the Contract that proper assistance is given by the Customer to the driver of the delivery lorry in unloading the Goods and that the Company's delivery vehicles or those of its agents shall be held on site for not more than half an hour. Any period in excess of these times shall be charged as waiting time to the Customer at the rate determined by the Company and such rate is available from the Company upon request.
- 6.10 Any delivery by the Company shall be made on the nearest good hard road to site with adequate turning space at the point of delivery. The Company's delivery driver is authorised to refuse delivery if, in his opinion, the point of unloading is unsafe or is likely to prove dangerous to third parties' properties. If the Company is required to deliver at any point off a public road, the Customer shall be responsible for any damages to third parties' properties resulting therefrom including vehicles, pipes, manholes or any other property of any sort and hereby indemnifies the Company against any such loss, damage, claims, costs including legal costs on an indemnity basis or any demands and penalty notices issued against the Company as a result of such delivery.
- 6.11 In the event that the Customer requests that any Goods be deposited on a street or public highway the Customer shall, at all times, be responsible for compliance with all regulations and steps required for the protection of persons or properties that might be affected 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 a result of such delivery.

## **7. INSPECTION AND SHORTAGES**

- 7.1 The Customer shall inspect the Goods at the place and time of unloading or collection.
- 7.2 Subject to Clause 6.6, the Customer must inform the Company by telephone or e-mail as soon as reasonably practicable and in any event must give the Company written notice within two working days of delivery of any claim for short delivery.
- 7.3 If the Customer does not comply with the provisions as set out in Clause 7.2 above, the Goods shall be deemed to have been delivered in the quantities shown in the delivery documents.
- 7.4 The Customer shall not be entitled to object to or to reject the Goods by reason of any such shortage or claim any damages whatsoever for short delivery howsoever caused.

- 7.5 Subject to Clause 7.2 and 7.3 above, the Company's liability for shortage is limited to:
- 7.5.1 making good the shortage within a reasonable time; or
  - 7.5.2 issuing a credit note for the shortage; or
  - 7.5.3 making pro rata adjustment to the invoice for the Goods if appropriate.

## **8. RISK AND TITLE**

- 8.1 The risk in the Goods shall pass to the Customer upon delivery or collection.
- 8.2 Ownership of the Goods shall not pass to the Buyer until the Company has received payment in cleared funds of all sums owed to it in respect of the Goods under the Contract.
- 8.3 Until such time as the ownership in the Goods passes to the Customer the Customer shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods (at no costs to the Company) separately stored, protected, insured and identified as the Company's property. Until that time the Customer shall be entitled to re-sell or use the Goods in the ordinary course of his business but at the direction of the Company the Customer shall account to the Company for the proceeds of sale or insurance proceeds related to the Goods.
- 8.4 The Company shall be entitled at any time to inspect or recover any or all of the Goods in the Customer's possession to which the Company has title and for that purpose the Customer hereby permits the Company or its contractors to enter upon any premises occupied by the Customer or to which the Customer has access and where the Goods may be or are believed to be situated.
- 8.5 On cancellation of the Contract, the Company's rights under this Clause 8 shall remain in effect.

## **9. LIABILITIES**

- 9.1 Nothing in these Conditions shall exclude or restrict the Company's liability for death or personal injury resulting from its negligence or the Company's liability for fraudulent misrepresentation.
- 9.2 If the Goods are manufactured processed or mixed by the Company to the design quantity measurement or specification of the Customer or its agents then:
- 9.2.1 subject to Clause 9.1 of these Conditions the Company shall not be under any liability for damages howsoever arising or under Clause 10.3 of these Conditions as the case may be except in the event of:
    - 9.2.1.1 fraudulent misrepresentation;
    - 9.2.1.2 non-compliance with such design quantity measurement or specification;
  - 9.2.2 The Customer shall unconditionally fully and effectively indemnify the Company against all loss damages costs on an indemnity basis and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringements of any patents copyright design trademark or any other industrial or intellectual property rights of any other person.
  - 9.2.3 The Customer shall further unconditionally fully and effectively indemnify the Company against all loss damages costs on an indemnity basis and expenses awarded or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any other claim arising from any such manufacturing processing or mixing including but not limited to any Defect in the Goods. This indemnity shall be reduced in proportion to the extent that such loss damages costs and expenses are due to the negligence of the Company.
- 9.3 If the Goods are not manufactured by the Company or have been processed by a third party whether or not at the request of the Company or the Customer the Company's liability in respect of any Defect in workmanship or materials of the Goods shall be limited to such rights against the manufacturer or the third party as the Company may have in respect of those Goods. The Company shall on written request provide details of its rights against the manufacturer or third party and any other terms and conditions imposed by the manufacturer or the third party and so far as possible shall on request assign to the Customer any such rights.
- 9.4 Subject to Clause 9.1 of these Conditions the Company shall not be liable for misrepresentation (unless fraudulent) or in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever arising and whatever the cause for: (a) any financial loss or any liability the Customer may have to a third party or any loss of profit, business, contracts, revenues or anticipated savings; and/or (b) any special indirect or consequential damage of any nature whatsoever.
- 9.5 Without prejudice to any other provisions in these Conditions in any event the Company's total liability for any one claim or for the total of all claims arising from any one act of default of the Company (whether arising from the Company's negligence or otherwise) shall not exceed the purchase price of the Goods the subject matter of any claim.

## **10. QUALITY**

- 10.1 In these Conditions "Defect" shall mean any failure of the Goods to conform with the relevant specification and "Defective" shall be construed accordingly.
- 10.2 In the event that the Goods delivered are thought to be Defective by the Customer, the Customer must notify the Company of such Defect within 48 hours of the discovery of the Defect, and in any case within 2 months of receipt of the goods in respect of aggregates and within 6 months of receipt of the Goods in respect of asphalt. Such notice to be given by the Customer in accordance with Clause 18. The Company shall in good faith investigate the quality of the Goods so purchased and where deemed defective the Company shall at its sole discretion either collect and replace those Goods or refund all (or where appropriate part) of the price for the relevant Goods within 14 days of the Customer's notification. The Company shall have no further liability under this Clause 10.2.
- 10.3 The Company shall not be liable under Clause 10.2:
- 10.3.1 if the Defect arises from fair wear and tear; and/or
  - 10.3.2 if the Defect arises from abnormal working conditions including where the Goods have been stored in unsuitable conditions whilst under the control of the Customer or laid in a manner contrary to industry practices or used after the expiry of the recommended shelf life; and/or
  - 10.3.3 if the Defect arises from the Customer's wilful damage negligence mis-use alteration or repair of the Goods failure to follow British Standard or industry instructions relevant to the Goods;
  - 10.3.4 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 be liable for costs or liabilities relation to the continuance of works or further construction, which should be the sole risk of the Buyer; and/or
  - 10.3.5 unless after the discovery of the Defect the Company is given a reasonable opportunity to inspect the Goods before they are used or in any way interfered with. For the avoidance of doubt the Company acknowledges that the costs of suspending works are relevant to the determination of what is a reasonable opportunity and this sub-Clause shall not apply to any works affecting the Goods which it may be reasonably necessary to carry out in the interests of safety and/or as emergency measures.

10.4 No liability is accepted by the Company for surface finish.

## 11. FORCE MAJEURE

- 11.1 The Company may defer delivery, cancel the order for the Goods or reduce the volume of Goods to be delivered to the Customer and shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of the aforesaid delay, cancellation, or reduced delivery or any failure to perform any of the Company's obligations due to a "Force Majeure Event".
- 11.2 Force Majeure Event means an event beyond the control of the Company which prevents the Company from complying with any of its obligations under the Contract including but not limited to trade sanctions, strikes or other forms of industrial action whether involving its own workforce, failure of transport networks, acts of God, war, terrorism, riots, civil commotion, pandemic or epidemic, fires and flood.

## 12. DEFAULT

- 12.1 "Insolvent" shall mean the Customer becoming unable to pay the debts within the meaning of Section 123 of the Insolvency Act 1986; the levying or the threat of execution or distress on any property of the Customer; the appointment of a receiver or administrative receiver over all or any part of the Customer's property; a proposal for a voluntary arrangement or compromise between the Customer and its creditors whether pursuant to the Insolvency Act 1986 or otherwise; the passing of a resolution for voluntary winding up or summoning a meeting to pass such a resolution otherwise than for the purpose of a bona fide amalgamation or reconstruction; the presentation of a petition for winding up of a Customer or for an administration order in relation to the Customer; the Customer ceasing or threatening to cease to carry on its business.
- 12.2 If the Customer fails to pay the Company for any Goods on the due date or the Customer becomes Insolvent or if the Customer is in breach of any condition of this Contract and fails to remedy such breach after being requested to do so the full balance outstanding on any account between the Company and the Customer shall become immediately payable and the Company shall be entitled to act on any of the following (without prejudice to any other rights or remedy it may have):
- 12.2.1 require payment in cash or cleared funds in advance of delivery or upon collection of the Goods;
  - 12.2.2 cancel or suspend any further delivery to the Customer under any contract;
  - 12.2.3 sell or otherwise dispose of any Goods which are the subject of any contract with the Customer; or
  - 12.2.4 exercise the powers as set out in Clause 8 of these Conditions.
- 12.3 The Customer shall reimburse the Company's costs including legal costs incurred on an indemnity basis in enforcing its rights under this Contract including but not limited to recovery of any sums due. Such sums shall be paid in addition to the statutory compensation payable by the Customer under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002).

## 13. DATA PROTECTION

- 13.1 For the purposes of this Clause 13:
- 13.1.1 "Data Protection Legislation" means the Data Protection Act 2018; the General Data Protection Regulation ((EU) 2016/679) (the "GDPR"); the UK version of the GDPR as provided for under the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 and any national implementing laws, regulations and secondary legislation as amended or updated from time to time;
  - 13.1.2 "personal data" and "personal data breach" shall have the meanings given to them in Data Protection Legislation.
- 13.2 To the extent that either party provides to the other personal data pursuant to or in connection with the Contract the recipient shall process that personal data strictly in accordance with Data Protection Legislation or any amendment or re-enactment thereof and the Company's Data Protection Policy, which is available on request.
- 13.3 A party shall notify the other party as soon as reasonably practicable and in any event within 72 hours of identifying an actual or suspected personal data breach relating to personal data provided to it by that party.

## 14. CALL RECORDING

- 14.1 The Company reserves the right to record all telephone orders and enquiries for training, dispute resolution or quality purposes. The Company shall comply with the requirements of the Data Protection Legislation with respect to any personal data captured on any such recordings.

## 15. ANTI-BRIBERY, MODERN SLAVERY AND COMPETITION

- 15.1 The Customer shall comply and use reasonable endeavours to ensure that all subcontractors, suppliers and all persons associated with the Customer (as defined by section 8 of the Bribery Act 2010) comply with all applicable anti-bribery and anti-corruption legislation in the relevant jurisdiction including without limitation the Bribery Act 2010. The Customer shall maintain and enforce its own policies and procedures, including adequate procedures to ensure compliance with all applicable anti-bribery and anti-corruption legislation in the relevant jurisdiction.
- 15.2 The Customer shall comply with the provisions of the Modern Slavery Act 2015 (MSA) and shall take all reasonable steps to ensure its supply chain is slavery free and the Customer shall use all reasonable endeavours to assist the Company in its compliance with the MSA.
- 15.3 The Customer shall not engage in any agreement, arrangement, concerted practice, information exchange or behaviour in breach of UK, EU or other competition law in force from time to time in the relevant jurisdiction.

## 16. SANCTIONS

- 16.1 It is agreed that all activities contemplated by the parties pursuant to this Contract will be performed in conformity with and shall not be prohibited by Sanctions and/or laws if and to the extent applicable. Notwithstanding any other provision of this Clause or any other Clause or provision to the contrary in this Contract, neither party shall be required to do anything under this Contract which constitutes a violation of, or would be in contravention of, or would expose it to the risk of designation pursuant to any Sanction applicable to it.
- 16.2 If, at any time during this Contract any Sanctions are changed, or new Sanctions are imposed or become effective, or there is a change in the interpretation of Sanctions, which would
- 16.2.1 expose a party to the risk of designation or to other punitive measures by a Sanctions authority; or
  - 16.2.2 materially affect a party's performance of this Contract including but not limited to:
    - (a) Its ability to take or make delivery or make or receive any payments as may be required in the performance of this Contract or to insure or transport the Goods to be delivered by the Company to the Customer; or,
    - (b) importing the Goods into the country of destination, or

- 16.2.3 cause either:
- (a) a curtailment, reduction in, interference with, failure or cessation of supply of Goods from any of the Company's or the Company's suppliers' sources of supply; or,
  - (b) a refusal to supply such Goods by any such supplier.

then notwithstanding any Clause or provision to the contrary in this Contract, such party may, by written notice to the other party, (i) suspend performance until such time as the notifying party may lawfully perform this Contract and/or (ii) cancel this Contract, in each event, without any further obligation or liability by either party, save for any accrued rights and remedies.

- 16.3 The Customer shall not directly or indirectly export, re-export, transfer divert, trade, ship, import, transport, store, sell, deliver or re-deliver any of the Goods provided by the Company to, or for end-use by, a jurisdiction or party that is subject to Sanctions.
- 16.4 Where requested to do so by the Company, the Customer shall supply such evidence as the Company may reasonably request to demonstrate the Customer's compliance with this Clause, including to verify the final destination of the Goods supplied and to demonstrate that controls are in place which actively support compliance with Trade Control Laws applicable to the performance of the Contract.
- 16.5 Obligations to make or receive payment which arose before, or as a consequence of cancellation shall remain in effect but shall be subject to suspension to the extent required by part a of this Clause.

## **17. GENERAL**

- 17.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).
- 17.2 The headings of these Conditions are for convenience only and shall have no effect on interpretation.
- 17.3 If any Clause or Sub-Clause of these Conditions is held by any court or other competent authority to be void or unenforceable the validity of the other Clauses or Sub-Clauses of these Conditions shall not be affected, and they shall remain in full force and effect.
- 17.4 The waiver by the Company of any breach or default of these Conditions shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provisions.
- 17.5 Nothing in these Conditions is intended to or shall create any benefit for or right to enforce any of these Conditions on a third party.
- 17.6 Cancellation of the Contract shall not affect the rights and obligations whatsoever accrued at the time of cancellation.

## **18. DISPUTE RESOLUTION**

- 18.1 If any dispute arises between the parties out of or in connection with this Contract, a party shall give to the other written notice setting out the nature and particulars of the disputed matter (a "Dispute Notice") together with relevant supporting documents. On service of the Dispute Notice the Company and the Customer shall attempt to resolve the matter in good faith.
- 18.2 Where the matter cannot be resolved within 30 days, it shall be escalated to senior representatives (such as the Commercial Manager or Technical Director) of the parties who shall use their reasonable endeavours to resolve it.
- 18.3 Where the parties are unable to resolve the matter within 30 days of the referral being made under Clause 18.2, the parties may resolve the matter through mediation in accordance with the London Court of International Arbitration Mediation Rules
- 18.4 Until the parties have completed the steps referred to in Clauses 18.1 to 18.3, and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief.

## **19. ADDITIONAL TERMS OF SALE RELATING TO READY MIX CONCRETE**

- 19.1 These Additional Terms relate only to the supply of ready mix concrete by the Company and apply in conjunction with the above Standard Terms of Sale (the "Standard Terms") save that where there is any conflict between the Standard Terms and the Additional Terms, the latter shall take precedence in respect of the supply of ready mix concrete only.
- 19.2 In these Additional Terms: "Concrete" means ready mix concrete supplied in a fresh condition. Reference to "Goods" in the Standard Terms shall be read as reference to Concrete. "BS EN 206" & "BS 8500" means the European & British Standard covering the methods of specifying and producing Concrete as amended from time to time. "BS EN 12390" means the European & British Standard on testing Concrete as amended from time to time.
- 19.3 Unless agreed in writing all quotations for the supply of Concrete by the Company are based on BS EN 206 & BS 8500.
- 19.4 Subject to Clauses 6.1 to 6.4 of the Standard Terms, the Customer shall specify the time as well as the date of delivery and shall have facilities prepared for the acceptance of the Concrete. The Customer shall provide and clearly indicate to the Company a safe route where the discharge is away from the made-up road and the Customer shall indemnify the Company against any damage or loss resulting from the Customer's failure to do so.
- 19.5 In respect of each delivery of Concrete an electronic delivery ticket shall be completed by the Company's driver which shall confirm:
- 19.5.1 that the mix description set out on the ticket describes the Concrete required by and delivered to the Customer; and
  - 19.5.2 the authorisation of any addition of water or any other materials to the Concrete after it has been declared by the Company's representatives as being ready for acceptance.
- A copy of the electronic delivery ticket shall be made available upon request.
- 19.6 The Company shall ensure that the Concrete delivered complies with the specification ordered provided always that the order is made in writing and fully in accordance with BS EN 206 & BS 8500. In any other event the Company cannot warrant that the Concrete delivered shall comply in all respects with the specification order.
- 19.7 Any Concrete referred to in any quotation or delivery ticket as a designed mix shall be interpreted as being a Concrete grade having a 28-day characteristic strength of the value stated as defined in BS EN 206 & BS 8500. Any reference to strength shall be interpreted as being reference to the compressive strength obtained from Concrete cubes, made, cured and tested in accordance with BS EN 12390.
- 19.8 A Concrete grade referred to in any quotation or delivery ticket as a prescribed mix or nominal mix or standard mix, shall be interpreted as being one in which strength testing shall not be used to judge compliance with the specification.
- 19.9 Subject to Clause 3 and Clause 9 of the Standard Terms the Company does not warrant that the specification of the Concrete quoted or ordered by the Customer shall be suitable for any particular purpose even if the Company has knowledge of that particular purpose.
- 19.10 In addition and without limitation to Clauses 9 and 10 the Company shall not be liable under Clause 10.2:
- 19.10.1 unless the Company is notified by telephone as soon as reasonably practicable after discovery of any Defect and in any event within 10 days of the date of delivery such notification to be confirmed forthwith in writing.
  - 19.10.2 unless the Company is given a reasonable time to investigate any alleged Defect as it sees fit;
  - 19.10.3 if loss of workability or change in air content (where applicable) of the Concrete is caused by reasons outside the control of

- the Company;
- 19.10.4 if additional water or any other material has been added to the Concrete after it has been declared by the Company's representatives as being ready for acceptance;
- 19.10.5 if the Concrete is tested unless:
- 19.10.5.1 any sample for testing has been taken during discharge from the Company mixer in accordance with the relevant provisions of BS EN 206 & BS 8500 within one hour of unloading unless a longer time has been agreed in writing.
- 19.10.5.2 testing of fresh concrete and the making curing and testing of Concrete cubes has been carried out in accordance with relevant provisions of BS EN 12390, BS EN 206 & BS 8500.
- 19.10.5.3 Test results have been interpreted in accordance with the relevant provisions of BS EN 206 & BS 8500 unless an alternative compliance has been agreed in writing.
- 19.11 In the event of the Customer requesting the Company to remove any surplus Concrete a charge for disposing of the surplus Concrete may be made by the Company.

## **20. ADDITIONAL TERMS OF SALE RELATING TO BITUMEN**

- 20.1 These Additional Terms relate only to the supply of bitumen by the Company and apply in conjunction with the above Standard Terms of Sale ("The Standard Terms") save that where there is any conflict between the Standard Terms and the Additional Terms, the latter shall take precedence in respect of the supply of bitumen only.
- 20.2 In these Additional Terms: "Bitumen" means bitumen supplied in a fresh condition. Reference to "Goods" in the Standard Terms shall be read as reference to Bitumen.
- 20.3 Subject to Clauses 6.1 to 6.4 of the Standard Terms, the Customer shall specify the time as well as the date of delivery and shall have facilities prepared for the acceptance of the Bitumen. The Customer shall provide and clearly indicate to the Company a safe route where the discharge is away from the made-up road and the Customer shall indemnify the Company against any damage or loss resulting from the Customer's failure to do so.
- 20.4 Subject to Clause 3 and Clause 9 of the Standard Terms the Company does not warrant that the specification of the Bitumen quoted or ordered by the Customer will be suitable for any particular purpose even if the Company has knowledge of that particular purpose.
- 20.5 The Company does not guarantee that any particular weight of Bitumen will cover a specific area or yield a particular volume. The Customer must independently ascertain its precise requirements as to the quantity of Bitumen it requires for a specific task or project.
- 20.6 In addition, and without limitation to Clauses 9 and 10 of the Standard Terms, the Company shall not be liable under Clause 10.2 where:
- 20.6.1 the Customer adds any spoiling material or contamination to the Goods without the written agreement of the Company, including, but without limitation, any non-approved releasing agent;
- 20.6.2 the Customer fails to discharge the Bitumen within 60 minutes of the Goods arrival at the delivery destination. The Company has no liability for any decision by the Customer not to discharge the Bitumen immediately on arrival;
- 20.6.3 the Customer fails to regularly record, measure and monitor the temperature of the Bitumen from the point of arrival at the delivery destination until used by the Customer and / or to use the Bitumen within the correct temperature range as specified by the Company;
- 20.6.4 the Bitumen is delivered in small batches or loads at the request of the Customer, it is accepted that the Bitumen will lose heat and workability quickly.