

# NEW MILTON CONCRETE LIMITED

## CONDITIONS OF SALE OF MATERIALS

### 1. CONDITIONS OF SALE

The following terms have the following meanings in these conditions:

- (a) "Company" means "New Milton Concrete Limited".
- (b) "Purchaser" means the person, firm or company contracting with the Company.
- (c) "Materials" means materials, goods, equipment, and the provision of services. These conditions apply to the sale of Materials by the Company and the acceptance of any quotation includes the acceptance of these conditions subject to any variation in the quotation.
- (d) "Delivery Vehicle" means any vehicle owned hired or contracted to or by the Company for the delivery of the Materials.

Unless previously withdrawn, quotations are open for acceptance in writing within thirty days from their date, and the following terms and conditions apply to all sales of Materials by the Company to the exclusion of all previous proposals or communications including any terms or conditions which the Purchaser may purport to apply under any purchase order confirmation of order or similar document. Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by a Director of the Company.

### 2. PRICE VARIATION:

Quotations are based on all costs applicable to the supply of the Materials at the date of quotation. Prices may be adjusted to reflect any reasonable increase in any applicable cost occurring after the date of quotation. The Purchaser will be responsible for any extra cost incurred by any subsequent amendment of its requirements not provided for in the accepted order.

### 3. ADDITIONAL CHARGES:

If the Company is required to make deliveries outside normal working hours or in part loads or in the event that discharge is not completed within fifteen minutes from arrival of the Delivery Vehicle, the Purchaser will be charged the extra in accordance with the Company's published standard scale of charges.

### 4. DELIVERY:

- (a) Any date given by the Company or the Purchaser for delivery is given and intended as an estimate only and is subject to these conditions and is not to be of the essence of the contract. The Purchaser shall nevertheless be bound to accept the Materials ordered when available unless the delay is due to circumstances within the Company's reasonable control. The Purchaser will be ready to take delivery of the Materials at its site on the estimated delivery date referred to in the quotation, order acknowledgement or any amended date notified to the Purchaser by the Company.
- (b) The Purchaser must provide a safe and adequate access to the point at which the Purchaser requires discharge of the Materials, including adequate space to manoeuvre the Delivery Vehicle. If in the Company's opinion the access is unsafe, inadequate or has insufficient manoeuvring space, the Company may at its discretion refuse to make deliveries of Materials. Any costs incurred by the Company as a result will be paid by the Purchaser. The Purchaser indemnifies the Company for any damage to the Delivery Vehicle and indemnifies the drivers of any such vehicles for any personal injury incurred by them whilst at the delivery site or on any access thereto not being a public highway, except to the extent that such damage or injury is due to the negligence of the Company or the driver.
- (c) The Purchaser, his employee or authorised agent must promptly:
  - (1) Accept delivery of the Materials when they arrive at his site and provide necessary labour to unload in a timely manner.
  - (2) Inspect the Materials when they are discharged or unloaded.
  - (3) Sign the delivery note.
  - (4) Sign the record of any delay after the arrival of the Materials on site, standing time, authorised day work or other records.
- (d) Where there is any complaint about the quality or quantity of the Materials the Purchaser must:
  - (1) Phone the office from which the Materials were ordered on the day of delivery.
  - (2) Confirm the complaint in writing to the Company's office within one week.
  - (3) Allow the Company all reasonable facilities to enable it to investigate any such complaint promptly and to advise the Purchaser of any remedial action which may be appropriate.
- (e) Deliveries may be totally or partially suspended during any period in which the Company may be prevented or hindered from manufacturing, supplying or delivering the Materials due to breakdown of plant, non-availability of Materials, labour disputes, fire, accident, inclement weather, transport difficulties or delays, or any circumstances outside the Company's control. The Company shall be under no liability to the Purchaser through failure to deliver in such circumstances. Customers ordering Delivery Vehicles off the public highway do so at their own risk.

### 5. CANCELLATION:

No cancellation of an order for supply can be accepted unless such cancellation is received at the Company's works in time to prevent the order being mixed or loaded. Any costs incurred by the Company as a result of the cancellation or variation of an order after commencement will be charged to the Purchaser. The Company shall be entitled to cancel any contract for the sale or supply of Materials and / or suspend any further deliveries or suspend the provision of services under any contract without any liability to the Purchaser and without prejudice to any other remedies, if the Purchaser:

- (a) fails to pay any sum payable to the Company under that or any other contract on the due date;
- (b) commits any breach of the Contract;
- (c) makes any voluntary arrangements with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation or has a receiver appointed (otherwise and for the purposes of amalgamation or reconstruction).

### 6 REPRESENTATIONS, WARRANTIES AND CONDITIONS

- (a) All descriptive and other specifications and particulars of weights and dimensions contained within the Company's literature or submitted with any quotation are approximate only but are not to be treated as binding unless specifically confirmed in writing by the Company.
- (b) No employee or agent of the Company is authorised to make any representations concerning the Materials and any such representations may be made on behalf of the Company only in writing signed by a director or manager of the Company; the Purchaser acknowledges that it does not rely upon any representations made otherwise than in writing signed by a director or manager of the Company (provided that this condition 6(b) does not exclude liability for fraudulent misrepresentation by the Company its employees or agents)
- (c) No express condition, warranty, guarantee or specification purportedly given by the Company is valid unless given in writing by the Company and signed by a director or manager of the Company.
- (d) The Company acts only as a supplier of Materials to the order of the Purchaser and knowledge of the purpose for which the Materials are intended to be used shall not give rise to any implied condition or warranty on the part of the Company as to the quality or fitness for that purpose of the Materials supplied (whether by virtue of section 14 of the Sale of Goods Act 1979 or otherwise howsoever). The Purchaser should satisfy itself that the Material is suitable for its intended use and there shall be no express or implied condition or warranty of fitness for purpose save such, if any, as may expressly be given in writing by the Company, signed by a director or manager of the Company.
- (e) Materials supplied are those in normal production.

### 7 DEFECTS AND LIMITATION OF LIABILITY

- (a) Subject as hereinafter mentioned in the event of any actionable defect in the Materials supplied (including but not limited to any failure to comply with any specification previously agreed in writing between the parties to this agreement and signed on behalf of the Company by a director or manager thereof) the Company will make good such defect either by supplying to the Purchaser replacement Materials in the same quantity as the defective Materials or by repaying to the Purchaser all or part (as appropriate) of the price of the Materials, the manner of such making good to be in the sole discretion of the Company.
- (b) The Company's liability in tort and in respect of direct and consequential damage howsoever arising and of whatever nature shall in respect of any misstatement or breach of condition or warranty in respect of the quality or fitness for purpose of the Materials supplied or otherwise in respect of any defect or failure whatsoever in any of such materials, be wholly limited to fulfilment of its obligation under condition 7 (a) above (subject to the provisions below) and all other remedies of the Purchaser in respect of such matters are hereby excluded.
- (c) The obligations of the Company under condition 7 (a) above are subject to the following provisions, which are applicable to all Materials:
  - (i) The Company will accept no responsibility for faults in or failure of the Materials due to use in unsuitable applications or in unsuitable climatic conditions or the handling, treatment or methods of placing adopted by the Purchaser after the Materials have been delivered to site or loaded in any vehicle or receptacle provided by the Purchaser or the effects of frost, heat or inclement weather.
  - (ii) The Company will accept no responsibility for cosmetic blemishes, surface depressions or fracturing resulting from naturally occurring inclusions contained in the Materials
  - (iii) The Company will accept no responsibility unless the alleged defects are notified to the Company as soon as possible after their discovery (but in no case exceeding 7 days from the date on which the Materials were supplied).
  - (iv) The Company will accept no responsibility unless it has been given an opportunity of investigating any alleged defect and of making representations as to any remedial action to be taken and any reasonable remedial action suggested by the Company has been taken by the Purchaser, without satisfactorily remedying the defect.
  - (v) If a defect in the materials should have been revealed by examination on delivery the Company's responsibility in respect of such defect shall be limited to the delivery of a fresh supply of materials to replace the defective materials (without prejudice to the necessity for compliance by the Purchaser with the other provisions of this Condition)
- (d) 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 servants or agents or for fraudulent misrepresentation.

### 8. RETENTION OF TITLE

- (a) The risk of damage to or loss of the Materials pass to the Purchaser at the moment either of its discharge from the Delivery Vehicle or of its discharge from the Company's plant into any vehicle or receptacle provided by the Purchaser.
- (b) Notwithstanding delivery and the passing of risk in the Materials, or any other provision of these Conditions, the property in the Materials shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full of the price of the Materials and all other Materials agreed to be sold by the Company to the Purchaser for which payment is then due.

### 9. PAYMENT:

Unless otherwise stated net payment to be received by the Company not later than the thirtieth day of the month following the month of delivery. The Company reserves the right to refuse to execute any order or to suspend or discontinue if the arrangements for payment or the Purchaser's credit is not satisfactory to the Company or the Purchaser's account is overdue for payment. Unless otherwise stated, prices are exclusive of value added tax, sales tax or any similar tax and import and other duties, which will be payable by the Purchaser in addition. All amounts charged by the Company are net and shall be paid without deduction or set off and the Company shall be entitled to recover the price notwithstanding that delivery may not have taken place due to the default of the Purchaser. If the Materials have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

If the Company's credit terms are not adhered to and the period of settlement extends beyond the thirtieth day of the month following the month of delivery, the Company reserves the right to invoke the terms of the Late Payment of Commercial Debts (Interest) Act 1998.

In the case of cash sales, interest will be charged from the date of delivery.

Where the Company has to resort to an Agency or Solicitors for collection of such debts, the reasonable charges that the Company may incur will be met by the Purchaser. The Purchaser shall not withhold any payment properly due to the Company in the event of any dispute with the Company.

### 10. ARBITRATION:

If any dispute, difference or question shall at any time hereafter arise between the parties to this agreement in respect of the construction of these terms or concerning anything contained in or arising out of them or as to the rights, liabilities or duties of the parties, the same shall be referred to the arbitration of a person to be nominated by the president for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996. It is further agreed that such arbitration shall be a condition precedent to the commencement of any action at law (provided however the Company shall be at liberty to commence proceedings for recovery of sums due on an outstanding account). All Contracts shall be in all respects construed and operated as an English contract and be governed by English law and wheresoever the contract be signed and wheresoever the works be executed and any legal action must take place in England.