

# - *Dunkall Ltd* *Screeding & Renewables*

## **1. DEFINITIONS**

In these Terms and Conditions, the following expressions shall have the following meanings:

"Company" Co-Dunkall Ltd

"Materials" means the goods or services to be supplied by the Company and includes all ready mix products.

"Purchaser" means the person/company to who the Materials are to be supplied;

"Conditions" means the standard conditions of sale set out in this document and includes any special terms and conditions agreed in writing between the Company and the Purchaser and; "Contract" means the contract for the supply of Materials incorporating these Conditions.

"Associated Company" means a subsidiary or holding company of the Purchaser (as defined in Section 736 of the Companies Act 1985) or any company in which the Purchaser or any such subsidiary or holding company owns 25% or more of issued equity share capital or any company, firm or business of which any director for the time being of the Purchaser is a partner or in which he has an interest (whether directly or indirectly) or 20% or more of its share capital or its assets (as the case may be).

## **2. FORMATION OF CONTRACT**

All Materials sold by the Company shall be sold subject to the Conditions which may not be altered unless expressly agreed in writing by a person authorised to sign on behalf of the Purchaser. Any contrary or additional items whether or not contained in a document of the Purchaser are excluded

## **3. QUOTATIONS**

- 3.1 Unless otherwise stated in writing all quotations and estimates by the Company may be withdrawn at any time before receipt of an order and shall be deemed to be withdrawn if an order is not received within 60 days of their date
- 3.2 The Company reserves the right to make any changes in the specification of the Materials which are required to conform with any applicable statutory or EC requirements or where the Materials are to be supplied to the Company's specification which do not materially affect their quality and performance.
- 3.3 No cancellation or variation of the whole or any part of the Contract is permitted except with the written agreement of a person authorised to sign on behalf of the Purchaser.

## **4. PRICE**

- 4.1 The price of materials is that ruling at the time of dispatch. Prices quoted are not fixed unless agreed in writing. The price, unless otherwise indicated, is exclusive of Value Added Tax.
- 4.2 Charges for vehicles and drivers on a day work basis are available on request. All such charges will commence at the time of arrival at the destination.

## **5. PAYMENT**

- 5.1 Payment without deduction is due one day prior to delivery or subject to agreed terms
- 5.2 The Purchaser shall not be entitled to make any deduction or set off from any sums claimed by the Company any amount due or claimed against the Company by the Purchaser whether under the contract or any other contract.
- 5.3 The Company reserves the right in its absolute discretion at any time to insist upon payment by way of cleared funds for Materials before delivery or to demand security for payment before continuing with or delivering any Materials notwithstanding any subsisting agreement to provide credit to the purchaser.
- 5.4 The purchaser will be liable for all costs and charges in full of the contract value if the contract cannot be carried out on the day of delivery through no fault of the company. The purchaser shall also be liable to all costs relating to dumping charges for non-discharged loads

## 6 DELIVERY

- 6.1 The Purchaser shall be responsible for ensuring that the Company has sufficient particulars of the site and the point of unloading to which the Materials are to be delivered
- 6.2 Delivery will be deemed to have been at the time of arrival at the Destination or if the Company is unable to deliver because of inadequate instructions or the Purchaser wrongly fails to take delivery of the Materials at the time when the Company has tendered delivery of the Materials.
- 6.3 The Company requires a minimum of 48 hours notice of delivery times. In any event Dates and times quoted for delivery are approximate only.
- 6.4 Time for delivery shall not be of the essence of the Contract.
- 6.5 The Company shall not be liable for any damages whatsoever whether direct or consequential (including for the avoidance of doubt, any liability to any third party) resulting from delivery of the Materials or failure to deliver the Materials within a reasonable time whether such delay is caused by the Company's negligence or otherwise howsoever.
- 6.6 The Company reserves the right to make delivery by instalments and tender a separate invoice for each instalment. Each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Purchaser in respect of any one or more instalments shall not entitle the Purchaser to treat the Contract as a whole as repudiated.
- 6.7 Without prejudice to any other rights or remedy available to the Company an additional charge may be made if:
  - 6.7.1 The Purchaser requires delivery of materials in quantities less than Minimum Loads or delivery of two different types of Materials on one vehicle.
  - 6.7.2 The Purchaser requires delivery outside the hours of 0730 and 1700 Monday to Friday (excluding Public Holidays):
  - 6.7.3 The Purchaser re-directs a delivery, fails to take delivery or fails to give the Company adequate delivery instructions;
  - 6.7.4 unloading of the delivery vehicle is delayed for more than 30 minutes after the Company is ready to unload or in the case Screed, discharge is not completed within 30 minutes or arrival at the Destination;
  - 6.7.5 Delivery cannot be effected because of unsuitable access.
- 6.8 The Purchaser must provide convenient and safe access to the Destination and the Company shall be entitled to refuse to deliver over roads or over ground which it considers unsuitable. The Purchaser shall be liable for and shall indemnify the Company against any accident or damage occurring due to unsuitable access.
- 6.9 In the event that the Purchaser requests that any Materials be deposited on a street or public highway the Purchaser 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 and expenses including legal costs on an indemnity basis which the Company may incur as a result of such delivery.

## 7 RISK AND TITLE

- 7.1 The risk in the Materials shall pass to the Purchaser upon delivery.
- 7.2 Until the Company has received in cash or cleared funds payment of all sums owed by the Purchaser to the Company on any account whatsoever the ownership of the Materials shall remain with the Company.
- 7.3 Until such time as the property in the Materials passes to the Purchaser the Purchaser shall hold the Materials as the Company's fiduciary agent and bailee and shall keep the Materials separately stored, protected, insured and identified as the Company's property. Until that time the Purchaser shall be entitled to resell or use the Materials in the ordinary course of his business but at the direction of the Company and shall account to the Company for the proceeds of sale or insurance proceeds related to the Materials.
- 7.4 The Company shall be entitled to recover the price of the Materials including VAT even though the ownership in any of the Materials remains with the Company.
- 7.5 The Company shall be entitled at any time to recover any or all of the Materials in the Purchaser's possession to which the Company has title and for that purpose the Company, its servants or agents may with transport as is necessary, enter upon any premises occupied by the Purchaser or to which the Purchaser has access and where the Materials have been laid.

## 8 PREPARATION

- 8.1 The Purchaser is responsible for all preparation works: prior to arrival of the Company unless otherwise stated
- 8.1.1 Building sealed from all elements by way of windows, doors or the fixing of plastic sheeting to all openings.
  - 8.1.2 Preparation of door breaks and bay sizes –including all expansion joints be correctly fitted prior to arrival of the Company unless otherwise stated
  - 8.1.3 Floor preparation including placement of insulation and slip membranes to be correctly fitted prior to arrival of the Company unless otherwise stated.
  - 8.1.4 Under floor heating pipes if fitted to be filled and pressure tested.
- 8.2 Standard day rate charges and expenses incurred will be charged if the Company carries out any remedial works relating to floor preparation.

## 9 RESPONSIBILITIES

- 9.1 In these Conditions "Defect" shall mean the condition and/or any attribute of the Materials and/or other circumstances which but for the effect of the Conditions would have entitled the Purchaser to damages.
- 9.2 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.
- 9.3 If the Purchaser deals as a consumer as defined by the Unfair Contract Terms Act 1977 or the Unfair Terms in Consumer Contracts Regulations 1994 ("a Consumer") any provision of these Conditions which is of no effect shall not apply. The statutory rights of a Purchaser dealing as a Consumer are not affected by these Conditions.
- 9.4 Subject to Clauses 9.2 and 9.3 of these Conditions the Company shall not be liable by reason of any misrepresentation (unless fraudulent) or any breach of warranty condition or other term express or implied or any breach of duty (common law or statutory) or negligence for any damages whatsoever. Instead or liability in damages the Company undertakes liability clause 9.5 below.
- 9.5 Where but for the effect of Clause 9.4 of these Conditions a Purchaser would have been entitled to damages against the Company the Company shall not be liable to pay damages but subject to the conditions laid out in Clause 9.6 below shall in its sole discretion repair the Materials at its own expense or supply replacement materials free of charge or refund all or part of the price paid for the relevant materials.
- 9.6 The Company will not be liable under Clause 9.5:
- 9.6.1 If the Defect arises from fair wear and tear;
  - 9.6.2 9.6.2 If the Defect arises from wilful damage, negligence, abnormal working conditions, misuse, alteration or repair of the Materials, failure to follow the British Standard or industry instructions relevant to the Materials
- 9.7 Subject to Clauses 9.2 and 9.3 of these Conditions the Company shall not be under any liability for damages whatsoever or under Clause 9.5 of these Conditions as the case may be except in the event of;
- 9.7.1 fraudulent misrepresentation;
  - 9.7.2 misrepresentation where the representation was made or confirmed in writing
  - 9.7.3 non compliance with such design, quantity, measurement or specification;
  - 9.7.4 breach of a written warranty by the Company that the materials are fit for that purpose or;
  - 9.7.5 a claim maintainable against the Company pursuant to Clauses 9.2 of these Conditions.
- 9.8 The Purchaser will 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 infringement of any patents, copyright, design, trademark or any other industrial or intellectual property rights of any other person;
- 9.9 The Purchaser will further 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 other claim arising from any such manufacturing, processing or mixing including but not limited to any Defect in the Materials. This indemnity will be reduced in proportion to the extent that such loss damage costs and expenses are due to the negligence of the Company.
- 9.10 Except where the Purchaser deals as a Consumer the Purchaser will 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 by any third party arising from the supply or use of the Materials including loss arising from the Company's negligence.

9.11 Without prejudice to any other provisions on 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 Company's negligence or otherwise) shall not exceed the purchase price of the Materials the subject matter of any claim.

## 10 DEFAULT

10.1 "Insolvent" shall mean the Purchaser becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; the levying or the threat of execution on the Purchaser; the appointment of a receiver or administrative receiver over all or any part of any property of the Purchaser; a proposal for a voluntary arrangement or compromise between the Purchaser 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 purposes of a bona fide amalgamation or reconstruction; the presentation of a petition for the winding up of the Purchaser or for an administration order in relation to the Purchaser; the Purchaser ceasing or threatening to cease to carry on its business

10.2 If the Purchaser fails to pay the Company for any Materials on the due date or any credit limit is exceeded or if there is a material change in the constitution of the Purchaser or an Associated Company or the Purchaser or an Associated Company becomes insolvent or if the Purchaser is in breach of any term of the Contract and fails to remedy such breach after being so requested to do the full balance outstanding on any account between the Company and the Purchaser shall become immediately payable and the Company shall be entitled to do one or more of the following (without prejudice to any other remedy it may have):

- 10.2.1 Require payment in cash or cleared funds in advance of delivery of undelivered Materials;
- 10.2.2 Cancel any further delivery to the Purchaser under any contract;
- 10.2.3 Sell or otherwise dispose of any Materials which are the subject of any contract between the Company and Purchaser;
- 10.2.4 Charge the Purchaser interest on the balance of monies due at a rate of 4% per annum above Barclays Bank Plc base rate in force from the date the payment became due until actual payment is paid whether before or after Judgement;
- 10.2.5 Without prejudice to the generality of Clause 7 of these Conditions exercise the powers there set out.

## 11 GENERAL

11.1 The construction validity and performance of these Conditions and the Contract shall be governed by English law.

11.2 The headings of these Conditions are for convenience only and shall have no effect on interpretation.

11.3 Health and Safety/Hazard Data Sheets relevant to Materials are available on request.

11.4 The Company shall not be liable to the Purchaser or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of the Company's obligations if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing the following are non-exhaustive illustrations of causes beyond the Company's reasonable control: strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Company or a third party); premature exhaustion of reserves or geological faults which were not reasonable foreseeable rendering the working of reserves uneconomic; failure of a processing plant.

11.5 If any Clause or sub clause of these Conditions is held by any court of 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.

11.6 The waiver by the Company of any breach or default of these Conditions shall not be construed as a continued waiver of the breach nor as a waiver of any subsequent breach of the same or any other provision.

**Privacy Policy** This privacy policy sets out how Co-Dunkall Ltd uses and protects any information that you give Co-Dunkall Ltd when you use this website. Co-Dunkall Ltd committed to ensuring that your privacy is protected. Should we ask you to provide certain information by which you can be identified when using this website, you can be assured that it will only be used in accordance with this privacy statement. Co-Dunkall Ltd may change this policy from time to time by updating this page. You should check this page from time to time to ensure that you are happy with any changes. This policy is effective from 1<sup>st</sup> March 2011.

We may hold the following information on the Purchase: name, contact information including email address, other information relevant to customer surveys. We require this information to understand your needs and provide you with a better service, and in particular for the following reasons: Internal record keeping, to improve our services. From time to time, we may also use your information to contact you for market research purposes. We are committed to ensuring that your information is secure. In order to prevent unauthorised access or disclosure we have put in place suitable physical, electronic and managerial procedures to safeguard and secure the information we hold.

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