

WEST COUNTRY CEMENT LIMITED – (“THE COMPANY”) TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1. In these Conditions:

“**Customer**” means the Customer whether a person or company from whom the Company accepts an order for the Goods;

“**Conditions**” means these standard terms and conditions of sale and including any additional terms and conditions specified by the Company and agreed with the Customer;

“**Contract**” means the contract between the Company and the Customer for the sale and purchase of the Goods;

“**Goods**” means the goods (including any part delivery of them) which the Company supplies pursuant to the Contract;

2. BASIS OF THE SALE

2.1. The Company shall sell and the Customer shall purchase the Goods in accordance with these Conditions. These terms and conditions shall overrule any terms and conditions which the Customer purports to apply under any order. For the avoidance of doubt the Company does not accept any Customer terms and condition which purport to be incorporated into any order.

2.2. Each order for Goods by the Customer to the Company shall be deemed to be a separate offer by the Customer to purchase the Goods subject to these Conditions.

2.3. Any quotation is given on the basis that it is valid for a period of 30 days subject to earlier withdrawal by the Company.

2.4. Brochures, leaflets, information sheets, price lists and technical data do not constitute offers by the Company and the Company reserves the right to withdraw the same at any time prior to acceptance of an order.

2.5. The Contract (and any specific written documents incorporated into it) forms the entire contract between the Company and the Customer as supersedes any previous agreements or understandings. No variation to these Conditions shall be binding unless agreed in writing by an authorised employee of the Company.

2.6. Employees of the Company are not authorised to make recommendations in respect of the use, storage or characteristics of the Goods. Save where otherwise agreed in writing between the parties, any such recommendation may not be relied upon by the Customer who should take technical or professional advice regarding the suitability and use of the Goods.

2.7. The Company reserves the right to record all orders and enquiries received by telephone.

3. ORDERS, SPECIFICATIONS, SAMPLING AND TESTING

3.1. No order submitted by the Customer shall be deemed to be accepted by the Company until either the order is acknowledged in writing or the Goods are delivered to or collected by the Customer.

3.2. The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation forming part of these Conditions or the Customer's order (if accepted by the Company in accordance with these Conditions).

3.3. For Goods specified in the Quotation and Contract as supplied to European standards, evaluation of conformity of the Goods with such standards, including any sampling and testing, shall be carried out in accordance with the relevant procedures set out in those standards.

4. DELIVERY & RISK

4.1. Time shall not be of the essence in respect of delivery of goods. Any delivery dates given by the Company shall be estimates only and the Company cannot guarantee delivery on specified dates.

4.2. The Customer warrants that safe and unhindered access is available for delivery by heavy goods vehicle and that safe, adequate access and storage is available at the point of discharge, including providing a trained Banksman when appropriate. The Company will arrange the drop-off of goods at the delivery point whereafter they will be the sole responsibility of the Customer. The Customer agrees to indemnify the Company against any claims whatsoever arising from the delivery and drop-off of goods as directed by the Customer.

4.3. Unless otherwise agreed where an order is accepted (which includes carriage) the price for the Goods is based upon the Company having to make a single delivery. Where a Customer later requests that goods be delivered by way of multiple deliveries of part orders then the Company reserves the right to make reasonable additional delivery charges.

4.4. The Company does not accept any liability for damage caused to Customer's property during delivery.

4.5. The Customer shall be obliged to accept delivery of the goods within 7 days of the estimated delivery date. Where the Customer fails to accept delivery within that timescale the Company reserves the right to

4.5.1. Cancel the order and to recover its losses so arising; and

4.5.2. To raise reasonable charges for storage of the goods.

4.6. Where the Goods are to be delivered in instalments a failure by the Company to deliver any one or more (but not all) of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more (but not all) instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

4.7. The Customer must satisfy itself as to the condition of the Goods at the time of delivery and the Goods must be inspected by the Customer or Customer's representative at the time of delivery. Any defects or shortages must be notified to the Company with 48 hours of delivery. The Company cannot consider claims made after such timescale.

4.8. The Company's liability in respect of short weight or measures of Goods supplied shall be limited to the delivery of an additional supply of the Goods in accordance with these Conditions to make up the short weight or measure. The Company shall have no liability in respect of the short weight or measure if notification is given later than 48 hours after delivery of the Goods.

4.9. If the Customer cancels or postpones its order, the Company shall be entitled to recover all costs accrued and/or incurred up to the date upon which the Company receives notice of such cancellation.

4.10. Risk in the goods shall pass at the time of delivery.

5. PRICE OF THE GOODS

- 5.1. The price of the Goods shall be the price quoted by the Company. Where no price has been quoted by the Company, deliveries will be made at the Company's prices ruling at the date of delivery or collection (as appropriate).
- 5.2. The price of the Goods shall be subject to the addition of VAT and a sum equal to any other government duty, tax or levy applicable to the Goods. Except where delivery takes place at the Company's premises, all prices quoted by the Company include the Company's charges for transport, insurance and packaging and any non-returnable packaging if any.
- 6. TERMS OF PAYMENT**
- 6.1. Unless otherwise stated payment is due prior to delivery.
- 6.2. For trade account holding customers payment shall be due in accordance with the terms of the trade account. Time shall be of the essence in respect of payments due to the Company.
- 6.3. Where the Company has not required payment before delivery and the Customer fails to collect or accept delivery of the Goods (as appropriate) the Company shall be entitled to invoice the Customer for the price of the Goods at any time after such failure to collect or accept delivery (as appropriate).
- 6.4. If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Company the Company shall be entitled to:
 - 6.4.1. Cancel the Contract or suspend any further deliveries to the Customer; and
 - 6.4.2. Charge the Customer interest (both before and after any judgement) on the amount unpaid at the rate of 4% per annum above Barclays Bank PLC's base rate from time to time until payment in full is made; and
 - 6.4.3. Charge the customer the cost of recovering any debt owed, the costs of which shall not be unreasonably incurred.
- 6.5. The Customer shall not be entitled to set-off, or retention. The Company shall be entitled to appropriate any payment made by the Customer to the Company to such of the Goods as the Company determines despite any purported appropriation by the Customer including, but not limited to, any goods which have been supplied by the Company to the Customer under any contract between the Company and the Customer.
- 7. PROPERTY**
- 7.1. Title in the Goods shall not pass to the Customer until the price of the Goods and every other sum due from the Customer to the Company (whether under the Contract or otherwise) has been paid in full and until such payment, the Company shall be entitled to enter the Customer's premises to recover the Goods.
- 7.2. Until Property in the Goods passes to the Customer, the Customer shall store the Goods separately from any other goods and identify them as belonging to the Company.
- 7.3. Risk of damage to or loss of the Goods shall pass to the Customer upon delivery.
- 8. THE COMPANY'S LIABILITY**
- 8.1. The Company accepts no liability (except in respect of death or personal injury caused by the Claimant's negligence to the extent that exclusion or limitation of liability is permitted by law) for any damage, loss, injury of any kind howsoever arising out of the supply of the Goods to the Customer.
- 8.2. It shall be the obligation of the Customer to check and ascertain (taking professional advice where appropriate) that the Goods are appropriate for the use intended by the Customer and the Company makes no representations or warranty as to their suitability for any specific use or for their incorporation into any structure, building or works.
- 8.3. Nothing in this clause shall affect the Customers statutory rights.
- 9. THE GUARANTEE**
- 9.1. If the Customer can establish to the reasonable satisfaction of the Company that the Goods are not in accordance with the quality or specification contained in the quotation and Contract then, subject to the remaining provisions of this condition and condition 8, the Company shall at its sole discretion supply to the Customer additional Goods in the same quantity as the defective or non-compliant Goods and which in all respects are in accordance with the Contract or refund all or part as appropriate of the price of the relevant Goods; this is the "Guarantee".
- 9.2. The Guarantee is subject to the following limitations:
 - 9.2.1. the Guarantee shall not apply unless the Customer notifies the Company in writing of the alleged defect or failure immediately upon its first becoming aware thereof and in any event within 48 hours of delivery of the Goods; or, where the defect or failure was not apparent on reasonable inspection, within 48 hours after the earlier of the discovery of the defect or failure by the Customer, its employees, agents or sub-contractors or the time when the defect or failure ought reasonably to have been discovered by the Customer, its employees, agents or sub-contractors; and
 - 9.2.2. in relation to cement Goods, the Company will accept no responsibility for the strength or other quality of the Goods if the Customer shall have added anything whatsoever to them (other than as directed by the Company); and
 - 9.2.3. the Company will accept no responsibility for faults in or failure of the Goods due to: non-standard methods of mixing; inadequate curing; due to non-standard placing; the effects of frost, heat or inclement weather; and
 - 9.2.4. the Company will accept no responsibility if the defect or failure in respect of the Goods results from incorrect specification or other data supplied by the Customer to the Company; and
 - 9.2.5. save in respect of death or personal injury caused by the negligence or breach of duty (as defined in section 25 of UCTA) of the Company, the Company shall have no liability whatsoever, whether in contract, tort or delict (including negligence) or otherwise for the presence of any lignite or other deleterious material in any of the aggregates contained in the Materials; and
 - 9.2.6. since all cement and related products exhibit some volume change upon hardening, no responsibility can be accepted by the Company, whether in contract, tort or delict (including negligence) or otherwise, for any loss or damage arising as a result of such changes.
- 9.3. The Customer shall provide to the Company, its employees and agents (together with such vehicles, plant and equipment as the Company shall deem necessary) safe and unrestricted access together with such other facilities and information as the Company may reasonably require to enable it to ascertain or verify the nature and cause of the alleged defect or failure and to carry out its obligations under the Guarantee provided always that the Company shall be under no obligation whatsoever to refund the price of, or supply additional materials in respect of, any Goods which are removed by the Customer without the

Company's prior written consent or where the Company has not been given proper opportunity to ascertain or verify the nature and cause of the alleged defect in accordance with this condition.

- 9.4. The Company shall be entitled to require the Customer by notice in writing to cease forthwith the use of any of the Goods in respect of which any alleged defect or failure has been notified to the Company and if the Customer fails to comply with such requirement the Company shall be under no liability to the Customer either under this condition or otherwise in relation to such Goods. Notwithstanding this, the Company shall not be liable for any damages or losses whatsoever suffered by the Customer to the extent that they are caused by the continued use of the Goods after a defect or failure became apparent, or ought to have become apparent, to the Customer, its employees, agents or sub-contractors.
- 9.5. The Company shall be under no obligation whatsoever to refund the price of the Goods or supply any additional Goods to the Purchaser pursuant to the Guarantee where the alleged defect or failure results from incorrect installation or handling, alteration without consent, wear and tear, accident, failure to observe the sampling or testing procedures referred to in condition 3, abnormal or improper conditions of storage or use or any act, neglect or default (including negligence) of the Customer or any third party.
- 9.6. Additional Goods supplied pursuant to the Guarantee shall be delivered to the Customer at the address at which the defective Goods were located.

10. INSOLVENCY AND BREACH OF CONTRACT BY CUSTOMER

- 10.1. If the Customer commits any breach of the Contract or of any other contract between the Customer and the Company or between the Customer and any company within the same group of companies of which the Company is a member; or if the Customer has a bankruptcy order made against him or enters into a voluntary arrangement or composition with his creditors (or being a company or body corporate) convenes a meeting of creditors or enters into liquidation (except a solvent voluntary liquidation for the purpose only of a reconstruction or amalgamation), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or an encumbrancer takes possession or a manager, administrator, receiver or administrative receiver is appointed over any of the property, undertaking or assets of the Customer (or part thereof); or the Customer ceases or threatens to cease to carry on business; or if any distraint, lien, hypothec, execution (whether legal or equitable) or other process is levied or enforced on any property of the Customer and is not paid out, withdrawn or discharged within 21 days; or the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986: or the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly, then without prejudice to any other right or remedy available to the Company the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer and if the Goods have been delivered but not paid for the price shall become immediately due and payable despite any previous agreement or arrangement to the contrary.

11. SET OFF

- 11.1. The Customer undertakes to pay any sum due to the Company in full without any deduction, offset or counterclaim whatsoever save in respect of any credit note issued to the Customer by the Company.
- 11.2. The Company shall be entitled to set off against any sum due from the Company to the Customer on any account whatsoever any sum owed to the Company or any other company within the Company's corporate group by the Customer whether or not the same shall have become due for payment and any claim or counterclaim which the Company may have against the Customer whether liquidated or unliquidated and whether jointly or otherwise.
- 11.3. These terms are in addition to rights of set off at common law or in equity.

12. GENERAL

- 12.1. All notices between the parties in respect of the Contract must be in writing and delivered by hand, sent by first class pre-paid post, sent by facsimile transmission or sent by e-mail (in the case of notices to the Company) to the Company's address, facsimile number or e-mail address shown on the Company's quotation, or as notified in writing by the Company from time to time or (in the case of notices to the Customer) to its registered office (if it is a company) or (in any other case) to the last known address of the Customer or such address, facsimile number or e-mail address as shall be notified in writing to the Company by the Customer for this purpose.
- 12.2. Notices shall be deemed to have been received 48 hours after posting (exclusive of the day of posting) if sent by first class post; on the day of delivery, if delivered by hand; or at the time of transmission, if sent by facsimile or by e-mail, provided that a confirming copy is sent by first class pre-paid post to the other party within 24 hours after transmission.
- 12.3. No waiver by the Company of any breach of any provision of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.4. Any provision of the Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.
- 12.5. This Contract shall be governed by the laws of England and Wales.
- 12.6. The Customer shall not assign, sub-contract or otherwise transfer all or any of its rights, interests or obligations under the Contract without the prior written consent of the Company. Any or all of the Company's rights or obligations under the Contract may be assigned or sub-contracted by the Company.

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