

## **TERMS & CONDITIONS OF SALE**

### **1. DEFINITIONS**

#### 1.1. In these terms

"The Company"	means CSS (Northwest) Limited (registered in England and Wales under number 3633465
"the Customer"	means the person or persons, firm or Company or any other body to whom goods are supplied to hereunder
"Contract"	means the contract for the sale and purchase of goods.
"Terms"	means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Company and the Customer.

1.2. A reference in these terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3. The headings in these Terms are for convenience only and shall not affect their interpretation.

### **2. BASIS OF THE SALE**

2.1 The Company shall sell and the Customer shall purchase the Goods in accordance with the Company's quotation, whether it be written or verbal (if accepted by the Customer) or the Customer's order, whether it be written or verbal (if accepted by the Company), subject in either case to these Terms which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the Customer.

2.2 All quotations given by the Company (unless otherwise agreed in writing) are subject to withdrawal and alteration without notice and do not constitute an offer to supply goods. Goods supplied against orders accepted in writing will be charged at the prices ruling at the date of dispatch. The Company may at any time refuse to accept any order placed as a result of any such quotation.

2.3. All estimates and quotations are issued under the conditions of trust and confidence for the sole use of the addressee and the Company reserves the right to withdraw any quotation at any time if in its opinion the information contained therein may have been passed to a third party.

2.4 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in Writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.5 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

### **3. MATERIALS**

All sand and aggregate supplied by the Company ex-stock in unsealed containers are supplied on a basis that no conditions warranties and representations whether expressed or implied statutory or otherwise in respect of the weigh ? shall be binding and the same are hereby excluded.

### **4. PRICE**

4.1 All prices are quoted exclusive of Value Added Tax ("VAT") as VAT will be added to all invoices at the rate applicable on the tax point date which date shall be the date of invoice. Notwithstanding any offer quotation tender price or price list all prices are subject to alteration without notice and goods will be invoiced at prices ruling at the date of dispatch. Where before delivery or the date of the invoice whichever is the earlier, the goods become the subject to any addition duty, VAT or any other tax or surcharges in excess of the sum specified or such liabilities in the Company's quotation or invoice, the customer shall be charged and will pay such extra duty tax or surcharge.

4.2 The Company reserves the right to refuse to execute any order or contract if the arrangements for payment or the customers credit are or become unacceptable to the Company for any reason.

4.3. The Company reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

### **5. DELIVERY**

5.1. All times quoted for delivery or otherwise for performance of the contract are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be the essence of the Contract. The Goods may be delivered by the Company in advance of the quoted delivery date on giving reasonable notice to the Customer.

5.2. Company reserves the right to deliver goods by instalments and in such event each instalment shall be treated as a separate contract provided that deliveries of further instalments may be withheld until the goods or materials comprised in earlier instalments have been paid in full.

5.3. The Customer shall give comprehensive instructions for delivery to the Company within a reasonable time prior to the time quoted for delivery. In the event that the Customer fails to give

such instructions the Company may treat such failure as a repudiation of the contract and may without prejudice to any of its other rights accept such repudiation without notice of the termination thereof.

5.4. Unless otherwise stated the Company shall deliver goods as near to the destination as a safe hard roadway permits. In the event that the delivery is to be made on the Customer's site the Customer should provide and clearly indicate to the delivery driver a route from the public highway to the site which is safe and reasonable and provides adequate turning space at the point of delivery. The driver may refuse delivery if in his sole opinion the route or the point of unloading is unsafe or is likely to cause damage to the delivery vehicle. The Customer shall indemnify the Company (for itself and its agents or any haulage contractor operating the vehicle) against any damage caused to any such vehicle against all claims costs damages and expenses incurred by the Company and by reason of any default of the Customer under this condition.

5.5. The Customer shall be responsible for providing adequate labour and facilities at the delivery point for unloading goods ordered by him without undue delay and shall keep the Company indemnified against all claims however so arising from such unloading operations. The Company reserves the right to charge for delays prior to and during unloading or for costs incurred in making abortive deliveries.

5.6. Unless the Company receives a written notice from the Customer that the delivery is to be made only to a specific person any person accepting delivery on site should be deemed to have the Customer's authority to give instructions as to delivery and to accept such delivery.

5.7. Where delivery of the Goods is to be made by the Company in bulk, the Company reserves the right to deliver up to [ 10 ] per cent more or [ 10 ] per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.

## **6. RETURN OF GOODS**

Goods will only be accepted for return with the Company's prior agreement in writing. Drivers have no authority to accept goods for return unless expressly given by the Company. All goods for return must be returned to the Company carriage paid in good order and condition. The Company reserves the right to make a charge for accepting goods back into stock.

## **7. TERMS OF PAYMENT**

7.1. Payment shall be made either prior to delivery by cash or by cleared cheque in which event the Customer shall allow at least 5 working days for cheque clearance before delivery may be effected by the Company; or within 30 days from the end of the month of delivery if the Company has granted credit terms to the Customer unless other terms are specifically agreed in writing. The Company shall not be obliged to grant credit terms to any Customer and in the event that credit terms are granted the Customer shall at all times keep within any credit limit set by the Company. The time of payment of the price shall be of the essence of the Contract.

7.2. If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to the Company, the Company may:

7.2.1. cancel the contract or suspend any further deliveries to the Customer

7.2.2. appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Company as the Company may think fit (notwithstanding any purported appropriation by the Customer); and

7.2.3. charge the Customer interest (both before and after any judgment) on the amount unpaid at the rate of 10% per cent per annum above HSBC Bank plc base rate from time to time, until

payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

7.3. The Customer shall not be entitled under any circumstances to make any reduction in or deferment of payment in respect of any dispute set off or counter claim with or against the Company.

7.4. In the event of default in payment of any sums due to the Company by the Customer the Company shall be entitled to demand immediate payment of all sums outstanding at the date of default including such sums not yet overdue.

## **8. RETENTION OF TITLE**

8.1. The risk in goods passes to the Customer:-

- a. Where the Company delivers goods or causes goods to be delivered, then as from their arrival at the point where they are to be unloaded,
- b. Where the Customer collects goods or causes goods to be collected, then as from the point where they are collected. When goods are loaded onto vehicles loading shall be the responsibility of and at the risk of the Customer.

8.2. Whilst risk in goods supplied to the Customer under the contract shall pass as stated in Clause 8.1 above, legal and beneficial ownership of the goods shall remain with the Company until such time as the Company has received payment in full for the goods supplied or until such time as the customer sells the goods to its Customers by way of a bona fide sale at full market value (whichever shall be the earlier) and until such time the Customer shall keep such goods separate from the property, protected and insured and clearly identified as the Company's property.

Notwithstanding terms of payment specified herein or elsewhere payment for all goods supplied shall become due immediately upon the commencement of any act or proceeding in which the Customer's solvency is involved (with a voluntary or upon application to any Court) or upon the appointment of a receiver over the whole or only part of its assets undertaking and upon such occurrence the power of sale granted to it above hereof shall automatically terminate.

If payment for the goods is overdue whether in whole or in part and any of the goods have been delivered the Company may without prejudice to any of its other rights enter the Customer's premises to recover and/or sell the goods or such of them as the Company in its absolute discretion may designate as necessary to recover the amount of payment overdue and its reasonable costs incurred in giving effect to its rights under this provision and for those purposes the Customer hereby irrevocably authorises the Company to enter and take all necessary and reasonable steps upon the Customer's premises.

Until full payment has been made for the goods supplied the Customer is and shall remain a fiduciary for the Company in respect of the goods and if it sells or allows to be sold the goods the proceeds of sale shall be held in a separate clearly identifiable account and the Company's beneficial interest shall be attached to the proceeds of sale and the Company has the right to take such proceeds of sale.

8.3. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without limiting any other right or remedy of the Company) forthwith become due and payable

## **9. SAMPLES**

9.1. Where samples of goods or colour charts are provided to the Customer they are so provided for the purpose of indicating the class and general character or quality of goods and the Company does not undertake that the goods said will be identical or equal to such samples or colour charts.

9.2. All descriptions and illustrations of goods any catalogue brochure price list or any other document provided by the Company are intended for general guidance only and do not form part of any contract between the Company and the Customer and the Company accepts no responsibility for any error or admission in any such document and should not be liable in any circumstances for any loss or damage of whatsoever nature and howsoever caused resulting from reliance on such description or illustration.

## **10. INSTALLATION**

Where an installer of the goods is recommended by the Company such recommendation is made in good faith and without responsibility and the Company gives no warranty or condition as to the ability of the installer nor is any such warranty or condition to be applied by reason of such recommendation. In no circumstances shall the Company be liable for any loss damage or expense suffered by the Customer or any third party by reason of any act default omission or delay of the installer his servants agents or sub contractors whether due to the negligence of the installer or the Company or otherwise.

## **11. CLAIMS**

11.1. The Customer shall inspect all goods immediately upon delivery and shall within 48 hours from such inspection give notice in writing to the Company of any matter by reason whereof the Customer may allege the goods are not in accordance with the Contract.

11.2. Notice of any claim relating to shortage of or damages to the goods shall be made to the Company in writing within 48 hours of receipt of goods. In the event of loss or non delivery of the goods the Customer shall notify the Company in writing within 7 days of receiving the advice note.

11.3. The Company will consider claims only if the above conditions are met and the claim is signed by the Customer and accompanied by full particulars giving the invoices and Customer's order number as the case may be, the case number, the condition of the case or packing and the copy of the delivery note in respect of the goods.

11.4. Where a valid claim in respect of any of the Goods is notified to the Company in accordance with these Terms, the Company may replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), in which case the Company shall have no further liability to the Customer.

11.5. The Company's liability hereunder in respect of any shortage loss or damage to the goods shall be limited to the proportion of the price attributable to the goods undelivered lost or damage and in no event shall the Company its servants or agents be liable for any injury loss or damage (including consequential damage) loss of profits or expenses of any kind whatsoever caused in connection with goods supplied by the Company (other than death or personal injury due to the negligence of a Company).

11.6. Where manufacturers products supplied by the Company have limited their liability in respect thereof and the respect of any consequential liability therefrom the same limitation shall apply to the Company's liability on the sale of such products.

## **12. WARRANTIES AND CONDITIONS**

12.1. No warranty condition or representation is given or made as to the quality of the goods supplied hereunder their condition, or their fitness for any particular purpose and any such warranty, condition or representation whether expressed or implied whether by statute, by collateral agreement or otherwise as hereby excluded.

12.2. The Company shall not be liable for any expenditure loss (including without limitation economic indirect and consequential loss) damage or injury (other than personal injury arising out negligence for which liability must be accepted in accordance with the Unfair Contract Terms Act 1977) arising out of any use or dealing with any goods or services howsoever such expenditure loss damage or injury shall arise and whether from any defect in goods or the negligence of the company or otherwise.

12.3. The Customer shall indemnify the Company against all and any claims costs actions or demands of whatsoever nature and howsoever arising made by any third party (including the Company's employees) whether direct or indirect including (but without prejudice to the generality of the foregoing) those relating to the use (including loading unloading and stacking) functioning or the state of the goods.

### **13. INSOLVENCY OF BUYER**

13.1. This clause 13 applies if:

13.1.1. the Customer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

13.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

13.1.3. the Customer ceases, or threatens to cease, to carry on business; or

13.1.4 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.

13.2 If this clause applies then, without limiting any other right or remedy available to the Company, the Company may 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 notwithstanding any previous agreement or arrangement to the contrary.

### **13. NON CONFORMITY OF MANUFACTURERS PRODUCTS**

The Company shall not be liable or responsible for any losses, expenditure (including without limitation economic indirect and consequential loss) or damage arising as a result of the mixing of different manufacturers products unless the supply of such products was contrary to the customers specific official order requirements.

### **14. FORCE MAJEURE**

In the event of the Company being delayed in or prevented from performing its obligations hereunder owing to any cause whatsoever beyond the Company's control including without limitation, act of God war strikes lock-outs trade disputes difficulty in obtaining workmen or materials breakdown of equipment or any other cause the Company will not be liable for any loss damage or expenses incurred at and shall be at liberty to cancel or suspend the contract without

incurring any liability arising herefrom and the Customer shall not be entitled to terminate the Contract.

## **15. INTELLECTUAL PROPERTY RIGHTS**

If the Customer received a claim that any goods or part thereof supplied by the Company infringes the Intellectual property rights of any third party the Customer shall immediately notify the Company in writing. The Company shall have sole right to evaluate settle or defend such claim and the Customer shall give the Company all possible information and assistance for this purpose. The Company shall at its own expense and option do all or any of the following

- (a) settle the claim
- (b) obtain for the Customer the right to use such goods
- (c) replace or modify the goods to avoid infringement
- (d) have the Customer return the goods refunding to the Customer the purchase price installation and carriage costs, less a reasonable amount for depreciation.
- (e) Defend against such claim provided always that the Customer has complied with all the terms of the contract and if any Court or competent jurisdiction holds such goods to constitute infringement the Company shall pay all costs and damages finally awarded on account of such infringement and if the use of such goods prohibited the Company shall at its option take action as specified in (b), (c) or (d) above. If a claim or infringement to goods or part thereof sold but not manufactured by the Company any Indemnity given by the manufactures of such goods shall apply. The rights and obligations of the Company and the Customer replacing intellectual property rights and policy are exclusively as laid down in this condition.

## **16. GENERAL**

16.1. This contract represents the entire agreement between the parties and supersedes all earlier warranties representations or statements (whether oral or in writing). Unless expressly agreed by the Company in writing any addition to or modification of these conditions shall be deemed not to have been accepted by the Seller.

16.2. A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

16.3. No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

16.4. If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

16.5. The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.