

**1. DEFINITIONS AND INTERPRETATION**

1.1 In these Conditions:

"Additional Charges" means the additional charges provided for by Clause 5.5 (Delivery).

"Associated Company" means a subsidiary or holding company of the Purchaser (as defined by Section 1159 of the Companies Act 2006) or any company, firm or business of which the Purchaser or any director for the time being of the Purchaser is a partner or in which he has an interest (whether directly or indirectly) of 20% or more of its share capital or its assets.

"Company" means Lafarge Cement UK Limited (Company No: 66558).

"Conditions" means the conditions set out in this document and includes any special terms and conditions agreed in writing between the Company and the Purchaser.

"Consumer" shall have the meaning given to it by the Unfair Contract Terms Act 1977 or the Unfair Terms in Consumer Contracts Regulations 1994.

"Contract" means the contract between the Company and the Purchaser for the supply and purchase of Materials incorporating these Conditions.

"Contract Price" means the amount payable by the Purchaser to the Company pursuant to the Contract in respect of the supply of the Materials.

"Defect" means any material shortcoming or non conformity in the condition and/or attributes of the Materials as compared with the requirements of the Contract.

"Delivery Ticket" means the proof of delivery/collection ticket to be signed by the Purchaser and returned to the Company setting out various details including the Purchaser's details and a description of the product type and quantity, delivery date and purchase order number.

"Destination" means the site and the point of unloading for the Materials.

"Insolvent" means (i) the Purchaser being unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or (ii) where any action to recover monies or property is taken against the Purchaser under any of Parts I-X of the Insolvency Act 1986.

"Materials" means any goods and materials agreed in the Contract to be supplied by the Company to the Purchaser (including any part or parts of them).

"Party" means a party to the Contract.

"Purchaser" means the person, firm or company who purchases the Materials from the Company.

"Purchaser's Price List" means the price schedule agreed between the Company and the Purchaser from time to time.

"Third Party" means any person other than the Purchaser or the Company.

- 1.2 The Contract shall be subject to English law and the English Courts shall have exclusive jurisdiction over any dispute save that where the Contract is for the supply of Materials from the Company's works or depots in Scotland or Northern Ireland then the Courts of England shall have non-exclusive jurisdiction in respect of any dispute.
- 1.3 Condition headings are for convenience only and do not affect interpretation.
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Words in the singular include the plural and in the plural include the singular.

## **2. FORMATION OF CONTRACT, QUOTATIONS AND ORDERS**

- 2.1 All Materials sold by the Company shall be subject to these Conditions, and any Contract shall be on the basis of these Conditions, to the exclusion of all other terms and conditions.
- 2.2 Any amendment or variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a Director of the Company and the Purchaser cannot cancel or vary the whole or any part of the Contract except with the written agreement of an authorised employee of the Company.
- 2.3 Subject to Clause 9.3.4 (Limitation of Liability) below, the Purchaser acknowledges that it has not relied on any statement, promise or representation in relation to the Materials made or given by or on behalf of the Company either before or after the date of the Contract which is not set out in the Contract.
- 2.4 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's literature or web sites are issued or published for the sole purpose of giving product information in relation to the materials and goods described in them. They shall not form part of the Contract or be treated as a description of the Materials unless expressly stated in writing as doing so in the Contract. No Materials are sold by sample.
- 2.5 Any quotation or estimate issued 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 30 days of its date.
- 2.6 A quotation or estimate does not constitute an offer to supply the Materials on any other basis than a Contract incorporating these Conditions and no contract shall exist until there has been an order from the Purchaser which has been accepted by the Company and any such order shall be deemed to be an offer by the Purchaser to buy the Materials subject to these Conditions.

- 2.7 The quantity and description of the Materials shall be as set out in the Company's Delivery Ticket or where there is no Delivery Ticket as set out in the Company's quotation.
- 2.8 The Company reserves the right to make any change to the specification of the Material which does not materially affect their quality and performance or which is required by a particular law.

### **3. PRICE**

- 3.1 Unless otherwise agreed by the Company in writing, the Contract Price for the Materials, whether delivered to or collected by the Purchaser, shall be the price set out in the Purchaser's Price List current at the time the order is accepted by the Company.
- 3.2 The contract prices may be increased or decreased at any time by the Company upon giving to the Purchaser at least one month's notice in writing.
- 3.3 Clauses 3.1 and 3.2 shall override any other provision relating to price in any quotation or estimate given by the Company.
- 3.4 The Contract Price shall be exclusive of any VAT or other applicable taxes and of any Additional Charge, all of which amounts the Purchaser shall pay as part of the Contract Price for the Materials.

### **4. PAYMENT**

- 4.1 Subject to Clause 4.2, 4.4 and 4.5 below payment of the Contract Price for the Materials shall be made in pounds sterling in cleared funds on or before the last banking day of the month following the month of delivery of the Materials to the Purchaser, or their collection by or on behalf of the Purchaser (the "Final Date for Payment"). Unless the Company sells the Materials on a net of discount basis, a discount of 2.5% (the "Prompt Payment Discount") will be granted on the Contract Price (but not on any taxes) if payment is received in accordance with this Clause.
- 4.2 Time for payment shall be of the essence and notwithstanding any other condition all payments payable to the Company under the Contract shall become due immediately on its termination.
- 4.3 Save for the Prompt Payment Discount, the Purchaser shall make all payments due under the Contract without deduction for set off, counterclaim, abatement or otherwise.
- 4.4 The Company reserves the right to insist upon payment by the Purchaser for any Materials that have already been supplied by way of cleared funds before supply of further Materials notwithstanding any subsisting agreement to provide credit to the Purchaser.
- 4.5 If the Purchaser fails to make payment of all or part of the Contract Price in accordance with the Contract then the Contract Price and any payment due on any account between the Company and the Purchaser shall become immediately payable by the Purchaser and

the Company shall be entitled to do one or more of the following (without prejudice to any other right or remedy it may have):

4.5.1 require payment in cleared funds in advance of delivery of undelivered Materials;

4.5.2 cancel or suspend any further delivery of Materials to the Purchaser under any contract; or

4.5.3 sell or otherwise dispose of any Materials which are the subject of any contract with the Purchaser.

4.6 Where any payments or sums due to the Company under this Contract are not paid by the Final Date for Payment then the payments or sums remaining due shall carry an interest rate of 4% per annum above Barclays Bank Plc base rate in force from time to time from the Final Date for Payment until the date on which the payment is made. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## **5. DELIVERY**

5.1 The Purchaser shall ensure that the Company has reasonable prior notice of the required time and date of delivery, and where the Materials are being delivered, that the Company (or its agent) is given sufficient particulars of the Destination.

5.2 Delivery will be deemed to take place either when the Purchaser is notified that the Materials are available for collection or at the time of arrival at the Destination. If the Company is unable to deliver because of inadequate instructions, or the Purchaser wrongly fails to take delivery of the Materials, delivery is deemed to take place at the time when the Company has tendered delivery of the Materials.

5.3 The Company shall use all reasonable efforts to comply with any time or date given or agreed by the Company for delivery of the Materials, but any aforesaid dates and times are intended for guidance purposes only and shall not be of essence, and shall not be capable of being made of the essence by notice from the Purchaser. If no times or dates are specified, the Materials shall be delivered within a reasonable time of the acceptance of the order.

5.4 The Company may deliver the Materials by means of separate instalment and each instalment shall be invoiced and paid for in accordance with the Contract. Each instalment shall for the purpose of delivery be treated as a separate supply and a failure to deliver any instalment or any claim by the Purchaser in respect of any instalment shall not entitle the Purchaser to repudiate, cancel or terminate the Contract.

5.5 Without prejudice to any other rights or remedy available to the Company an Additional Charge may be made if:

5.5.1 the Purchaser is notified prior to or the time of acceptance of the order that an additional charge will be made for a delivery below the Company's minimum load;

- 5.5.2 delivery is notified outside the Company's normal working hours or on a bank or public holiday;
  - 5.5.3 the Purchaser re-directs or fails to take a delivery, fails to give sufficient delivery instructions, or its failure to obtain appropriate licences or authorisations prevents or delays delivery;
  - 5.5.4 the Purchaser returns part of the delivery having failed to accept the full ordered quantity of Materials;
  - 5.5.5 the unloading of the delivery vehicle is delayed for more than 30 minutes; or
  - 5.5.6 the delivery is aborted due to unsuitable access to the Destination.
- 5.6 The Company or its agent shall be entitled to refuse to deliver over roads or over ground which it considers unsuitable. The Purchaser hereby indemnifies the Company (and or its agent) against any accident or damage (excepting death and personal injury caused by the Company or its agents negligence) occurring due to unsuitable access or inadequate unloading equipment or labour.
- 5.7 If the Materials are to be left on a street or public highway the Purchaser is responsible for compliance with all regulations and for all steps required to ensure the protection at all times of persons or property and shall indemnify the Company against all damages, costs, claims, losses or expenses which the Company may incur as result of such delivery.
- 5.8 The Company shall not be liable for any loss or damages whatsoever whether direct, indirect or consequential (including, for the avoidance of doubt, any liability to any Third Party, pure economic loss, loss of profits, loss of business, and loss of goodwill), costs, charges or expenses resulting from any delay in the delivery of the Materials, or failure to deliver the Materials within a reasonable time (whether such delay or failure is caused by the Company s negligence or otherwise), nor shall any delay or failure entitle the Purchaser to terminate or rescind the Contract unless it continues for 30 days or more.
- 5.9 Should the Purchaser not terminate or rescind the Contract under Clause 5.8 then any liability of the Company for continued non-delivery shall be limited to either:
- 5.9.1 replacing the Materials; or
  - 5.9.2 issuing a credit note at the pro rata Contract Price.

## **6. INSPECTION AND SHORTAGES**

- 6.1 The Company shall use reasonable endeavours to supply the quantity of Materials provided for by the Contract and to notify the Purchaser of any surplus or shortfall in the quantity of Materials delivered. Subject to Clause 6.2, if a surplus or shortfall occurs the Company shall discuss with the Purchaser the possible options to resolve the surplus or shortfall and the Purchaser shall not be entitled to object to or reject the Materials (or part) by reason of any such surplus or shortfall.

- 6.2 If the Purchaser has a claim for short delivery it must telephone the Company as soon as reasonably practicable and shall then advise the Company in writing within 48 hours of delivery (the "Notice Procedure") of any such claim.
- 6.3 If the Notice Procedure is not followed the Materials will be deemed to have been delivered in the quantities shown on the Delivery Ticket or where there is no Delivery Ticket containing such details on the consignment note and the Purchaser shall not be entitled to make a claim in respect of alleged shortfall in the Material.
- 6.4 Subject to Clauses 6.2 and 6.3 above, the Company's liability for any shortfall is limited to:
- 6.4.1 making good the shortfall within a reasonable time; or
  - 6.4.2 issuing a credit note the shortfall, at the pro rata Contract Price.
- 6.5 The Purchaser must follow the Notice Procedure where it is or would have been apparent on a reasonable inspection that the Materials are not in conformity with the Contract. If the Purchaser fails to follow the Notice Procedure the Materials will be deemed to have been accepted and the Purchaser shall not be entitled to reject the Materials.

## **7. RISK AND TITLE**

- 7.1 Risk in the Materials shall pass to the Purchaser on delivery as provided for in Clause 5.2 (Delivery).
- 7.2 Ownership of the Materials shall not pass to the Purchaser until the Company has received payment in cleared funds of all sums owed by the Purchaser to the Company under the Contract.
- 7.3 Until ownership passes to the Purchaser, or the Purchaser has used the Materials in the ordinary course of its business, the Purchaser shall:
- 7.3.1 hold the Materials as the Company's fiduciary agent and bailee; and
  - 7.3.2 keep (at no cost to the Company) the Materials separately and safely stored, satisfactorily protected and identified as the Company's property.
- 7.4 Until ownership passes to the Purchaser, the Purchaser shall be entitled to resell at full market value or use the Materials in the ordinary course of its business but any such sale shall be a sale of the Company's property on the Purchaser's own behalf and the Purchaser shall deal as principal when making such a sale and account to the Company for the proceeds of sale.
- 7.5 The Company shall be entitled to recover payment for the Materials (including VAT, other taxes and Additional Charges) even though the ownership of any of the Materials has not passed from the Company.
- 7.6 The Company shall be entitled at any time to inspect or recover any or all of the Materials in the Purchaser's possession to which the Company has title and for that purpose the Purchaser permits the Company or its servants or agents to enter upon any premises

occupied by the Purchaser or to which the Purchaser has access and where the Materials may be or are believed to be situated.

7.7 On termination of the Contract, the Company's rights in this Clause 7 shall remain in effect.

## **8. QUALITY**

8.1 The Company warrants that (subject to the other provisions of these Conditions) upon delivery the Materials shall:

8.1.1 be of satisfactory quality;

8.1.2 be reasonably fit for the purpose for which they are normally used; and

8.1.3 be reasonably fit for any particular purpose for which the Materials are being bought if the Purchaser had made known that purpose to the Company in writing and the Company had confirmed in writing that it is reasonable for the Purchaser to rely on the skill and judgment of the Company.

8.2 The Company agrees to manufacture the Materials in accordance with any applicable British Standards and Materials covered by harmonised European Standards will carry CE marking.

8.3 Whilst every effort is made to maintain consistency in the characteristics of the Materials, some variation is unavoidable and the Company shall not be liable in respect thereof.

8.4 Subject always to Clause 8.3, the Company shall not be liable for a breach of Clauses 8.1 and 8.2 above unless:

8.4.1 the Purchaser gives written notice of any Defect to the Company within 35 days of either discovery of the Defect or when the Purchaser ought reasonably to have discovered the Defect; and

8.4.2 the Company is thereafter given a reasonable opportunity of examining the Materials; and

8.4.3 the Purchaser has complied with the recommended storage conditions as may be notified by the Company and has not tampered with the Materials in an attempt to rectify any perceived Defect.

8.5 Subject always to Clause 8.4, if the Materials do not conform with Clauses 8.1 and 8.2 and where those Materials have not been used or incorporated into another product, then the Company shall at its option:

8.5.1 replace such Materials; or

8.5.2 issue a credit note for the price of such Materials.

8.6 If the Company either replaces the Materials or issues a credit note under Clause 8.5 then it shall have no further liability for a breach of Clauses 8.1 and 8.2. This Clause does not affect any other rights or claims of the Purchaser arising out of any other provision of the Contract.

## 9. LIMITATION OF LIABILITY

- 9.1 Save for where the Contract provides specific remedies to the Purchaser in respect of delay under Clauses 5.8 and 5.9 (Delivery), short delivery under Clause 6.4 (Inspection and Shortages) and breach of Clauses 8.1 and 8.2 under Clause 8.6 (Quality), the following provisions set out the total liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) for other loss and damage suffered by the Purchaser in respect of:
- 9.1.1 any breach of contract;
  - 9.1.2 any use made or resale by the Purchaser of the Materials, or any product incorporating the Materials; and
  - 9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract or the supply of the Materials.
- 9.2 All warranties, conditions and other terms implied by statute or common law which may be excluded by law (save for the conditions implied by Section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 Nothing in these Conditions shall exclude or restrict the Company's liability:
- 9.3.1 for death or personal injury resulting from the Company's negligence;
  - 9.3.2 under Section 2(3) of the Consumer Protection Act 1987;
  - 9.3.3 for any matter which it would be unlawful for the Company to exclude or attempt to exclude its liability; or
  - 9.3.4 for fraud or fraudulent misrepresentation.
- 9.4 Subject to Clauses 9.2 and 9.3:
- 9.4.1 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance of or contemplated performance of the Contract and the supply of the Materials shall be limited to a maximum financial cap of £50,000.00 or a sum equivalent to the Contract Price whichever is the greater amount; and
  - 9.4.2 The Company shall not be liable to the Purchaser for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 9.5 The Company shall have no liability for any defect to the extent that the loss or damage suffered by the Purchaser or any Third Party arises from:
- 9.5.1 normal wear and tear;

9.5.2 the Purchaser's or a Third Party's wilful damage, negligence, abnormal working practice, misuse, alteration or repair of the Materials; or

9.5.3 failure to comply with the recommended conditions for the storage of the Materials set out in Clause 11 (Recommended Shelf Life and Conditions for Storage).

9.6 If the Materials are manufactured processed or mixed by the Company to the specifications of the Purchaser or its agents, the Purchaser fully indemnifies the Company against all loss, damages, costs, and direct and indirect economic loss or expenses on an indemnity basis awarded against or incurred 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 Third Party.

9.7 The Purchaser also fully and indemnifies the Company against all loss, damages, costs and expenses on an indemnity basis 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 described in Clause 9.6. The indemnity will be reduced in proportion to the extent that such loss, damages, costs and expenses are due to the negligence of the Company.

9.8 The statutory rights of a Purchaser dealing as a Consumer are not affected by these Conditions.

## **10. FORCE MAJEURE**

10.1 The Company may defer delivery, terminate the Contract or reduce the volume of Materials delivered to the Purchaser and shall not be liable to the Purchaser or be deemed to be in breach of the Contract by reason of the aforesaid delay, termination, or reduced delivery or any failure to perform any of the Company's obligations where it was due to any cause beyond the Company's reasonable control (a "Force Majeure Event").

10.2 If the Force Majeure Event in question continues for a continuous period in excess of 90 days, either Party may give notice in writing to the other terminating the Contract.

## **11. RECOMMENDED SHELF LIFE AND CONDITIONS FOR STORAGE**

11.1 The Company shall use reasonable endeavours to deliver Materials to the Purchaser as soon after the date of manufacture as possible and in any event before the expiry of the recommended shelf life.

11.2 The Company shall have no liability to the Purchaser for the use of Materials following the expiry of the recommended shelf life or if the Materials are not stored in the recommended conditions as notified by the Purchaser.

## **12. GENERAL**

12.1 The Company reserves the right to record all telephone orders and enquiries.

- 12.2 The Company has produced health & safety/hazard data sheets for Materials and these are available on request but for information purposes only and do not form part of the Contract and the Purchaser agrees that the Company will have no liability in respect of them.
- 12.3 If any clause or sub-clause of these Conditions is held by any court or other authority of competent jurisdiction to be wholly or partly 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.
- 12.4 The Purchaser shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 12.5 The waiver by the Company of any breach or default of these Conditions by the Purchaser 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 provision.
- 12.6 The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.7 Any notice by either Party to the other shall be in writing addressed to that other Party at its registered office or principal place of business or such other address as notified to the Party giving the notice.
- 12.8 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.