

Capital Concrete

Terms & Conditions of Sales



Capital Concrete Limited Terms and Conditions

1 Definitions

1.1 In these Conditions:

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

"Company" means Capital Concrete Limited, company number 10307947.

"Conditions" means these terms and conditions of sale.

"Contract" means the contract for the sale and purchase of the Goods in accordance with these Conditions.

"Customer" means the person or firm named as such in the Order.

"Delivery Site" means, if delivered otherwise than at the Company's premises, the location(s) for delivery of the Goods.

"Force Majeure Event" means any event or circumstances beyond a party's reasonable control including, without limitation, acts of God, natural disasters, adverse weather, fire, industrial accidents, war, civil disturbance, acts of terrorism, acts of government or state organisations, industrial action or trade disputes, power failure, mechanical breakdown and interruptions to supplies of raw materials.

"Good Industry Practice" means standard construction industry practice and all applicable laws, regulations, recommended practice and British and European Standards applicable to the use of the Goods.

"Goods" means the concrete, mortar or screed materials as referred to in the Order.

"Specification" means the specification for the Goods as set out in the Order.

"Order" means the written quotation or order confirmation/acknowledgement issued by the Company setting out details of the Goods to be supplied including the applicable mix design and which is appended to or which accompanies these Conditions.

2 Basis of contract

2.1 The prices and other terms set out in any quotation or estimate issued by the Company shall not constitute an offer by the Company to supply on those terms and shall only be valid for 20 Business Days from its date of issue unless withdrawn earlier. All contracts can be terminated by the Company on the giving of three months' notice.

2.2 The Customer's order for Goods constitutes a binding offer by the Customer to purchase the Goods in accordance with these Conditions. The Company shall only be bound to supply the Goods upon confirming to the Customer in writing that its order has been accepted.

2.3 These Conditions (and the terms stated in the Order) apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, whether on any order form, purchase order or otherwise, or which are or may be implied by trade, custom, practice or course of dealing.

2.4 In the event of any inconsistency between a quotation issued by the Company and its acceptance of the Customer's order the terms of the document most recently issued by the Company to the Customer shall prevail.

2.5 The Customer may, by notice in writing to the Company in accordance with its cancellation procedures, cancel its order or any delivery of Goods provided it does so by 12.00 noon on the Business Day prior to the agreed delivery date. If the Customer cancels its order or any delivery after this time it shall be liable to pay the Company's standard cancellation charge which, if the Customer cancels its order or a delivery after batching or fails to accept delivery at the Delivery Site within 30 minutes of the arrival of the delivery vehicle, shall comprise the full price, inclusive of delivery, of the batched Goods plus an amount equal to the Company's costs of disposal of the Goods.

3 Delivery

3.1 Delivery, subject to clause 7.6 (iv), shall occur upon discharge from the delivery vehicle to the Delivery Site or, if the Goods are collected by the Customer ex-works, upon loading the Goods, subject to clause 7.6 (iv), into the Customer's Collection vehicle.

3.2 Upon delivery the Customer's representative must sign the delivery note for the Goods supplied which will record:

- the quantity of Goods supplied as taken from the batching records of the supplying plant;
- the time of delivery;
- any waiting time at the Delivery Site; and
- the addition of any additives at the Delivery Site prior to unloading.

3.3 The Customer shall notify the Company of its requested date(s) and time(s) for delivery of the Goods. While the Company shall use all reasonable endeavours to deliver on the Customer's required delivery date(s), time of delivery shall not be of the essence and the Company shall have no liability to the Customer for any failure to deliver provided that this clause shall be without prejudice to the Customer's right to cancel an order or delivery under clause 2.5. If the Company is not able to deliver the Goods on the Customer's required delivery date(s) it shall notify the Customer accordingly and a new delivery date shall be agreed.

3.4 The Customer shall have no right to reject the Goods once delivery has taken place.

4 Customer obligations

4.1 The Customer shall ensure that:

- the Goods are suitable for their intended purpose;
- the Company is able to safely deliver the Goods to the delivery location without hindrance or delay and access to and from and across the Delivery Site allows for safe movement of the delivery vehicles without risk of damage;
- upon placing its order, the Company is provided with clear written instructions as to any access and/or arrival requirements at the Delivery Site and of any applicable site rules;
- to the extent that the Customer collects Goods ex-works, the Customer and its subcontractors, agents and employees comply with all site rules and health and safety requirements as notified by the Company.

4.2 The Customer shall indemnify the Company and keep the Company indemnified against any and all losses, liabilities, costs, claims, expenses and/or damages suffered or incurred by the Company as a consequence of any damage to property or vehicles or death or personal injury to the extent caused or arising as a consequence of any act or omission on the part of the Customer and/or any of its subcontractors, agents and employees during the delivery or collection of the Goods either at the Delivery Site or from the Company's premises.

5 Quality

5.1 The Company warrants that on delivery the Goods shall conform in all material respects with the Specification. Save in the case of manifest error the Company's batching records shall be conclusive evidence of the specification and quantity of the Goods supplied.

5.2 The Customer acknowledges that the Goods may contain hydration controlling admixtures up to the acceptable limits provided for in British Standards applicable to the Goods.

5.3 No warranty is given by the Company that the Goods are fit for a particular purpose or their intended use. The Company shall have no liability for any recommendation, statement or representation made by or on behalf of the Company relating to the Goods including as to their use, strength, storage or handling.

5.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6 Title and risk

Title to the Goods shall pass to the Customer upon payment in full being received by the Company. The risk in the Goods shall pass to the Customer on delivery.

7 Price and payment

7.1 The price of the Goods shall be as set out in the Order or, if no price is quoted, the Company's standard prices as at the date of delivery as confirmed by the Company upon acceptance of order.

7.2 The Company may, by not less than five Business Days' notice prior to delivery, increase the price of the Goods to reflect any increase in its costs of supply or any change in the Customer's order.

7.3 In addition to the price for the Goods the Customer shall be liable to pay the following additional charges, to the extent applicable, as referred to in the Order or detailed on the Company's website:

- Outside normal working hours charge: to apply to requested deliveries outside of Monday – Friday 07.30 to 17.30 and Saturday 07.30 to 12.00;
- Waiting time charge: to apply if the delivery vehicle is unable to unload within thirty minutes following arrival at the Delivery Site;
- Part load charge: to apply if the Customer requests delivery of Goods in part loads;
- Surplus removal charge: to apply if the Customer requests removal of materials;
- Hot Water charges: to apply if the Customer requests hot water to be added to the Goods;
- Cancellation and disposal charges: to apply as per clause 2.5.

7.4 The prices of the Goods and any other amounts payable by the Customer to the Company under these conditions excludes VAT which shall be payable in addition at the applicable rate.

7.5 The Company may invoice the Customer for the Goods once the Customer's order has been accepted and, if the Company has agreed credit terms with the Customer, the Customer shall pay the Company's invoices in full by the end of the month following the month of supply. If the Customer's credit limit with the Company is exceeded, withdrawn or reduced or the Company does not agree to grant credit terms to the Customer, the Company's invoices must be paid in full in advance of delivery.

(a) Where payment is made by credit card, or other charge card, we reserve the right to recover from you any merchant service charges or transaction fees incurred by us in processing such payments. These charges may vary depending on the card type and payment method used.

7.6 If the Customer fails to make any payment when due: (i) the Customer shall pay interest on the amount due at the rate of 8% per annum above HSBC Bank plc's base rate from time to time, such interest to accrue on a daily basis from the due date until payment, whether before or after judgment; (ii) the Company may withdraw any rebate or discount on the price of the Goods purchased by the Customer; (iii) all outstanding amounts due to the Company shall become immediately due and payable and any credit facilities advanced by the Company may be withdrawn; (iv) the Company reserves the right to withhold the supply of Goods to the Customer until all outstanding amounts have been paid; and (v) the Customer shall indemnify the Company on demand for all costs and expenses incurred by the Company in recovering any overdue amount, including but not limited to all legal costs (on a full indemnity basis), administrative costs, enforcement costs, and any fees charged by debt recovery agents. The rights and remedies set out in this clause are in addition to, and not in substitution for, the Company's rights to claim interest, fixed-sum compensation and reasonable recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

7.7 The Customer shall pay all amounts due to the Company in full without any set-off, counterclaim or deduction or withholding.

7.8 Payment must be made by Electronic Payment to Capital Concrete's nominated bank account.

8 Defective Goods

8.1 The Company shall only be liable for a claim by the Customer that Goods do not meet the Specification ("Defective Goods") if the Customer notifies the Company in writing within 48 hours of becoming aware of the alleged defect and the Company is given a reasonable opportunity after receiving such notice, being not less than three Business Days, to examine the Goods.

8.2 If the Company, acting reasonably, is satisfied that the Goods do not meet the Specification in any material respect then, subject to clause 9.1, the Company shall:

- either replace the Defective Goods or refund the price paid for the Defective Goods; and
- reimburse the Customer for the cost of removing the Defective Goods which shall constitute the Customer's sole remedies for the supply of Defective Goods.

8.3 The Company shall not have any liability in respect of Defective Goods to the extent that:

- the Customer fails to follow Good Industry Practice as to the use and/or application of the Goods or the Customer continues to use the Goods after giving notice of any defect in accordance with clause 8.1;
- the Customer fails to apply industry mitigation procedures under Good Industry Practice or otherwise fails to mitigate its losses arising from the supply of Defective Goods;
- notwithstanding that the Goods do not meet the Specification they are fit for the Customer's intended use;
- the specification of the Goods is not appropriate for the intended use of the Goods;
- the defects are natural defects in the colour or appearance of the Goods on account of the use of natural, marine dredged or quarried materials;
- the defect arises from the Customer's mix design or by the addition of water or other additives by the Customer or by the Company at the Customer's direction following delivery.

9 Limitations on liability

9.1 Subject to clauses 9.2:

- the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, liquidated or unliquidated damages relating to delay and/or disruption or any indirect or consequential loss arising under or in connection with the Contract;
- the Company's total liability in respect of any and all claims arising on account of the supply of Defective Goods, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to three times the price paid by the Customer for the Defective Goods save that, if such sum is insufficient to cover the cost of removal of the Defective Goods, the Company shall be liable for the additional cost of removal of the Defective Goods up to a maximum further amount of £50,000; and
- the Company's total liability in respect of any and all claims arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, and including for claims falling within clause 9.1(b) shall in no circumstances exceed the sum of £100,000.

9.2 Nothing in these Conditions shall limit or exclude the Company's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979 or any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

9.3 The Company shall not have any liability in respect of waterproof performance. Concrete supplied by Capital Concrete as waterproof concrete is on the basis that the customer corresponds directly with the chosen waterproofing additive manufacturer who instead will provide the required waterproof warranty and therefore the customer must ensure adherence to all conditions linked to their warranty.

10 General

10.1 These Conditions and any terms set out in the Order sets out the entire agreement in relation to the supply of the Goods by the Company to the Customer and supersedes any prior agreements, understandings, commitments or arrangements, whether in writing or otherwise, made by the parties in respect thereto. The Customer confirms that in entering into the Contract it has not relied on and shall have no remedy in respect of any representation made by or on behalf of the Company.

10.2 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.

10.3 No variation of this Contract shall be effective unless it is in writing and signed by a duly authorised representative of both of the parties.

10.4 Any notice or other communication given by the Customer to the Company under or in connection with the Contract shall be in writing addressed to the Company's registered office from time to time or to such address and marked for the attention of such person as may be provided for in the Order.

10.5 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it shall be governed by and construed in accordance with the law of England and Wales and each party agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract.