

## TERMS & CONDITIONS

### 1. DEFINITIONS

In these Terms and Conditions the following words shall have the following meaning: "company" means abc stone limited (Company No 09999057). "Goods" means the subject matter of the Contract including the raw materials, finished or semi finished materials or articles and say goods supplied in substitution for or in replacement of or in addition thereto and any services connected with the sale of Goods described in the order or in any specification of the customer whichever shall be accepted by the Company. "Contract" means an agreement between the Company and any Customer of which these Terms and Conditions shall form part of. "Customer" means the individual firm, partnership, company or any other body howsoever constituted acting as the buyer of goods to be supplied either directly or indirectly or otherwise by the company.

### 2. CONTRACT

- (1) Any order issued by the Customer is subject to acceptance by the Company and a Contract shall only be formed when the Company has accepted the Customers offer to buy in writing.
- (2) All orders are placed under these Terms and Conditions alone which exclude any other terms and conditions inconsistent therewith which a customer might seek to impose.
- (3) The Company may from time to time provide brochures and catalogues together with promotional material, which will be subject to variation and adjustment. The company reserves the right to provide alternative or adjusted documentation at any time without liability.

### 3. DESIGNS AND DRAWINGS

- (1) Where the Company prepares designs or drawings at the request of the customer
- (a) The Customer shall approve such designs and drawings in writing and until such approval has been received the Company shall be under no liability to the Customer and any time for delivery shall not begin to run:
- (b) Although the Company shall warrant as to the correct functioning of the Goods no warranty is given as to the product, for which goods are designed to manufacture:
- (2) Where the Goods are manufactured to designs submitted by the Customer the Company shall be under no liability for the correct functioning of the Goods.
- (3) In respect of any third parties dealing with the Goods the customer shall be responsible and undertake that the goods are safe and without risk to health when properly used and comply in all respects with all relevant statutes regulation and byelaws and standards in force at the date of delivery including without prejudice to the generality of the foregoing Factories Act 1961 and the Health & Safety at Work Act 1974 and the customer shall supply in respect of the Goods such information about the use of them as complies with the Health & Safety at Work Act 1974 or any amendments thereto or changes or variations thereto at the date of this Contract and proper evidence of all tests and examinations and research made in compliance with the provision of the Act.
- (4) The customer's order must be accompanied by sufficient detailed technical information to enable the company to proceed with the order forthwith.
- (5) The Company is entitled to assume that all drawings, descriptions, specifications and other information supplied by the Customer to the Company whether written or verbal is in all respects completely accurate and in accordance with the Customer's requirements and provided that the goods or materials supplied in accordance with the Customer's designs, standards and specifications the Company shall not be responsible for the suitability or quality of the Goods.
- (6) The cost of preparation of any designs or drawings prepared by the Company shall be met by the Customer.

### 4. PRICES

- (1) Unless otherwise stated all prices quoted are based on current material costs and operating costs (including wages) at the date of quotation but the Company reserves the right at any time prior to the delivery of the Goods or provisions or Services to adjust the price to take account of any increase in the cost of raw materials labour services or any currency fluctuations affecting the cost of imported materials.
- (2) There shall be added to the price of the Goods or services any value added tax and any other tax or duty relating to the manufacture, transportation, export import sale provision or delivery of the Goods or services (whether initially charged on or payable by the Company or the Customer).
- (3) The price does not include packing and delivery nor insurance but quotations in respect of packing, delivery and insurance can be obtained on request from the Company.
- (4) In the event that information given by the customer to the Company differs from that on which the contract is based and involves the alteration of this contract the Company may increase the price quoted therein to cover any increase in costs that the alteration may incur and amend the delivery date.
- (5) If, after the Company has accepted an order, the customer requires any alteration in the goods quoted for the cost of such alteration shall be paid by the Customer to the Company on demand.

### 5. TERMS OF PAYMENT

- (1) Unless otherwise agreed in writing materials must be paid for prior to dispatch. Account orders, to an agreed credit limit become due and payable in accordance with the Contract under these Terms and Conditions 30 days from date of invoice unless specific agreement as to payment has been reached between the Company and the Customer.
- (2) When deliveries or individual jobs making up Services and spread over a period, each consignment or job will be invoiced as despatched or completed and each month's invoice will be treated as a separate account and be payable accordingly.
- (3) Time for payment shall be of the essence.
- (4) The Company reserves the right to charge interest of 4% over Barclays Bank base rate (applying at the time) whichever shall be the higher on all overdue accounts such interest being deemed to accrue on a day to day basis from the due date for payment.
- (5) the company reserves the right where genuine doubts arise as to the Customer's financial position or in the case of failure to pay for any Goods or Services or any delivery instalment as to aforesaid to suspend delivery of any order or any part or instalment or job without liability until payment or satisfactory security for payment has been provided.
- (6) The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any order.
- (7) The Company reserves the right at any time to renegotiate specific payment terms and/or the payment of a deposit with the Customer which shall rest entirely with the Company. In the event that the Customer is not prepared to agree to the payment of a deposit and/or specific terms to be imposed by the Company then the Company reserves the right to withdraw all services and custom from the Customer.

### 6. DELIVERY OR COMPLETION

- (1) The delivery or completion date specified in the Contract is approximate only and unless otherwise expressly stated time is not of the essence for delivery or completion.
- (2) The Company will use reasonable endeavours to deliver the goods or complete the services by the date or dates agreed between the parties but the Customer shall not be entitled to refuse delivery on account of any delay.
- (3) The Company shall not be liable for any loss, damage or shortage on delivered orders unless informed within three working days of the date of delivery.
- (4) The Company shall be under no liability if it is prevented from carrying out any provision of the Contract for any reason beyond its control including (but without limitations) act of god, legislation, war, fire, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation of furtherance of a trade dispute or owing to any inability to procure materials or labour required for the performance of the Contract in any event contemplated aforesaid occasioning a suspension of the work for a substantial period of time either the Customer or the Company will have the option of terminating the Contract and the Customer will pay the cost of labour and materials expended at the date of termination and upon payment the property in the Goods in their uncompleted state will pass to the Customer and neither party will have claim against the other for any further costs.
- (5) Deviation in quantity of the Goods delivered (representing no more than 10% by value) from that stated in the Contract shall not (where time is of the essence in the Contract) give the Customer any right to repudiate the Contract or to claim damages and the Customer shall be obliged to accept any pay at the Contract rate for the quantity of the Goods delivered and for the balance of the Goods which are delivered subsequently.
- (6) The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment. Each delivery shall be considered a separate transaction and any failure to affect one delivery shall not affect the due performance of this agreement as regards other deliveries.
- (7) should the Customer postpone delivery of any item of the Goods or if delivery instructions are delayed then the Company may arrange storage of the goods and the Customer shall be liable to the Company for the reasonable costs (including insurance) or such storage which will be payable in accordance with Clause 4 hereof.
- (8) Without prejudice to any other right which the Company may have in respect of the Customer's failure to take delivery of the Goods if the Customer delays delivery for a period in excess of 7 days then the Company shall be entitled to serve written notice upon the Customer of its intention to dispose of the Goods and seven days after deemed receipt by the Customer of such notice the Company shall be entitled but not obliged at the Company's option either to:-
  - a. deliver the Goods to the Customer or,
  - b. dispose of the Goods at the best price reasonably obtainable but if the goods are not easily realisable then in any way...
- (9) If the Customer wishes to postpone the commencement of the provision of services or goods a new date for commencement must be agreed in writing with the Company which is mutually acceptable for both sides. Any delay in reaching such agreement shall not preclude the Company from seeking payment of Goods which are ready for installation and have not been installed because the Customer has postponed commencement of the services or the provision of Goods.
- (10) Time of delivery dates from acceptance of order shall be extended in the event of late delivery of technical information, drawings, specification or models by the Customer and in the event of any alteration in the goods quoted for being required by the Customer or upon the delay by the Customer in paying any instalment of purchase price to the Company.
- (11) Where the contract includes delivery:
  - (a) Any claim for non delivery must be made in writing to both the carriers and the Company within three days of advice note or within such period as may be specified by the carrier, whichever is the shorter.
  - (b) Any claim in respect of Goods damaged in transit or shortage in delivery must be made to both the carrier and the Company within three days of delivery. If the Customer fails to comply with any of this paragraph or to do all things necessary to protect and further any claim which the Company may have against the carrier or does anything which adversely affects or invalidates, then the Company shall not be liable to the Customer for any non-delivery damage in transit or shortages in delivery.

### 7. TITLE OF GOODS

- (1) Risk in the Goods shall pass to the Customer on delivery to the Customer or to its agents or other person to whom the Company has been authorised by the Customer to deliver the Goods or immediately prior to loading where the Goods are being collected by the Customer, its servants or agents from the Company's premises. If the Goods are appropriated to the customer but kept at the Company's premises at the Customer's request then the Company shall have no responsibilities in respect of the safety of the Products thereafter and accordingly the Customer should insure the products thereafter against such risks (if any) as it thinks appropriate.
- (2) Notwithstanding sub clause (1) above legal ownership of the Goods shall remain with the company which reserves the right to dispose of them until payment has been received in full or the Goods have been sold by way of bona fide sale for full market value and in the meantime the Customer holds them as bailee for an on behalf of the Company and in a fiduciary capacity. The Goods shall be stored in a safe and proper manner and in such a way as to be readily identifiable as being Company property.
- (3) Even when payment for the Goods has been received in full by the Company in respect of the Goods delivered under the Contract ownership of the Goods shall remain with the Company as aforesaid until payment has been received in full in respect of all other sums due from the Customer to the Company on any account and in the meantime the fiduciary relationship shall subsist.
- (4) The Customer acknowledges that he is in possession of the Goods solely as fiduciary for the Company until such time as title of the Goods passes to him. The Customer further acknowledges that the entire proceeds of the sale of the Goods by the Customer are held on trust for the Company and shall be placed in a separate bank account.
- (5) As long as the title to Goods remains with the Company the Customer may not encumber them or purport to transfer title to them for security purposes. The Customer shall immediately notify the Company by registered post or recorded delivery letter if a third party attempts to seize or exercises any lien over the Goods. The Customer shall bear the cost of any action resulting from attempted seizure or lien.
- (6) At any time when the Company has title to the Goods it may by notice in writing to the Customer to be given by posting to or leaving at the Customer's address determine the Customer's rights to sell and have possession of the Goods at any time after the giving of such notice the Customer hereby irrevocably authorises the Company and/or his representative to enter upon any premises where the Goods are or are reasonably expected to be for the purpose of repossessing them and subsequently reselling them. The Customer undertakes to give access to its premises and to the Goods and to enable the Company to retake possession thereof and to notify any keeper where the Goods are stored that the Company is authorised and entitled to give instructions for their removal. The Company agrees only to exercise its rights under this sub-clause in the event of the Customer defaulting on a payment or payments having a receiver appointed over any of its assets entering into any arrangements or composition with its creditors entering into liquidation or administration or committing any act of bankruptcy having any person attempt to exercise any lien over the Goods or in the reasonable opinion of the Company having its solvency materially impaired.
- (7) The Customer shall not affix or annex the Goods to land without the written consent of the Company.
- (8) The Customer shall make available to the Company the Land certificate for the purpose of affecting an entry under the Land Registration Legislation.
- (9) The Customer shall be entitled to offer for sale and sell the Goods at the best obtainable price in the ordinary course of its business as principal vis-à-vis sub-buyers and not as agent for the Company
- (10) Nothing in this clause shall in any way limit or modify the Customer's obligation to pay for the Goods.
- (11) Each paragraph of this clause shall be constituted as a separate clause to the intent that the invalidity of any one or more shall not affect or enforceability of any other paragraph.

### 8. CUSTOMER MATERIAL

The Company shall not be liable for any faulty or defects to the Goods arising out of the use of Customer's materials. No guarantee or warranty is given but subject to the availability of capacity and facilities the Company will endeavour to correct any such faults or defects at the customer's expense and risk. If defects are due to manufacturing error they will be replaced FOC; refunds will not be given. The company reserves the right to issue a credit note.

- (1) Unless otherwise agreed in writing any copyright or other industrial or intellectual property rights in all specifications drawings or other technical information supplied to the Customer shall remain the property of the Company and shall not form part of the Contract. The customer shall not publish or communicate with a third party the content thereof or any particulars of the Goods supplied by the Company without the previous consent in writing of the Company.
- (2) In the event of it coming to the notice of the Company that any work done or any Goods to be supplied under this Contract infringe or are alleged to infringe any patent registered design copyrights or any other rights in the manufactured Goods then the Company shall have the right to cease the manufacture of these Goods or to be bound by this agreement and shall retain the title to such Goods as have been manufactured and the Customer shall indemnify against all claims that might be made by any person against the Company for such infringement or alleged infringement or for royalties and against all cost expenses or other payments arising there from and shall pay to the Company the value of the work done on and used in the manufacture of the Goods prior to such cessation of manufacture.

### 9. SAMPLE

- (1) Sample of the Goods may be provided by the Company to the Customer on request.
- (2) The Customer acknowledges that due to the nature of the Goods provided by the Company that any sample provided cannot always be matched identically forming a part of any order of Goods or any contract provided by the Company.
- (3) The Company hereby specifically excludes any warranty implied express or otherwise that any Goods provided by the Company will match any sample.
- (4) The Customer shall be responsible for ensuring that grain or markings contained within any sample of stone or product or Goods supplied by the Company are acceptable to the Customer and are suitable for the purpose for which they are required by the Customer.

### 10. ENTITLEMENT TO ASSIGNMENT

The Company shall be entitled to assign or sub-contract this Contract or any part thereof. Failure by the Company to enforce any of these terms and conditions shall not be construed a waiver of any of its rights hereunder.

### 11. JURISDICTION

The validity construction and performance of this Contract shall be governed by the Laws of England and Wales and the Customer and the Company submit to the non exclusive jurisdiction of the English Court.

### 12. GENERAL

The Customer must within 14 days advise the Company of any change of address. Any notice hereunder sent by the Company to the Customer shall be deemed served within 48 hours of posting to the last known address of the Customer.

### 13. CANCELLATION

Orders accepted by the Company cannot be cancelled or suspended by the Company except upon terms which indemnify the Company against any actual or anticipated loss including resultant loss from underutilised capacity.