

TERMS & CONDITIONS

1. INTERPRETATION

- (a) The definitions and rules of interpretation in this condition apply in these conditions. Goods: Ready-mixed concrete and screed supplied or to be supplied by us we or us: Midland Mix Concrete Limited/Out of Hours Concrete Limited you: the individual, partnership, firm or company who purchases Goods from us.
- (b) 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.
- (c) Words in the singular include the plural and in the plural include the singular.
- (d) Condition headings do not affect the interpretation of these conditions.
- (e) Words and expressions defined in British Standards shall have the same meaning in these conditions.

2. APPLICATION OF CONDITIONS

Unless otherwise agreed by us in writing, all contracts entered into by us for the supply of Goods shall be on these conditions to the exclusion of all other terms and conditions (including any terms and conditions which you purport to apply). Any variation to these conditions shall have no effect unless expressly agreed in writing by a Director of Midland Mix Concrete Limited.

3. QUOTATIONS

- (a) Unless otherwise agreed by us in writing, prices are valid for 3 months from the date of our written quotation.
- (b) In the case of oral quotations, prices are valid for 30 days from the date of our quotation.

4. ORDERS

- (a) Only orders placed with our sales office will be delivered.
- (b) If you require us to use order numbers, you must notify us to this effect and provide order numbers when placing orders.
- (c) Each order or acceptance of a quotation for Goods by you shall be deemed to be an offer by you to buy Goods subject to these conditions. No contract shall come into existence until we accept an order from you.

5. CANCELLATION

- (a) Except where 5(b) applies, no charge will be made for cancellation by you 3 hours or more before the agreed time for delivery (which shall mean, where a time band has been agreed, the beginning of the agreed time band). If you cancel less than 3 hours before the agreed time for delivery, materials ordered and delivered to site at the agreed time but not produced may incur the non-delivery fee specified in our quotation.
- (b) Where we have ordered materials specially to meet your requirements and you cancel your written order at any time, we are entitled to charge you for our reasonable costs.

6. DELIVERY

- (a) As long as we have used all reasonable endeavours to deliver at the agreed time or within the agreed time band, as the case may be, we shall have no liability for any loss, costs, damages, charges or expenses caused by any delay in delivery.
- (b) We reserve the right to suspend or delay delivery without liability of any kind in the event of war, civil commotion, strikes, lock-outs, fire, flood, adverse weather conditions, delays in any type of transport, delays at other customers' sites, non-availability of material or equipment, vehicle breakdown or accident or any other cause beyond our reasonable control.
- (c) You shall ensure that a duly authorised person signs and prints their name legibly on our delivery tickets.

7. ACCESS

- (a) Each order is accepted by us on the understanding that access can be obtained to your site by a hard road. Our operator is entitled to refuse delivery if in his opinion there is a risk of damage to our vehicle.
- (b) We shall have no liability for damage caused to your roads or property or the roads or property of others by use of the vehicle except in the case of negligence by us, our employees, agents or sub-contractors.
- (c) You shall be liable for any damage caused to our vehicle or injury to our employees, agents or sub-contractors or damage caused to your roads or property or the roads or property of others by reason of defects in the access road or negligence by you, your employees, agents or sub-contractors.
- (d) Without prejudice to the generality of condition 7(c) if you request our operator to take our vehicle off the public highway and the Off Highway Request Box on our delivery ticket has been ticked, you acknowledge that we are relying on your knowledge of the site and you shall be liable for any damage or injury which may result from the action you have requested.
- (e) We reserve the right to charge a reasonable non-delivery fee if we are unable to deliver because in our opinion there is a risk of damage to our vehicle or to property.

8. WAITING TIME

Prices are quoted on the assumption that discharge will take place within the times specified below:

1m³ to 3m³: Up to 30 minutes on site from the agreed time of arrival
3.25m³ to 6m³: Up to 45 minutes on site from the agreed time of arrival
6.25m³ to a full load: Up to 1 hour on site from the agreed time of arrival

If additional time is required for discharge it will be charged at the agreed rate as specified in our quotation for every 15 minutes or part of 15 minutes. The start time for discharge shall be the time agreed in the Time Arrived on Site Box on our delivery ticket signed by you prior to discharge.

9. RISK/TITLE

- (a) The Goods are at your risk from the time of completion of delivery which will occur upon your signature of our delivery ticket after discharge.
- (b) Ownership of the Goods shall not pass to you until we have received in full (in cash or cleared funds) all sums due to us in respect of:
- (i) the Goods; and
- (ii) all other sums which are or which become due to us from you.
- (c) We shall be entitled to recover payment for Goods notwithstanding that ownership of

the Goods has not passed from us.

10. PAYMENT

- (a) Payment is due on or before the last day of the month after the month in which your order is placed, unless otherwise agreed in writing by us. If payment on an account is not received on or before the seventh day of the month after the month in which payment is due, we reserve the right to suspend deliveries on that account including (without limitation) where Goods have been ordered and/or orders have been accepted by us.
- (b) If payment by you of one invoice is late, all other outstanding invoices from us to you shall become immediately due and payable despite any other provision of these conditions.
- (c) If payment by you of one invoice is late, we reserve the right to alter your credit limit and/or our payment terms in respect of future orders and invoices.
- (d) Any queries you may have in relation to any of our invoices must be notified to us within 14 days of the date of that invoice.
- (e) All our reasonable charges for debt recovery in respect of late payments shall be paid by you, to the extent permitted by law.
- (f) Our payment terms and your credit limit are agreed on the basis of information provided by you to us on your credit account application form, together with information supplied to us by credit reference agencies. If there are any material changes to any of your information which may adversely affect your creditworthiness you must notify us of these changes within 14 days of their occurrence. We reserve the right to alter our payment terms and/or your credit limit in the event of any such changes to any of your information.
- (g) All written communications from us to you may be delivered by hand or sent to your registered office (if you are a Limited Company) or (whether or not you are a Limited Company) to such address as has been or shall be notified to us by you.
- (h) All written communications from you to us may be delivered by hand or sent to our registered office or such other address as shall be notified to you by us and shall be marked for the attention of the Managing Director.

11. DESCRIPTION AND/OR SPECIFICATION

- (a) You shall provide us with a description and/or specification of the Goods you require at the time of placing your order.
- (b) The description and/or specification of the Goods shall be as set out on our quotation and/or delivery ticket.

12. LIMITATION OF LIABILITY

- (a) Our liability in respect of defects in Goods (including failure to comply with a description and/or specification) shall not exceed the cost of removal and replacement.
- (b) We shall not have any such liability:
- (i) if water is added to the Goods at your request after our operator has informed you that it would be excessive and the Additional Water box on our delivery ticket has been ticked
- (ii) unless you have had a sample tested which was taken during discharge from our vehicle in accordance with the relevant clauses of BSEN12350-2 and BSEN12390-2;
- (iii) unless all sampling, making, curing and testing of specimens has been carried out in accordance with the relevant clauses of BSEN12350-2 and BSEN12390-2;
- (iv) unless test results have been interpreted in accordance with BSEN12350-1 or any other specification previously agreed by us, it being recognised that for a well controlled continuous production there is always the slight probability of a result occurring below the compliance limit and that it is not normally possible to predict its occurrence;
- (v) unless the compressive strength of the Goods has been tested (unless otherwise agreed by us) in concrete cubes made, cured and tested in accordance with BS8500 by an Accredited Approved Test House;
- (vi) if the defect arises because you failed to follow accepted trade custom and practice regarding the treatment of the Goods or any advice given to you by us;
- (vii) if you alter the Goods in any way after becoming aware of the possible defect;
- (viii) unless you give us written notice of the defect within 60 days of the date of delivery;
- (ix) unless we are given a reasonable opportunity after receiving such notice to investigate the alleged defect and to make recommendations as to any remedial action to be taken;
- (x) if you fail to carry out our recommendations as to remedial action.
- (xi) Concrete produced at an air temperature of less than 5 degrees Celsius is outside the specification of BSEN206/BS8500. Acceptance of concrete below this temperature is at the customers own risk.
- (c) Nothing in these conditions excludes or limits our liability:
- (i) for death or personal injury caused by our negligence; or
- (ii) under section 2(3), Consumer Protection Act 1987; or
- (iii) for any matter for which it would be illegal for us to exclude or attempt to exclude our liability; or
- (iv) for fraud or fraudulent misrepresentation.

13. CONSEQUENTIAL LOSS

We shall have no liability for any loss of profit, loss of business or depletion of goodwill in each case whether direct, indirect or consequential or any claims for consequential compensation whatsoever (howsoever caused) which arise from or in connection with any Goods.

14. HEALTH AND SAFETY

We operate a Health and Safety Policy, a copy of which is available on request.

15. GENERAL

- (a) If any provision of any contract between you and us is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the contract and the remainder of such provision shall continue in full force and effect.
- (b) We and you do not intend that any term of any contract between us and you shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- (c) The formation, existence, construction, performance, validity and all aspects of contracts between us and you shall be governed by English Law and we and you submit to the exclusive jurisdiction of the English Courts