

AC CEMENT LIMITED TERMS AND CONDITIONS OF SALE AND DELIVERY

1. INTERPRETATION

1.1 Definitions

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: the date the Contract commences, as set out in the Contract Details.

Conditions: these terms and conditions set out in clause 1 to clause 15 (inclusive).

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with the Contract Details and these Conditions.

Contract Details: the contract details as set out at the front of the Contract.

Delivery Location: the address for delivery of the Goods, as set out in the Contract Details.

Goods: the goods (or any part of them), as set out in the Contract Details.

Order: an order for the Goods submitted by the Customer in accordance with clause 5.

Price: the price for the Goods, as set out in the Contract Details.

1.2 Interpretation

- a) Words in the singular include the plural and, in the plural, include the singular.
- b) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- c) A reference to a party includes its personal representatives, successors and permitted assigns.
- d) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- e) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- f) A reference to **writing** or **written** excludes fax and email.

2. APPLICATION OF TERMS AND CONDITIONS

- 2.1 Subject to any variation under clause 2.2 all sales of goods made by the Supplier to the Customer shall be made under these Conditions, to the exclusion of any other terms, conditions, warranties or representations, written or oral, express or implied, which the Customer purports to apply under any purchase order, confirmation of order, specification or other document. No director, employee or agent of the Supplier has authority to agree to any variations of these terms and conditions unless such variation be in writing and signed on behalf of the Supplier.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable specification submitted by the Customer are complete and accurate.
- 2.3 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.4 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.5 No variation to these terms and conditions is binding on the Supplier unless agreed in writing and signed by a director of the Supplier.

3. QUOTATIONS

- 3.1 Any quotation, howsoever issued by the Supplier, shall not constitute an offer, shall be revocable at any time prior to acceptance by the Customer and, shall only be valid for a period of 20 Business Days from its date of issue.

4. ACCEPTANCE

- 4.1 The Conditions shall be deemed to have been accepted if the Customer places an order, howsoever that order is received, on the Supplier for the Goods that form part of the quotation.
- 4.2 No order placed by the Customer shall be deemed to be accepted by the Supplier until a written acknowledgement of order is issued by the Supplier confirming the Price or (if earlier) the Supplier delivers the Goods to the Customer with a delivery note or the Customer collects the Goods from the Supplier and is issued an advice note by the Supplier.

5. ORDERS

- 5.1 Orders shall be given in writing or by telephone. The Supplier may accept or decline Orders at its absolute discretion. The Supplier may, at its discretion, accept an amendment to an Order by the Customer.
- 5.2 The Supplier shall assign an order number to each Order it accepts and notify the order number to the Customer. Each party shall use the relevant order number in all subsequent correspondence relating to the Order.
- 5.3 The Customer is responsible for ensuring that Orders are complete and accurate. The Customer shall give the Supplier all necessary information that the Supplier reasonably requires to fulfil each Order.

6. PRICES

- 6.1 The Supplier may, by giving notice to the Customer at any time up to 5 Business Days before delivery, increase the Price to reflect any increase in the cost of the Goods that is due to:
- 6.1.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 6.1.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- 6.1.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 6.2 The Price excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice:
- 6.3 Where the Supplier notifies to the Customer in writing that the Price is a delivered price, then the Price shall include the costs and charges of packaging, insurance and transport of the Goods.
- 6.4 If the Supplier does not notify to the Customer in writing that the Price is a 'delivered price' then the Price excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

7. PAYMENT

- 7.1 Unless otherwise agreed in writing by the Supplier all invoices for the Goods supplied must be paid without retention, no later than 30 days from the date of the invoice.
- 7.2 The Customer shall not, without the prior written permission of the Supplier, be entitled to make any deductions or set-off from any money or monies being due to the Supplier in respect of any claims for loss or expense alleged to have been incurred by the Customer through any default whatsoever of the Supplier.
- 7.3 If the Customer's credit rating is not satisfactory or is less than the amount applied for by the customer the Supplier reserves the right to insist upon payment for goods before delivery.
- 7.4 If the customer fails to make payment on the due date, the Supplier may:
- 7.4.1 Cancel the contract or suspend any further deliveries of Goods to the Customer without prejudice to its right to recover all sums due to it.
- 7.4.2 Charge the Customer interest at 4% above the Bank of England base rate from time to time, until payment in full is made and to suspend or discontinue deliveries of Goods under any uncompleted contract with the Customer.
- 7.4.3 Require the Customer to procure an appropriate extension to the delivery date or contract period and to provide suitable letters of comfort or indemnity to the Supplier (as it shall require) against all costs, proceedings and claims which may be brought against the Supplier following a postponement of its obligations under the Contract due to the Customer's delay in making payment.

8. DELIVERY

- 8.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note.
- 8.2 Unless otherwise agreed in writing, the goods shall be delivered to the Delivery Location. In the event of the Customer cancelling or amending the delivery instructions, such cancellation or amendment will be accepted by the Supplier only on the understanding that the Customer pays all expenses incurred by the Supplier up to the time of cancellation or amendment. The Supplier's reasonable estimate of expenses incurred in such

circumstances shall be accepted as final.

- 8.3 The Supplier shall be responsible for delivering the Goods or the Customer shall collect the Goods as set out in the Contract Details.
- 8.4 Where the Supplier is responsible for delivering the goods then:
- 8.4.1 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 8.4.2 The Customer must provide safe access to the place of delivery and the Supplier shall be entitled to refuse to deliver over roads or other ground which it considers unsuitable. If a vehicle delivering the goods is required to deliver a load to or from a place situated off a public road, the Customer must supervise the positioning and departure of the vehicle and shall be liable for any accident or damage resulting from such movements, other than death or personal injury caused by the negligence of the Supplier or the driver.
- 8.5 Where the Customer is responsible for collecting the Goods then Delivery is completed when the Supplier places the Order at the Customer's disposal at the Delivery Location.
- 8.6 Unless otherwise stated, prices in any new quotation are for delivery of loads at times between 7.00am and 5.00pm, Monday to Friday (excluding public holidays). If the Purchaser requires delivery outside those hours, the Supplier shall be entitled to make such extra charges as shall be reasonable (subject to availability).
- 8.7 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 8.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
- 8.7.2 the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 8.8 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the Price or charge the Customer for any shortfall below the Price.
- 8.9 The Customer shall take delivery in full of the Goods detailed on the Delivery Ticket. An extra charge is payable where the Supplier is required to remove from the Delivery Location any part of the Goods which is not accepted by the Customer.
- 8.10 Prices quoted by the Supplier assume that delivery vehicles will not be detained on site and the Supplier shall be entitled to make an extra charge in respect of any load, delivery of which, for reasons beyond the Supplier's control, is not completed within 30 minutes of arrival on site.
- 8.11 If the Supplier delivers up to and including 10% more or less than the quantity of Goods ordered the Customer may not reject them. Any delivery that includes 10% more or less than the quantity of Goods ordered by the Customer must be notified to the Supplier in writing within 48 hours of completion of delivery.
- 8.12 The Supplier may deliver the Goods by instalments, the contract between the Supplier and the Customer shall be divisible and any defect in any load shall give rise to a remedy in respect of that load only.
- 8.13 Any times specified by the Supplier for delivery of the Goods are intended to be an estimate and time for delivery shall not be of the essence. The Supplier shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or any instalment thereof.

9. TERMINATION

- 9.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 9.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- 9.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 9.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part

- of its business; or
- 9.1.4 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

10. LIABILITY

- 10.1 The Supplier's liability in respect of defects in the goods, including failure to comply with specifications (which apply only if such specifications have been given to and accepted by the Supplier in full at the time of acceptance of the order) shall be limited to the cost of removal and replacement of the defective goods. The Supplier accepts such liability only where the Customer can establish that:
- 10.1.1 the sample tested has been taken in accordance with the relevant British Standard specification or other specification previously accepted in writing by the Supplier and;
- 10.1.2 test results have been properly interpreted in accordance with the relevant British Standard specification or other specification previously agreed in writing by the Supplier and;
- 10.1.3 the Customer has, within 3 days of delivery of the Goods, notified the Supplier of their non-compliance with the specification and;
- 10.1.4 the Supplier has been given a reasonable opportunity to investigate any alleged defect and of making representations as to any remedial action to be taken.
- 10.2 If the defect(s) in the Goods should have been revealed by examination on delivery, the Supplier's liability in respect of such defect(s) shall be limited to supplying and delivering replacement goods free of charge.

11. TITLE

- 11.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 11.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 11.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; or
- 11.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 11.4.
- 11.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 11.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 11.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 11.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

11.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.4 and

11.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to:

- a) the Goods; and
- b) the ongoing financial position of the Customer.

11.4 Subject to clause 11.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

11.4.1 it does so as principal and not as the Supplier's agent; and

11.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

11.5 At any time before title to the Goods passes to the Customer, the Supplier may:

11.5.1 by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and

11.5.2 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

12. QUALITY AND PURPOSE

12.1 The Customer shall upon each and every delivery or collection inspect the Goods and notify the Supplier immediately of any defects which are reasonably apparent. In any event all complaints concerning the Goods must be notified to the Supplier by the Customer within 3 working days of delivery or collection of the Goods.

12.2 Any recommendation or suggestion relating to the use of the Goods made by the Supplier either in technical literature or in response to a specific enquiry or otherwise is given in good faith. However, it is for the Customer to satisfy himself of the suitability of the Goods for his own particular purpose and any implied warranty or condition (statutory or otherwise) as to fitness for purpose is excluded.

12.3 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.

13. WARRANTIES AND LIABILITIES

13.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

13.1.1 any breach of these conditions;

13.1.2 any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and

13.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

13.2 The Supplier makes no warranty as to the suitability of the Goods for any particular purpose. The Supplier warrants that the Goods will correspond with their specification at the time of delivery.

13.3 The Company shall not be liable to the Customer for 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 out of or in connection with the Contract.

13.4 The Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price; and

13.5 The Supplier recommends that the Customer takes out its own insurance to cover the types of loss specified in condition 13.3.

12 INSURANCE AND INDEMNITY

12.1 The Customer agrees to indemnify the Supplier against all damages, losses, costs, claims or expenses incurred by the Supplier in respect of any claim brought against the Supplier by any third party for:

12.1.1 any loss, injury or damage wholly or partly caused by the Goods or their use by the Customer;

12.1.2 any loss, injury or damage in any way connected with the performance of this Contract, provided that this clause will

not require the Customer to indemnify the Supplier against liability for the Supplier's own negligence.

- 12.2 The Customer undertakes that it will maintain sufficient insurance to cover its potential liabilities under the Contract and the Customer shall provide proof of such insurance to the Supplier if so requested by the Supplier.

13 FORCE MAJEURE

- 13.1 The Supplier reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to the Supplier to terminate the Contract.
- 13.2 Should any such event referred to in clause 13.1 occur, the Supplier may cancel or initially suspend, then cancel the Contract without incurring any liability for any loss or damage whatsoever thereby occasioned.

14 CONSEQUENTIAL LOSS

- 14.1 Without prejudice to the generality of anything contained elsewhere in these terms and conditions, the Supplier shall not be liable to the Customer for 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 out of or in connection with the Contract. Under no circumstances shall the Supplier be responsible or liable for the workmanship of the Customer's employees or sub-contractor.

15 GENERAL

15.1 Assignment

- 15.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

15.2 Entire agreement.

- 15.2.1 The Contract constitutes the entire agreement between the parties.
- 15.2.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

- 15.3 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.3.1 Waiver.

- 15.3.2 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 15.3.3 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

- 15.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.5 Notices.

- 15.5.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - b) sent by email to the email address' for the Customer Representative and Supplier Representative as set out in the Contract Details.
- 15.5.2 Any notice shall be deemed to have been received:
- if delivered by hand, at the time the notice is left at the proper address;
 - if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 15.5.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 15.6 **Proof of Delivery** The Supplier reserves the right to make a reasonable administration charge for the provision of copy delivery notes for proof of delivery.
- 15.7 **Third party rights.**
- 15.7.1 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 15.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 15.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 15.9 **Jurisdiction.** Each party irrevocably 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 or its subject matter or formation.