

## **CONDITIONS OF SALE FOR Melksham Minimix Limited**

### **DEFINITIONS**

- 1.1 "the Buyer" means the person or company whose order for the Goods is accepted by the Company in accordance with these Conditions.
- 1.2 "the Company" means Melksham Minimix Limited (company number 11622057) whose registered office is at Sahara Sandpit, Sandridge Hill, Melksham, Wiltshire, SN12 7QX.
- 1.3 "Conditions" means these terms and conditions and any variation thereto which is agreed in accordance with the terms hereafter.
- 1.4 "the Contract" means the contract between the Company and the Buyer for the sale and purchase of the Goods.
- 1.5 "the Goods" means the goods which the Company is to supply in accordance with these Conditions.

### **BASIS FOR SALE**

- 2.1 These Conditions apply to all sales of the Goods by the Company to the exclusion of any other terms and conditions and any variation or additional terms must be expressly confirmed in writing by a director of the Company.

### **QUOTATIONS, ORDERS AND SPECIFICATIONS**

- 3.1 Any quotation is given by the Company on the basis that no Contract will come into existence until the Company accepts the order by either dispatching an acknowledgement of order to the Buyer or (if earlier) delivering the Goods. Any quotation is valid for a period of 30 days only from its date unless the Company has previously withdrawn it. The price quoted in any quotation may be varied by the Company at any time giving not less than seven days written notice and the varied price shall apply to all orders delivered in accordance with these Conditions after the date specified in the notice.
- 3.2 Each order for the Goods by the Buyer to the Company shall be deemed to be an offer by the Buyer to purchase these Goods subject to these Conditions. No order which has been accepted by the Company may be cancelled or postponed by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all losses (including loss of profit), costs (including the cost of all labour, materials and tipping (where applicable), damages, charges and expenses incurred by the Company as a result of the cancellation or postponement.
- 3.3 The Company reserves the right to charge the Buyer an additional charge where (i) the supply of Goods is required by the Buyer outside the Company's normal working hours; (ii) delivery of the Goods is required in part loads rather than full loads; (iii) for any reason, the delivery vehicle is unable to discharge its load within 30 minutes of arrival at the Buyer's site and (iv) the Buyer purchases quantities of the Goods which are substantially different from the quantity specified in the quotation.
- 3.4 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order and any applicable specification.
- 3.5 The quantity, quality, description and specification of the Goods shall be those set out in a quotation or where no quotation as set out in the delivery ticket.
- 3.6 Sampling and testing shall be carried out in accordance with the appropriate British Standard or European Standard or specification accepted by the Company. Compliance with such standard or specification shall be discharged by the Company at the time of supply of the Goods to the Buyer and on the basis that the Company is the supplier and not the user of the Goods.

### **DELIVERY**

- 4.1 Delivery of the Goods shall take place either on discharge into the Buyers vehicle at the Company's premises or on discharge from the Supplier's vehicle at the Buyer's site or as otherwise agreed by the parties.
- 4.2 The Buyer must provide safe and adequate access to the point of discharge of the goods, including adequate manoeuvring space for the delivery vehicle. Failure to comply may result in the Company refusing to make delivery and charging the Buyer with the costs incurred.
- 4.3 Except in cases of negligence by the Company or its drivers the Buyer shall indemnify the Company and its drivers against damage or injury caused during the presence on the Buyer's site or access thereto by the delivery vehicle.
- 4.4 On any delivery (howsoever effected), the Buyer must (i) satisfy itself as to the condition of the Goods; (ii) allow delivery of the Goods when they come onto the Buyer's site; (iii) sign the delivery note; (iv) sign any record produced by the Company or its drivers in respect of any delay after the arrival of the Goods at the Buyer's site, standing time, authorised day work or other records.
- 4.5 Where the Buyer fails to comply with any of the conditions contained in Condition 4.4, or the Company is unable to deliver the Goods on time because of the Buyer's default then (i) risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence); (ii) the Goods will be deemed to have been delivered; and (iii) the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance);
- 4.6 Any time, period or date specified by the Company for delivery of the Goods is intended to be an estimate only and the Company shall not be liable for any damages or losses (including as a result of negligence of the Company) arising out of failure to meet such time, period or date.

### **RISK AND TITLE**

- 5.1 Unless otherwise provided in these Conditions, the risk in the Goods shall pass on delivery as provided by these Conditions.
- 5.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the company from the Buyer on any account and the Company shall be entitled to enter onto the Buyer's site to recover the Goods.

### **QUALITY**

- 6.1 The Company shall not be liable to the Buyer for any defect in the Goods or for any loss claimed to result there from unless the Buyer notifies the Company in writing of the alleged defect or failure within 14 days of delivery; allows the Company all reasonable facilities to enable it to investigate any such defect or failure promptly and to advise the Buyer of any remedial action which may be appropriate and follows the Company's reasonable advice and carries out any reasonable remedial action recommended to it by the Company.

- 6.2 The concrete must be discharged within two hours of batching (or as otherwise agreed at the Company's discretion but at Buyer's risk) and if the Buyer prevents such discharge, the Buyer will be charged for the concrete, its delivery, return and disposal. The Company accepts no responsibility for the workability, strength or quality of its concrete if the Buyer shall have added anything whatever to it or authorised the alteration of the mix such that the workability of the concrete is different from that specified and ordered and outside the tolerances specified in the quotation.

### **PRICE**

- 7.1 The price payable for the Goods shall be the price stated in the quotation or the Company's prices ruling at the date of delivery where no quotation is given. The price for the Goods shall be exclusive of any value added tax and any other form of taxation imposed from time to time on the Goods.

### **PAYMENT**

- 8.1 Payment for the Goods must be received by the Company 30 days from date of invoice, this is applicable to account customers only or before delivery of Goods if a Cash Sale. The Company may refuse (whether under this Contract or other contracts with the Buyer or an associated company of the Buyer) to accept or complete any order, suspend supplies, impose special conditions or cancel the Contract where the Buyer's credit limit is or will be exceeded on delivery or where the Buyer fails to comply with these Conditions.
- 8.2 In the case of late payment the Buyer shall pay the Company interest on the net payment due at the rate of 4% per annum above the base rate charged by HSBC Bank Plc (or its successor in title) from time to time calculated from the date payment was first due until the date when payment has been received by the Company. The Company reserves the right to claim interest under the Late Payment of Commercial Debt Regulations 2002.
- 8.3 In the case of late payment where the Company engages the services of a collection agent to assist in recovery of the debt the Buyer shall pay these costs to the Company in addition to those in Condition 8.2.
- 8.4 The Buyer shall not have a right of set-off, counterclaim, discount, and abatement or otherwise nor to withhold payments properly due to the Company in the event of any dispute with the Company.

### **WARRANTY AND LIABILITY**

- 9.1 No warranty or representation is given that the Goods are suitable for any particular purpose and all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 (as amended)) are, to the fullest extent permitted by law, excluded from the Contract.
- 9.2 Where the Goods supplied by the Company are proved to be defective and the Buyer has complied with Condition 6 the Company will replace the Goods as promptly as possible without charge and will reimburse the Buyer for any expense proved to have been directly incurred in the removal and replacement of the defective Goods. Save as aforesaid and save in respect of death or personal injury caused by the negligence of the Company, the Company shall not be liable whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the supply of Goods or their use by the Buyer except as expressly stated in these Conditions. Without limitation to the generality of the foregoing, the Company shall not be liable to the Buyer for any losses or costs resulting from unsuitable application, wrongful handling or placing or from any fault in a design or specification provided by or on behalf of the Buyer.
- 9.3 The Company accepts no liability for any failure in performance of any contract or the provision of any data in connection therewith arising from any incompatibility between the computer systems of the Company and the Buyer.

### **FORCE MAJEURE**

- 10.1 Deliveries may be totally or partially suspended during any period in which the Company may be prevented or hindered from manufacturing, supplying or delivering the goods due to breakdown of plant, non-availability of material, labour disputes, fire accident or inclement weather, transport difficulties or delays or any circumstances outside the Company's control. The Company will inform the Buyer should any such an occasion arise, but shall be under no liability to the Buyer for failure to deliver in such circumstances. Whilst every effort will be made to meet any agreed requirements of the Buyer the Company shall not be liable for any loss or damage arising through its failure to meet such requirements.

### **GENERAL**

- 11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this condition to the party giving the notice.
- 11.2 The parties do not intend that any terms of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 11.3 Any provision of the Contract held by any competent authority to be illegal, invalid, void, voidable, unenforceable or unreasonable, in whole or in part, shall be deemed severable and all remaining conditions of the Contract shall not be affected thereby.
- 11.4 All aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.