

## TERMS & CONDITIONS

### **1. DEFINITIONS**

In these conditions the following expressions shall have the following meaning: –

- (a) “The Company “shall mean Natural Cement Distribution Ltd.
- (b) “The Buyer “shall mean any person, company, firm or unincorporated association with whom any contract to supply goods shall be made by the Company.
- (c) “The Goods “shall mean all products of the company contracted to be sold by the Company to any Buyer.

### **2. ACCEPTANCE OF ANY ORDER**

“All orders shall be deemed to incorporate these conditions of sale as shall any contract or agreement arising there from to the exclusion of any terms inconsistent therewith in any such order contract or agreement unless otherwise agreed by the Company in writing. The Company reserves the right at its option upon giving prompt notice in writing of its intentions to the Buyer not to fulfil any order. If any one or more of these conditions shall be held to be unenforceable or invalid then the remaining conditions shall nonetheless continue to have full force and effect.”

### **3. PRICES**

All price lists and quotations are, unless specifically stated subject to alteration at any time without notice. Orders are accepted on condition that goods are invoiced at the price ruling at the date of despatch unless otherwise agreed in writing by the Company. Any price set out in any quotation whether verbal or in writing shall be for the information of the Buyer only and shall not be construed as a representation of the Company. All prices are subject to the rate of V.A.T. current at the date of invoice.

### **4. TERMS OF PAYMENT**

- (a) Unless otherwise confirmed in writing payment of the price together with any V.A.T. applicable shall be made by the Buyer in cash without discount at the end of the month following the date of the Company’s sales invoice and payment in full shall be made notwithstanding any delay in delivery of the Goods.
- (b) If goods are delivered in instalments, the Company shall be entitled to invoice each instalment as and when despatched and payment shall be due in respect of each and every instalment whereof despatch had been made notwithstanding any non-delivery of other instalments or other default on the part of the company.
- (c) If upon the terms applicable to any order the price shall be paid by instalments or if the Buyer has agreed to take specific quantities of Goods at specific times a default by the Buyer of the payment of any due instalment or the failure to give delivery instructions in respect of any quantity of Goods outstanding shall cause the whole balance of the price to be become due forthwith.
- (d) The price of the Goods shall be due in full to the Company in accordance with the terms of the order and the Buyers shall not be entitled to exercise any set off lien or any other similar right or claim. (e) Without prejudice to any rights it may have the Company is entitled to charge interest at the rate of 3% per month on all overdue payments of the price of the Goods or the price of any instalments thereof.

## **5. DELIVERY**

- (a) The Company's estimate of time(s) for delivery must be regarded as approximate only, whilst every effort will be made to avoid delay the Company will accept no liability for any direct or indirect loss arising for such delays.
- (b) Where the Goods are handed to a carrier for carriage to the Buyer or to a United Kingdom port for export any such carrier shall be deemed to be the agent of the Company and not the Buyer for all purposes.
- (c) Where the Goods are sold F.O.B. the responsibility of the Company shall cease immediately the Goods are placed on board ship and the Company shall be under no obligation to give the Buyer the notice specified in Section 32 (3) of the Sale of Goods Act 1979.
- (d) No liability for non-delivery partial loss or damage to the Goods occurring prior to delivery or where the Goods are not in accordance with the contract will attach to the Company unless claims to that effect are notified in writing by the Buyer to the Company (with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods);
  - (1) Within seven days of delivery for partial loss, damage or non-compliance with the contract or
  - (2) Within 14 days of the date of the invoice for non-delivery.
- (e) In the event of a valid claim for non-delivery, partial loss, damage or non-compliance with the contract the Company undertakes at its option either to reprocess or replace the Goods at its expense but the Company shall not be under any further or other liability to any party in connection with such non-delivery, partial loss, damage or non-compliance.
- (f) If the Buyer fails to give notice in accordance with Condition 5 (c) above the Goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be bound to accept and pay for the same accordingly.
- (g) Without prejudice to any rights it may have the Company may withhold delivery of the Goods or any instalment thereof if it has reasonable grounds for doubting the Buyers ability to pay the price thereof.

## **6. PACKING**

- (a) The company undertakes to ensure that Goods are adequately packed where necessary to prevent damage but the Company shall be under no liability for any packing, which is deemed ineffective.
- (b) An extra charge for any special packing required for export orders or in accordance with Buyers specific requirements will be made.

## **7. PASSING OF RISK**

From the time of despatch the Goods shall be at the risk of the Buyer who shall be solely responsible for their custody and safekeeping and shall indemnify the Company for any loss or damage thereby sustained.

## **8. PASSING OF TITLE**

- (a) Notwithstanding any agreed terms of payment Goods are sold and delivered on credit but on condition that the ownership of them shall not pass to the Buyer until they are fully paid for and the Company shall be at liberty in its discretion to cancel the contract and remove the Goods if the price be not paid at the times and in the manner stipulated and to recover damages from the Buyer in respect of the loss and damage suffered as a result of the Buyer's failure to complete the contract and any instalments of purchase money which may have been paid shall be retained by the company against those damages. Until the moment of full payment of the amount which the Buyer owes the

Company in respect of the said Goods delivered sold or contracted to be sold the Buyer shall keep the Goods for the Company in his capacity as fiduciary owner and if required shall store the Goods in such a way that they can be recognised as such. The entries in the books of accounts maintained by the Company shall be conclusive evidence of such indebtedness.

(b) In the event of any resale by the Buyer of the Goods the Company shall be beneficially entitled to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be held on trust for the Company.

(c) In the event of failure to pay the price in accordance with the contractual terms the Company shall have the power to re-sell the Goods or products after reasonable notice, such power being additional to (and not in substitute for) any other power of sale arising by operation of law or implication or otherwise.

## **9. PATENT RIGHTS**

(a) Patent and design rights relating to goods offered or supplied shall remain the absolute property of the company. The Buyer will not, without the previous written consent of the Company copy or enable others to copy any goods or parts thereof supplied by the Company.

(b) The Buyer hereby agrees to indemnify the Company against all claims damages costs and expenses to which the Company may become liable through executing any orders to the specification of the Buyer by the infringement or the alleged infringement of a Patent Registered Design or instrument of privilege.

(c) No licence is granted under third party patent claim covering the combination of the Company's products with other devices or covering the use of the products of the Company except for the purpose made known to the Company and accepted by it as part of the same.

## **10. CONDITIONS AND WARRANTIES**

(a) Every description specification drawing or illustration of the Goods is given in good faith based on average results of standard tests but any conditions or warranties expressed or implied that the Goods shall correspond with such description specification drawing or illustration is hereby expressly negated and the use of any such description specification drawing or illustration shall not constitute a sale by description.

(b) Any conditions or warranties (whether express or implied by statute common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the quality or fitness of the Goods for any particular purpose even if that purpose is made known expressly or by implication to the Company are hereby expressly negated.

(c) Notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Buyer or results of standard tests upon a sample furnished to the Buyer it is hereby declared that such sample was so exhibited and inspected or tested solely to enable the Buyer to judge for himself the quality of the bulk and not so as to constitute a sale by sample. The Buyer shall take the Goods at its own risk as to their corresponding with the sample or as to their quality condition or sufficiency for any purpose.

## **11. CONSEQUENTIAL LOSS**

The Company shall not be liable for any costs claims or damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits income production or accruals or loss of such profits income production or accruals or by reference to accruals of such costs claims damages or expenses on a time basis.

## **12. REPRESENTATIONS**

No statement description information warranty condition or recommendation contained in any catalogue price list advertisement or communication (other than written and signed guarantees given by the Company) or made verbally by any of the agents or employees of the Company shall be construed to enlarge vary or override in any way any of these conditions.

### **13. DEFECTIVE GOODS**

(a) In the case of Goods of the Company's manufacture the Company undertakes for a period of two months following delivery of the Goods at its discretion to credit to the Buyer in full the price paid by the Buyer to the Company or supply free of charge a replacement of the goods in which a substantial defect in the material or workmanship appears within four weeks of delivery at the place of delivery specified by the Buyer for the original Goods provided in any case that the Goods have been accepted and paid for.

(b) In the case of Goods not of the Company's manufacture the Company will pass on to the Buyer any benefits obtainable under any warranty given by the Company's supplier provided that the Goods have been accepted and paid for.

(c) The rights given to the Buyer in sub-clause (a) and (b) above shall be in substitution for all or any other rights which the buyer would or might have had but for these conditions.

(d) In order to exercise its rights under sub-clause (a) above the Buyer shall inform the Company within 28 days of the date when such defect appeared or ought reasonably to have been discoverable and shall return the defective Goods carriage to the Company.

(e) Nothing herein shall impose any liability upon the Company in respect of any defects in the Goods arising out of the acts omissions negligence or default of the Buyer its servants or agents including in particular but without prejudice to the generality of the foregoing any failure by the Buyer to comply with any recommendation of the Company as to storage and handling of the Goods.

(f) Where the Goods are for delivery by instalments for foregoing shall not be ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept delivery thereof.

### **14. LIMITATION OF LIABILITY**

The Liability of the Company to the Buyer for any loss or damage of whatsoever nature and howsoever caused shall be limited to and in no circumstances shall exceed the cost of the Goods plus £1,000.

### **15. DEFAULT OR INSOLVENCY**

The Company has the right to cancel any deliveries in any cases of the Buyer default in payment breach of agreement, bankruptcy or in the case of a limited company, the appointment of a Receiver or commencement of liquidation other than of amalgamation or reconstruction purposes but save as aforesaid orders may not be cancelled except by agreement in writing signed by both parties.

### **16. FORCE MAJEURE**

Without prejudice to the generality of any previous exclusion or limitation of liability the Company shall not be liable for any failure to fulfil any terms of any transactions governed by these conditions if fulfilment has been delayed hindered or prevented by any circumstances whatsoever which are not directly within the Company's control and if the Company is able to fulfil some if not all of the demand for the Goods the Company may allocate its available supplies amongst its customers, including parent subsidiary or associated companies, in such a manner as the Company in its absolute discretion considers to be fair.

## **17. THE LAW GOVERNING THE CONTRACT**

The contract shall in all respects be construed and operated as an English contract governed by English Law and the Buyer shall submit to the jurisdiction of the Courts of England.

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Registered in England No. 3194800

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