

CONDITIONS FOR THE SUPPLY OF GOODS AND ASSOCIATED SERVICES BY OR ON BEHALF OF MANSFIELD SAND COMPANY LTD

1. (a) In these conditions: "the Company" means Mansfield Sand Company Limited trading as both Mansfield Sand or Mansfield Brick, "the Customer" means the individual, firm, company or other party with whom the Company contracts, "Supply" includes (but is not limited to) any supply under the contract of sale, "Loss" means loss of profits, loss of sales or business, loss of agreement or contracts, loss of anticipated savings, loss of or damage to goodwill and indirect and consequential loss, "Group Company" means the Company's Subsidiaries or Holding Companies from time to time and any Subsidiary of any Holding Company from time to time, "Subsidiary and Holding Company" in relation to a company means "subsidiary" and "holding company" as defined in section 1159 of the Companies Act 2006 and "Contract" means the contract made between the Company and the Customer for the supply of goods and/or services.

(b) The Customer acknowledges that whilst goods or services may be provided to the Customer by a Group Company, such Group Company is not a party to the Contract. The only parties to the Contract shall be the Company and the Customer. No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted in writing by a director of the Company at which point and on which date the contract between the Company and Customer shall come into existence. Any contract made between the Company and the Customer for the supply of goods and/or services (herein called "the Contract") shall be subject to these conditions and save as aforementioned no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them; any such term, representation or contract will bind the Company only if in writing and signed by a director of the Company.

(c) Unless otherwise agreed in writing by a director of the Company these conditions shall override any terms and conditions stipulated or referred to by the Customer in its order or pre-contract negotiations including but not limited to any terms which are implied by trade, custom, practice or course of dealing.

(d) Any description contained in the Company's catalogues, samples, price lists or other advertising material is intended merely to present a general picture of the goods or services supplied by the Company and shall not form a representation of or be part of the Contract or have any contractual force. Unless expressly agreed in writing by a director of the Company no sale shall be a sale by sample and the goods sold may not correspond with any sample supplied to the Customer.

(e) In the event that the Company has not given a written acknowledgement of the Customer's order these conditions, provided the Customer shall have had prior notice of them, shall nonetheless apply to the Contract.

(f) The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.
2. The Customer warrants that it will pass on to all third parties to whom it may supply the goods and to all third parties employed or engaged by the Customer all information as to the use and safe handling of the goods as may have been passed onto the Customer by the Company.
3. The Company shall not be liable for any Loss sustained by the Customer, anyone employed or engaged by the Company, any customer or client of the Customer or any third party to whom the Customer has supplied the goods (together known as the "Third Parties") arising out of the use of the goods by the Third Parties.
4. (a) Subject to any agreement to the contrary the Company's quotations are provisional and may be altered to take account of any changes taking place between the date of quotation and the Company's acceptance of the Customer's order in the price of raw materials, rates of ages and other costs or in the Customer's instructions or in the event that the Customer orders part only of the quantity referred to in any quotation.

(b) The Company shall be entitled to increase its prices at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or working on or supplying any goods or services (including any such increase arising from any error or inadequacy in any instructions provided by the Customer or any modification carried out by the Company at the Customer's request) and such increased prices ruling at the date of despatch by the Company shall be substituted for the previous Contract price. All prices quoted are exclusive of VAT and the Customer shall pay any and all taxes, duties and other government charges payable in respect of the goods and services.

(c) Unless otherwise agreed in writing the Contract price only includes delivery during the normal working hours and normal working days of the Company. All deliveries made at the Customer's request (subject to the Company's written agreement) on Public Holidays, Sundays or Saturdays or outside normal working hours will be subject to an additional charge.

(d) The Company reserves the right to make an additional charge:
 - (i) if the supply of goods is requested by the Customer in quantities of less than a full load; or
 - (ii) if for any reason (other than the default of the Company or its servants or agents) the delivery vehicle is unable to discharge its load within 15 minutes of arrival at the delivery point.Details of such charges are available upon request.

(e) The contract price is based upon safe and easy access for laden vehicles of the Company or its servants or agents and, where in the reasonable opinion of the Company, such access is not provided the Customer shall be liable for any extra charges incurred by the Company.
5. (a) Unless otherwise agreed in writing by a director of the Company, the Customer will take delivery of the goods at the nearest convenient unloading point to the Customer's premises or appropriate site and the Customer shall be responsible for notifying the Company of any restriction of access such as weight, width, height or unloading hours. If, at the Customer's request, the Company agrees to deliver the goods to a point off the public road the Customer will indemnify the Company against all losses, costs, expenses, actions and claims incurred by the Company arising from delivery at that point or as a result thereof including, but not limited to, damage to vehicles, kerbs, pipes, manholes or any other property. The Customer will give the Company all necessary instructions and approvals for delivery within seven days of notification that the goods are ready for delivery. Offloading will be at the Customer's risk and the Customer will give proper assistance to the driver of the delivery lorry in unloading the goods. Delivery of the goods shall be completed on completion of unloading of the goods at the specified delivery location.

(b) The risk in goods which the Company agrees to supply shall, subject to any agreement in writing by a director of the Company, pass to the Customer on the relevant date as defined in sub-paragraph 5(a) hereof or the date (if earlier) on which, the goods being ready for delivery, delivery is postponed at the Customer's request.

(c) The Company shall not be liable for any loss or damage sustained by any goods left with the Company howsoever caused and whether or not attributable to negligence on the part of the Company or negligence or wilful default on the part of any servant or agent of the Company.

(d) Should the Company be delayed in or prevented from supplying the goods or services due to war, governmental or parliamentary restrictions, strike, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destructions of goods, breakdown of machinery, shortage of labour or of raw materials or Act of God or due to any other cause whatsoever beyond the reasonable control of the Company, including but not limited to, the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the goods, the Company shall be at liberty to cancel or suspend the order placed by the Customer without incurring any liability for any loss or damage arising therefrom.

(e) While the Company will endeavour to supply the goods or services by any date or within any period agreed upon, such dates and periods are estimates only given in good faith. The time of delivery is not of the essence. The Company will not be liable for any failure to supply by such a date or within such a period. Moreover, the Company shall be entitled to defer supply until any monies due from the Customer have been received.

(f) Title to the goods shall not pass to the Customer until the earlier of:
 - (i) the Company receiving payment in full (in cash or cleared funds) for the goods; or
 - (ii) the Customer resells the goods, in which case title to the goods shall pass to the Customer immediately before the time at which resale by the Customer occurs.
(g) Until title to the goods has passed to the Customer, the Customer shall:
 - (i) maintain the goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery; and
 - (ii) give the Company such information relating to the goods as the Company may require from time to time.
6. (a) For the purposes of this paragraph the goods shall mean the whole or any instalment of the goods which the Company has agreed to supply or to which the Company has agreed to carry out work and the relevant date shall be the date on which (i) the Company despatches the goods or (ii) the Customer takes delivery of the goods at the Company's premises or (iii) the Customer defaults in his obligation under sub-paragraph 5(a) hereof whichever shall first occur or (iv) (in the case of services) the services or any part thereof are completed.

(b) Unless otherwise specified in writing by a director of the Company payment shall be made by the Customer not later than 30 days after the net monthly relevant date. Time for payment shall be of the essence of the Contract. Without prejudice to any other rights of the Company interest will be payable on all overdue accounts from the due date until payment of the overdue sum, at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0% and for the purpose of paragraph 6 the full purchase price of the goods or services shall include any interest payable hereunder.

7. (a) If the Customer shall fail to make any payment when it becomes due or shall enter into any composition or any arrangement with his or its creditors or if being an incorporated company shall have an administrative receiver or administrator appointed or shall pass a resolution for winding up or a Court shall make an order to that effect or if there shall be any breach by the Customer of any of the terms and conditions hereof the Company may defer or cancel any further deliveries and treat the Contract as determined but without prejudice to its right to the full purchase price for goods and services supplied and damages for any loss suffered in consequence of such determination.
- (b) Cancellation by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss and damage resulting to the Company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company in writing.
- (c) A charge will be made for any costs incurred by the Company due to suspension or deferment of any order by the Customer or in the event that the Customer defaults in collecting or giving instructions for the delivery of any goods.
8. (a) No claim for damage in transit, shortage of delivery or loss of goods will be entertained unless the Customer shall have given to the Company written notice of such damage, shortage or loss with reasonable particulars thereof within 3 days of receipt of goods or (in the case of total loss) of receipt of the invoice or other notification of despatch. The Company shall have no liability in respect of damage, shortage, or loss occurring while the goods are in the custody of an independent carrier. In any other case, the Company's liability, if any, shall be limited to replacing such goods or (in its discretion) crediting the Customer with the Contract price thereof and it shall be a condition precedent to any such liability that the Customer shall if so requested have provided authority for the Company to inspect damaged goods within 14 days of such request. The Company shall have no liability for consequential loss arising out of such damage shortage or loss as aforesaid.
- (b) Save as otherwise provided in these conditions the Company shall have no liability in respect of the state, condition or composition of the goods.
- (c) The Customer must satisfy itself that the goods are suitable for their required purpose and the Company gives no warranty that the goods are suitable for their required purpose.
- (d) In the event that any goods are delivered which either do not comply with any agreed specification or other description or representation or which are defective by reason of any error or failure in any work done by the Company (any such goods being hereafter referred to as "faulty goods") the Company's liability is limited to replacing or (in its discretion) crediting the Customer with the purchase price of goods which within 1 month of delivery to the Customer are found to be faulty goods PROVIDED THAT the Customer shall inspect all goods at the time of delivery and by accepting delivery shall be deemed to accept that the goods are not faulty in any way which such inspection ought to reveal. Conditions precedent to the Company's liability hereunder shall be that as soon as reasonably practicable the Customer shall have given to the Company reasonable notice of the respects in which the goods are faulty and shall have provided authority for the Company's servants or agents to inspect them. The Company shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the Customer arising from or in connection with the faulty goods. These Conditions shall apply to any replacement goods supplied by the Company.
- (e) Where the Company agrees to repair or replace goods in accordance with the foregoing provisions of this paragraph any time specified for delivery under the Contract shall be extended for such period as the Company may reasonably require.
- (f) Save for such terms as may be implied in the Contract by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods Act 1982, all conditions, warranties and other terms express or implied statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Company in writing PROVIDED that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the Contract or any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this paragraph and the provisions of paragraph 10 will not apply to any such term.
9. No right of set-off shall exist in respect of any claims by the Customer against the Company unless such claims are agreed by the Company in writing and the Customer shall not withhold any part of any payment which has become due to the Company for goods or services.
10. The following provisions shall apply to all Contracts under which the Company agrees to carry out haulage services on a daywork basis:
- (i) in calculating the period of working time for which payment is due the travelling time to and from the site (or if greater, a period of 30 minutes for each journey) shall be included.
- (ii) if a vehicle is supplied and is not used the working time (excluding travel time) shall be deemed to be 4 hours.
- (iii) if a vehicle is supplied and is used for part only of the day the working time (excluding travelling time) shall be deemed to be 8 hours.
- (iv) the agreed hourly rate shall apply to all period of overtime other than any working time on a Sunday, for which an additional rate may be charged.
- (v) the Company may add to the Contract price a reasonable charge for the mileage costs incurred in travelling to and from the site.
11. In the case of any Contract to which paragraph 10 applies the Company shall indemnify the Customer in respect of direct damage to his property caused by any negligence on the part of the Company or negligence or wilful default on the part of any driver in the employment of the Company in the carryout of the service PROVIDED THAT the Company's liability hereunder shall not exceed the total price payable under the Contract. Save as aforesaid or as otherwise provided in these Conditions the Company shall have no liability in respect of any Loss or damage sustained by the Customer arising from or in connection with any default or failure in the performance of the Contract. Save as aforesaid or as otherwise provided in these Conditions the Company shall have no liability in respect of any Loss or damage sustained by the Customer arising from or in connection with any negligence or default on the part of a third party engaged by the Company to perform the Contract to which paragraph 10 applies.
12. Save as hereinbefore provided and subject to the provisions of section 2(1) of the Unfair Contract Terms Act 1977 the Company shall not be liable to the Customer for any damage or for any direct or consequential loss incurred by the Customer in consequence of any negligence on the part of the Company or negligence or wilful default on the part of its servants or agents in or in connection with the supply of any goods or the design or manufacture thereof or in the carrying out of any work or the provision of any information.
13. The law of all contracts with the Company shall be English Law which shall govern in all respects the construction and effect of such contracts and these Conditions. The Customer agrees that in the event of any dispute arising out of the Contract or the performance thereof he will submit to the jurisdiction of the English Courts.
14. All descriptions, specifications, particulars of weight and dimensions supplied by the Company or approximate only and the Company shall have no liability in respect thereof.
15. Notwithstanding delivery and the passing of risk, property in and title to the goods shall remain in the Company until the Company has received payment of the full price of:
- (a) All goods subject of the Contract; and
- (b) All other goods supplied by the Company to the Customer under any contract whatsoever.
16. The Company shall not be liable to the Customer, whether in contract, tort (including negligence) for breach of statutory duty, or otherwise, arising under or in connection with the Contract for Loss. The Company's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the total charges paid under the Contract.
17. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right.
18. The Contract and any order constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of 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 misstatements based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud. In the event of a conflict between the Contract and any order, the terms of the Contract shall prevail.