

CONDITIONS OF SALE

1. DEFINITIONS

- 1.1 "Seller" means CEMEX UK Cement Ltd.
- 1.2 "Buyer" means the person, firm or company placing an order for Goods.
- 1.3 "Goods" means all those goods and materials which are to be supplied by the Seller pursuant to the contract.
- 1.4 "Contract" means the contract for the supply of Goods incorporating these conditions.
- 1.5 "Conditions" means these Conditions of Sale.
- 1.6 In any case where the Contract stipulates the application of any international trade term defined in Incoterms 1980 (or any amendment to or revision thereof) such definition shall be deemed to be incorporated herein. In the event of any inconsistency or ambiguity arising between any of the provisions of Incoterms 1980 and of the Contract the latter shall prevail.

2. FORMATION OF CONTRACT

- 2.1 There shall be no binding Contract between the Seller and the Buyer until the Seller accepts the Buyer's order, whether or not in writing, subject to these Conditions.
- 2.2 All orders are accepted by the Seller subject to these Conditions and these Conditions shall be the sole terms and Conditions of any sale by the Seller to the Buyer. Terms and conditions put forward by the Buyer shall not be binding on the Seller.
- 2.3 No amendment or addition to the Contract shall be valid unless accepted in writing by the Seller.
- 2.4 The Buyer agrees that these Conditions and any specific details agreed in writing by the Seller constitute the entire understanding between the parties hereto and that there are no other representations, warranties of merchantability or of fitness for a particular purpose, or of any other kind (except as to title), conditions, terms or obligations, whether written or oral, express or implied, by custom, statute or otherwise applicable to the contract.

3. QUOTATIONS

The prices, quantities and delivery times stated in any quotation given by the Seller are commercial estimates only which the Seller will make all reasonable efforts to achieve but are not binding on the Seller. Quotations can be withdrawn at any time by the Seller.

4. SPECIFICATIONS

- 4.1 All recommendations and advice given by or on behalf of the Seller to the Buyer as to methods of storing, using or applying the Goods, the purposes for which the Goods may be applied and the suitability of using the goods in any manufacturing process or in connection with any other materials are given without liability on the part of the Seller.
- 4.2 All performance data, dimensions, weights and other technical information and particulars of the Goods are given by the Seller in the belief that they are as accurate as reasonably possible but are not to be treated as binding or as forming part of the Contract with the Buyer.

5. ORDERS AND DELIVERY

- 5.1 Orders are accepted by the Seller subject to the availability of Goods for delivery. The Seller shall be entitled to make partial deliveries or deliveries by instalments and to invoice for such deliveries as made. These Conditions shall apply to each such delivery.
- 5.2 Unless otherwise agreed delivery will be made by any method of transportation regarded as suitable by the Seller at its discretion and if within the U.K. delivery will be made from any works to the delivery site, or as near thereto as fair and safe roadway permits, specified in the Buyer's order and if outside the U.K. delivery will be made ex works the Seller's premises or FOB at the port nominated by the Seller at Seller's option.
- 5.3 Buyer warrants that the delivery site will be safe and suitable to take delivery from Seller's or Seller's carriers' transportation (details of which will be provided to Buyer on request) and will indemnify Seller in respect of any damage, costs or expenses caused by any lack of safety or suitability.
- 5.4 While the Seller shall use all reasonable efforts to meet delivery times it shall not be liable to the Buyer for any loss or damage, whether direct, indirect or consequential if it is delayed or prevented, in whole or in part from delivering the Goods or otherwise performing its obligations under the Contract. Any such delay shall not entitle the Buyer to treat the Contract as repudiated or to reject the Goods.
- 5.5 Upon refusal or failure of the Buyer to take delivery of the Goods at the time for delivery the Seller shall at its own discretion be entitled to store the Goods at the risk of the Buyer and the Buyer shall in addition to the price payable under Clause 8 pay all costs and expenses of such storage and any additional costs of carriage incurred.

6. PACKAGING

Unless otherwise agreed in writing the Seller will package the Goods in its normal domestic delivery packaging. Any special or export packaging will be at the Buyer's expense and may lead to delivery delays.

7. RISK

- 7.1 In the case of delivery within the U.K. the risk of loss or damage to the Goods shall pass to the Buyer upon delivery of the Goods by the Seller to the Buyer's carrier or to the Buyer's delivery site.
- 7.2 In the case of delivery outside the U.K. the risk of damage or loss to the Goods will pass to the Buyer upon delivery.

8. PRICE

- 8.1 Unless otherwise agreed in writing, the price of all Goods will be that ruling at the date of despatch.
The Seller shall be entitled to amend its prices from time to time without notice.
- 8.2 Unless otherwise agreed, the price is inclusive of the cost of delivery to an address within the U.K. but is exclusive of Value Added Tax, customs duties and all other taxes, duties and expenses in respect of the Goods all of which shall be for the Buyer's account unless otherwise stipulated in writing by the Seller.

9. PAYMENT

- 9.1 Unless otherwise agreed in writing, for domestic sales payment by the Buyer shall be made in pounds sterling before the last day of the month following the month in which the delivery is made or tendered. The time of payment of the Goods shall be of the essence of the contract.
- 9.2 Except where otherwise agreed in writing, the Buyer shall be entitled to a prompt payment discount of 2.5% of the price of the Goods (including packages where applicable, but excluding any taxes) when accounts are paid to and received on or before the due date.
- 9.3 If the Buyer fails to make payment in respect of any invoice on the due date.
- 9.3.1 All invoices for goods delivered for which payment has not been received shall become immediately due and payable notwithstanding Clause 9.2 or any previous agreement to the contrary.

- 9.3.2 Without prejudice to any other right or remedy available to the Seller, Rugby Limited shall be entitled to charge the Buyer interest (both before and after judgement) on the amount unpaid at an annual rate of 2% above the U.K. Clearing Bank current base rate from time to time until actual payment on all overdue amounts. Rugby Limited will also be entitled to cancel the contract or suspend any further deliveries to the Buyer.
- 9.4 The Seller reserves the right at any time to demand security for payment before continuing with or delivery any order.
- 9.5 Export Sales, payment by the Buyer shall be made by irrevocable letter of credit confirmed by a first class London Bank and delivered to the Seller at least ten days prior to the scheduled delivery date.
- 9.6 The setting off or withholding of payment by the Buyer in respect of any claim under this or any other Contract shall not be allowed unless expressly agreed by the Seller in writing.
10. PROPERTY
- 10.1 The Seller shall retain title to the Goods until it has received payment in full of all sums due in connection with the Contract or on any other account. For these purposes the Seller has only received a payment when the amount of that payment is irrevocably credited to its bank account.
- 10.2 Until title to the Goods passes to the Buyer, the Buyer shall hold the goods as fiduciary agent and bailey for the Seller and should keep the Goods in good and substantial repair and condition properly stored, protected and insured and the Goods shall be stored in such way as to be clearly identifiable as belonging to the Seller.
- 10.3 Until such time as title in the Goods passes to the Buyer, the Seller may, for the purpose of recovery of the Goods, enter upon the premises where they are stored and may repossess the same. The Seller shall at any time be entitled to appropriate any payment made by the Buyer in respect of any Goods in settlement of such invoices as the Seller may in its absolute discretion think fit notwithstanding any purported appropriation by the Buyer.
11. WARRANTY
- 11.1 The Seller warrants that the goods will comply with current British Standard Specifications (where applicable) at the date of delivery. Variations in the characteristics of the goods will occur from time to time despite Seller's efforts to maintain consistency and such variations shall not render the Goods defective or the Seller liable. The Buyer shall have the right to return to the Seller, at the Seller's expense. Goods which do not conform to relevant British Standard Specifications provided that
- 11.1.1 the Buyer makes a full inspection of the Goods and tests them immediately upon delivery.
- 11.1.2 the Buyer notifies the Seller in writing forthwith of any non-conformity which it discovers and, in any event, within one month of delivery.
- 11.1.3 the Buyer has used the Goods in accordance with any instructions or recommendations of the Seller and has not stored the Goods under adverse conditions, and
- 11.1.4 the Buyer has allowed the Seller a reasonable opportunity to inspect the Goods.
- 11.2 The Seller shall, at its option, refund the price of or replace free of charge such Goods as its examination confirms are defective since they do not comply with such specifications.
- 11.3 Should any dispute arise concerning the quality of any cement supplied a representative sample shall be drawn in the manner prescribed by the relevant British Standard Specification in the presence of the Seller or its representative from the Goods complained of and shall be packed in an airtight tin. Such sample shall be referred for examination in accordance with any relevant British Standard Specification or otherwise to some recognised expert in the field of the Goods to be mutually agreed upon or failing agreement to be nominated at the request of either party by the President for the time being of The Institute of Civil Engineers. In the absence of written agreement to the contrary, only the method of test as specified in British Standard Specification BSEN 196-1 shall be used for the purpose of testing compressive strength. The report of the expert shall be final and binding. The expert's fees and expenses shall be paid by the Seller in the event the Goods are found by the expert not to comply with the relevant British Standard Specification and by the Buyer in the contrary case.
- 11.4 In no circumstances shall the Seller's liability to the Buyer for any breach of condition or warranty exceed the price paid for the Goods in respect to which the claim is made.
12. LIABILITY
- 12.1 The Seller's liability in respect of defective Goods set out in Condition 11 shall represent its sole and total liability to the Buyer and the Seller shall, in particular, under no circumstances be liable for any other direct loss or any indirect, special or consequential loss (including loss of anticipated profit) howsoever arising either from breach or non-performance of any of its obligations under the Contract or from the supply of or intended use of the Goods, even if the Seller has been advised of the possibility of such potential loss, except that in the case of contracts which are not international supply contracts as defined in Section 26 of the Unfair Contract Terms Act 1977 the Seller shall be liable for loss arising from death or personal injury resulting from the proven negligence of the Seller.
- 12.2 The Buyer shall fully indemnify the Seller in respect of all actions, suits, claims, demands, costs, charges or expenses arising from damage to or destruction of property, personal injury or death caused by Goods or by work involving use of the Goods or their resale or use by the Buyer whether caused by the negligence of the Seller, its servants, agents or subcontractors in executing the Contract or howsoever caused, provided that in the case of contracts which are not international supply contracts the buyer shall not be liable to indemnify the Seller in respect of any action, suit, demand, cost, charge of expense arising from personal injury or death caused by the proven negligence of the Seller.
- 12.3 Nothing in this Contract shall have the effect of excluding or limiting liability under Consumer Protection Act 1987 to a person who has suffered damage caused by a defective product, or to a dependent or relative of such a person.
13. REGULATIONS AND LABELLING
- The Buyer shall be responsible to compliance with all relevant laws and regulations and for obtaining and maintaining at its expense any necessary import licenses, customs clearance, exchange control consent or other authorisations and permits whatsoever and the Buyer shall ensure that the Goods are at all times labelled and used in such a way as to ensure the safety which a person is entitled to expect from the Goods.
14. TERMINATION
- Should the Buyer make default in any payment or otherwise be in breach of its obligations to the Seller under the Contract or under any other contract with the Seller or compound with or execute an assignment for the benefit of its creditors or commit any act of bankruptcy or being a company enter into voluntary or compulsory liquidation or suffer an administrator, administrative receiver or manager to be appointed over all or any part of its assets or take or suffer any similar action in consequence of debt or become insolvent or suffer any

judgement for a liquidated amount which it does not satisfy or discharge until 14 days of the same being entered or should the Seller have reasonable cause to believe that any of these events is likely to occur; the Seller may, by notice in writing to the Buyer, without prejudice to any other rights, forthwith suspend or cancel any uncompleted part of it, or delay performance of it.

15. FORCE MAJEURE

Without prejudice to any other provisions hereof, the Seller shall be under no liability for delay in or non-performance of any obligations under the Contract due to war, fire, accident, civil disturbance, shortage of unavailability of stock or manpower, industrial action, transportation delays or any other circumstances whatsoever beyond the reasonable control of the Seller, whether or not foreseeable, and in any such event the Seller may at its option cancel the Contract or any outstanding part of it, or delay performance of it.

16. WAIVER

The failure of the Seller to insist upon the strict performance of any of the terms and conditions of the Contract shall not be construed as a waiver of any such term or condition and shall in no way affect the Seller's right to enforce such provision later.

17. SEVERABILITY

If any provision of the Contract is found to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof.

18. ASSIGNMENT

The Buyer shall not assign or transfer or purport to assign or transfer the Contract or the benefit of it to any other person.

19. GOVERNING LAW

The construction, validity and performance of the Contract shall be governed by English law and the Buyer agrees to submit to the jurisdiction of the English courts.

20. IMPORTANT

The Buyer undertakes to use it reasonable care and skill in carrying out work involving use of the Goods.
July 1997.