

**BISON PRECAST**

a Forterra brand

## **FORTERRA BUILDING PRODUCTS LIMITED T/A BISON PRECAST - STANDARD CONDITIONS OF SALE**

### **The Customer's attention is drawn in particular to Conditions 7 (Quality) and 8 (Limitation of Liability)**

The Company's prices are calculated on the basis that these conditions will apply. Customers requiring prices to be quoted on a different basis should inform the Company at the earliest opportunity and will not take effect until expressly agreed by the Company in writing.

#### **1. DEFINITIONS**

In these Conditions: "Company" means Forterra Building Products Limited, Floors and Precast Division "Customer" means the person or company whose order for the Units is accepted by the Company in accordance with these Conditions "Quotation" means the Quotation, any explanatory notes and these Conditions and "Units" means the products specified in the Quotation and any associated works which the Company is to supply in accordance with these Conditions.

#### **2. BASIS FOR SALE**

2.1 The Units detailed in the Quotation will be supplied in accordance with the terms and conditions of the Quotation and shall form the basis of the contract between the Company and the Customer. No variation or addition to these Conditions (including the Customer's own terms) is effective unless expressly confirmed in writing by a director of the Company. In the absence of such express confirmation in writing, acceptance of delivery of the Units or any quantity of them shall be deemed to be acceptance by the Customer of these Conditions. Each order for the Units by the Customer to the Company shall be deemed to be an offer by the Customer to purchase the Units subject to these Conditions and shall be accepted by the Company either issuing an acknowledgement of order or (if earlier) delivering the Units. This Quotation is given on the basis that no contract shall exist between the Company and the Customer until the Company has received an order from the Customer and the Company has accepted the order by either sending an acknowledgement of order in writing or (if earlier) delivering the Units.

2.2 The Customer is wholly responsible for ensuring the accuracy of the terms of any order and any applicable specification. Any recommendation or suggestion relating to any use, storage or handling of the Units made by the Company either in sales and technical literature or in response to a specific enquiry or otherwise is given in good faith but it is strictly for the Customer to satisfy itself of the suitability of the Units for its own particular purposes and the Customer accepts it does not rely on any such recommendation, suggestion or representation.

2.3 The parties agree that these terms and conditions constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral.

2.4 Orders may only be cancelled with Company's prior written consent. In the event of the Customer varying, cancelling or refusing to accept delivery of an order, the Customer shall pay all additional costs that may be incurred by the Company.

2.5 The Company reserves the right to charge the Customer an additional charge where (i) delivery of Units is required by the Customer outside the Company's normal working hours (ii) delivery of Units is required in part rather than full loads (iii) the delivery vehicle is unable to discharge its load within 60 minutes of arrival at the Customer's site or delivery location (iv) the Customer purchases a substantially different quantity of the Units from that or specified in the Quotation.

2.6 The quantity, quality, description and specification of the Units shall be those set out in the Quotation, otherwise as set out in the conveyance note at delivery.

#### **3. DELIVERY**

3.1 Despatch, Transport and Unloading (applicable only to supply only contracts): No provision is made in the price for unloading or storing at the site any Units and/or materials. The Customer shall without charge to the Company, be responsible for taking delivery of, unloading and safely storing the Units at site upon arrival. An allowance of one hour per load is included for the Customer to unload the vehicle after which time a demurrage charge will be implemented. The Customer shall be solely liable for the loss, damage or injury however arising, occasioned to the Units and/or materials, to any persons during unloading and shall indemnify the Company in respect of any claim or claims brought against it in respect of such loss, damage or injury.

3.2 Loss or Damage in Transit (applicable only to supply only contracts): Copy(ies) of the Company's delivery note(s) must be signed on receipt of the Units and/or materials. Unless the deficiency or damage prior to unloading in the case of delivered Units and/or materials, or prior to loading in the case of collected Units and/or materials is recorded thereon, the Company shall not be liable for any Units and/or materials damaged in transit or for short delivery.

3.3 The periods quoted for delivery and/or installation are estimates only. The Company will use reasonable endeavours to effect delivery and installation on agreed dates but will not be liable for any loss or damage occasioned by delay. Under no circumstances shall the Customer refuse to accept the Units on the grounds of delay in delivery or installation.

3.4 The Customer shall promptly furnish all designs, equipment, information and instructions necessary for the Company to be able to produce deliver and install the Units and the Customer shall compensate the Company for all losses and expenses incurred by the Company by reason of any error defect or omission therein or by reason of any act or omission on the part of the Customer. Further, the Customer warrants and undertakes full responsibility that any designs, specifications, equipment, information and instructions do not infringe any proprietary right of any third party and shall indemnify the Company for any losses, damages or expenses (including costs) which the Company may incur or arising from the performance of the contract by reason of any infringement of any such proprietary right.

3.5 The Customer accepts that any periods quoted for delivery and/or installation are based upon the Company's budgeting of space in its production programme.

Any delay by the Customer or variations in the Customer's requirements may necessitate re-scheduling in accordance with the Company's other commitments. The Company will accept no liability other than to use reasonable endeavours to meet the Customer's revised requirements.

3.6 The Company may deliver the Units by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in any instalment shall not entitle the Customer to cancel any other instalment.

#### **4. RISK AND TITLE**

4.1 The risk in the Units shall pass to the Customer upon delivery of the Units as specified herein.

4.2 Notwithstanding that risk in the Units shall pass to the Customer in accordance with the foregoing clause, ownership of the Units shall remain with the Company until payment in full has been received by the Company: (i) for those Units; (ii) for any other goods supplied by the Company to the Customer and (iii) of any other monies due from the Customer to the Company on any account.

4.3 At any time before title to the Units passes to the Customer (whether or not any payment to the Company is then overdue or the Customer is otherwise in breach of any obligation to the Company), the Company may (without prejudice to any other of its rights); (i) retake possession of all or any part of the Units and enter any premises for that purpose (or authorise others to do so which the Customer hereby authorises); or (ii) require delivery up to it of all or any part of the Units and the Customer shall indemnify the Company against all and any cost incurred in so doing.

#### **5. PRICE**

5.1 The price payable for the Units and works shall be the price stated in the Quotation. The price quoted for the Units and works is exclusive of VAT, which shall be payable in addition along with any other form of taxation imposed from time to time. The price in any Quotation may be varied by the Company at any time upon giving written notice (including by email) and the varied price shall apply to all orders delivered after the date specified in the notice. The rates and prices specified in the Quotation are based upon the Customer providing, free of charge, the following:

5.1.1 facilities for the acceptance of delivery and safe storage of the Units, other materials and plant supplied. Unless otherwise stated, delivery is based upon a minimum tonne capacity articulated load as set out in our Quotation – if delivery is required in smaller loads the Company may increase the price by the additional costs involved.

5.1.2 free and uninterrupted possession of the site in order that the Company may execute the works specified in the Quotation in the most economic manner during its normal working hours which are Monday to Friday 0800-1600. All work executed at the Customer's request on bank holidays, Saturdays, Sundays and holidays applying to the construction industry and outside normal working hours will be subject to a reasonable additional charge.

5.1.3 hard roads and standing areas on site suitable for the safe passage and operation of the Company's lorries and craneage including levelling as necessary, together with safety scaffolding and other measures to comply with the current Health and Safety regulations, adequate site lighting and welfare facilities (in accordance with Safety, Health and Welfare at Work (Construction) Regulations), water, power, hoarding, fencing and watching and the Customer shall obtain all necessary permissions wayleaves and licenses and discharge all fees, levies and rates relating to the site. If the Customer fails to comply with the above conditions then the Company may suspend deliveries or erection and/or invoice the Customer for any extra costs incurred.

5.2 Notwithstanding condition 5.1, unless the Quotation is marked "Lump Sum Quotation" all quantities are subject to remeasurement upon completion of the order. In so far as condition 5.3 does not apply, remeasurement shall be based upon the rates and prices quoted in the Quotation. Any variations and extra works shall be charged at the Company's rates prevailing at the date of remeasurement.

5.3 In the event of substantial variation, arising from (i) remeasurement of the works or (ii) agreed additions or deletions or work or materials or (iii) works of a different nature or under different working conditions the Company reserves the right to remeasure the works by reference to the price or prices that the Company would have quoted at the date of completion of the works for the type and quantities of work actually carried out.

5.4 If the Units have been manufactured to order and they have not been dispatched to the Customer within 30 days due to (a) the Customer failing or refusing to take delivery at the time specified; or (b) the Company being unable to dispatch the units by any reason of any act or omission (including delay or postponement or an event permitting suspension by the Company under condition 9) on the part of the Customer, its agents or subcontractors, the Company will invoice the Customer for the full cost of the Units and furthermore reserves the right to charge the Customer a reasonable sum for any associated storage charges, of whatever nature.

5.5 In the event that the Units have not been dispatched within 30 days following manufacture in the circumstances described at clause 5.4 and there is no space to store the Units at the Company's manufacturing facility, the Company further reserves the right to move the Units and store elsewhere including a third party premises at the Customer's expense, on a full indemnity basis.

#### **6. PAYMENT**

6.1 The Company will issue its invoice(s) upon each delivery and/or completion of each installation or as otherwise specified on the face of the Quotation or in any order acknowledgement. If the Customer its servants or agents delay, postpone, refuse or otherwise fail to accept delivery or delay or prevent completion of installation, the Company will issue its invoice(s) on the date(s) due for delivery and/or completion of installation.

6.2 Subject to condition 9.3, payment shall be made to the Company not later than the 28th day of the month following the month the Units are delivered by the Company to the Customer; alternatively, not later than the 28th day following the date of issue of any invoice by Company. The Company may refuse (under this Contract or other contracts with the Customer or any of its associated companies) to accept or complete any order, suspend supplies, impose special conditions or cancel the contract if the Customer's credit limit is or will be exceeded on delivery; or where the Customer fails to comply with these Conditions; or if the Customer is subject to any insolvency procedure.

6.3 If payment or any part thereof is overdue then without prejudice to any other rights of the Company, interest will be chargeable as well after as before judgment on any outstanding balance on a day to day basis at a rate set by the then current order made in accordance with section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (or any re-enactment of that section made from time to time).

6.4 Whether in relation to this Quotation or other contracts between the parties, the Customer shall not have any right of set-off, counterclaim, discount or abatement from sums due to the Company.

6.5 All sums payable to the Company by the Customer in respect of any Units delivered by the Company to the Customer, shall become due immediately upon termination of the contract on commencement of legal or dispute resolution proceedings against the Customer or upon any failure by the Customer to make payment for the Units by the due date for payment.

6.6 In the event of any breach of these Conditions by the Customer, or dispute between the parties of any nature, the Company shall be entitled to suspend delivery, withdraw or terminate any discount or rebate agreement between the parties, affecting this Quotation or any other contract between them and for the avoidance of doubt the Company will not be liable to the Customer for any direct or indirect losses including consequential loss, damages or liabilities of any nature arising as a result of such breach.

6.7 Any rebate that is payable by the Company to the Customer subject to these Conditions must be claimed within two years from the end of the respective rebate period. After this two year time period has expired any rebate claimed will no longer be eligible for payment.

6.8 Without prejudice as to any other rights and remedies available to the Company, whether pursuant to these terms and conditions or at law, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential loss, loss of profit, reputation, interest, penalties and legal costs calculated on a full indemnity basis) suffered or incurred by the Company arising out of or in connection with any breach of the Customer's payment obligations under this clause or in connection with any other breach of or negligent or non-performance of the Customer's obligations under these terms and conditions generally.

## **7. QUALITY**

7.1 The Customer or his agent shall inspect or test the Units upon completion of the works and if any Units fail to meet the agreed design loadings (other than as a result of an act or omission of the Customer, its employees, agents or representatives) the Company shall replace such Units at its own Cost but reserves the right not to replace any Unit if it is structurally sound. In no circumstances shall the Company ever be liable for costs or liabilities relating to the continuance of works or further constructions which shall be at the sole risk of the Customer. The Company shall have no liability in respect of any minor deviations from any specification if the Units are suitable for uses appropriate with such specification.

7.2 Notwithstanding condition 7.1: the Company warrants that, provided all bearings and surrounding components not supplied by the Company are suitable, adequate and complementary then;

7.2.1 insofar as specifications and/or drawings have been expressly agreed with the Customer then the Units and/or materials supplied will comply with such specifications and/or drawings (i.e. it is the responsibility of the Customer not the Company to ensure that the specifications and/or drawings are suitable for the Customer's intended purpose).

7.2.2 insofar as no specifications and/or drawings apply, that reasonable skill and care will be used in the selection of materials and in the design and construction of the Units and

7.2.3 reasonable skill and care will be used in carrying out the installation works (where applicable).

7.3 Other than condition 7.2.1, the Company does not warrant materials supplied to the Customer's design or specification. The Company shall be under no duty to draw to the attention of the Customer any defect or shortcoming in such design or specification and accept no liability for surface finish.

7.4 The Company accepts no responsibility for the structural design of the building into which the Units are to be incorporated.

7.5 If the Customer is able to establish that any of the Units supplied or installed by the Company are defective or do not comply with condition 7.2 ("Defective Goods") then the Company may at its option either (a) replace with similar Units any such Units as soon as practicable or (b) allow the Customer credit for the price paid for them and shall reimburse the cost of physically removing the Defective Goods or (c) repair any such Units or any defects in the installation works where applicable. The Company shall have no liability to the Customer other than for the direct costs of replacing or repairing the Units as aforesaid and in no circumstances shall the Company be liable whether in contract, tort (including negligence or breach of statutory duty), or otherwise to the Customer for any form of damage, loss, cost or expense, whether direct, indirect, consequential, physical or economic (including but not limited to loss of profit and liquidated and/or unliquidated damages attributable to delay and/or disruption), which arises out of or in connection with the supply of the Units or their use by the Customer. The Customer shall be under a strict duty to mitigate and minimise the adverse consequences, damages, loss, costs and expense arising from the supply of Defective Goods.

7.6 No warranty or representation is given by the Company that the Units are suitable for any particular purpose or application 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 excluded from the contract and to the fullest extent permitted by law.

7.7 The Company shall not be liable to the Customer for any losses or costs resulting from unsuitable application, wrongful handling or placing of the Units.

## **8. LIMITATION OF LIABILITY**

8.1 Nothing in these Conditions shall limit or exclude liability of the Company for death or personal injury resulting from the negligence of the Company, its employees or agents or for fraudulent misrepresentation.

8.2 Subject to condition 8.1, the maximum aggregate liability of the Company arising out of condition 7 or in connection with the supply of Units or their use by the Customer shall (including any refund made pursuant to condition 7.5 above) be limited to three times the price of the Defective Goods. The Customer acknowledges that it bears the risk of all additional expenses, costs, losses, damage and liabilities which may be incurred. The Customer acknowledges that it can obtain insurance to cover such potential expenses, costs, losses, damages and liabilities. Should the Customer wish the Company to have a higher limit of liability this must be raised with the Company at the earliest opportunity and expressly agreed by the Company in writing.

8.3 The Company shall be under no liability to the Customer for any failure to fulfil any term of the contract if fulfilment is delayed or prevented by strikes, lockouts, labour disturbances, fire, accidents, breakdowns, shortage of supplies, statutory or government order, prohibition, adverse weather, force majeure, acts of God, war, hostilities, civil disturbance or any other cause of whatsoever nature beyond the control of the Company. Should the Company be so prevented from delivering full quantities of Units and/or materials to the Customer for the time being and/or installing the same, the Company may suspend or reduce deliveries and/or installation to such extent it thinks fit.

## **9. SUPERVISION AND TERMINATION**

9.1 Where any sum owed by the Customer to the Company under this or any other contract is overdue the Company may suspend further production or deliveries or installation under this and/or any other contract with the Customer until arrangements as to payment or credit have been established which are satisfactory to the Company.

9.2 If the Customer being a company shall pass a resolution or suffer an Order of Court to be made for its winding up, or if a Receiver shall be appointed, or if a petition for the appointment of an Administrator shall be presented in respect of it, or being an individual or partnership shall suspend payment or propose to enter into any composition with creditors or become unable to pay its debts (or have no reasonable prospect of doing so) or suffer a bankruptcy order, then the Company may without prejudice to any other right rescind the contract, or suspend or cancel delivery or installation or recover the possession of any Units for which payment in full has not been received.

9.3 If at any time the Customer's credit ratings become unsatisfactory to the Company it may give the Customer written notice to make immediate payment of the full contract price or to secure such payment. Until the Customer complies with the requirements of any such notice the Company may suspend further production and/or deliveries and/or installation. If the requirements of the notice are not satisfied within 7 days of the date thereof the Company may rescind this contract whereupon the Customer will be liable for the price of all Units manufactured and/or installed up to the date of rescission.

## **10. INTELLECTUAL PROPERTY RIGHTS**

The Customer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings), loss, claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, unregistered design, design right, copyright, trade mark or other industrial or intellectual property rights (hereinafter 'Intellectual Property Rights') resulting (i) from compliance by the Company with the Customer's instructions, whether express or implied or (ii) from the Customer's infringement of the Company's Intellectual Property Rights.

## **11. GENERAL**

11.1 Quotations and any designs, drawings, specification and information supplied with them shall remain the property of the Company, shall be treated as confidential and shall not be disclosed to any third party without the Company's prior written consent.

11.2 The Company shall not be prejudiced by or restricted by any indulgence or forbearance extended to the Customer and no dispensation by the Company in respect of any breach shall operate as a waiver to any subsequent claim by the Company.

11.3 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 be notified to the other party from time to time.

11.4 This contract may not be assigned by the Customer but is fully assignable by the Company. A person who is not a party to this Quotation shall not have any rights to enforce its terms.

11.5 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.

11.6 All aspects of the contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts for any dispute in respect of these Conditions.