

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

**1. DEFINITIONS**

In these Conditions "Buyer" means the person or company whose order for the Goods is accepted by the Company in accordance with these Conditions; "Company" means Forterra Building Products Limited, company number 8960430; "Conditions" means these conditions of sale and any variation of them which is agreed in accordance with these Conditions; "Contract" means the contract between the Company and the Buyer for the sale and purchase of the Goods; and "Goods" means the goods which the Company is to supply under this Contract in accordance with these Conditions.

**2. BASIS FOR SALE**

2.1 These Conditions apply to all sales of the Goods to the exclusion of all other terms and conditions. No terms or conditions written upon, delivered with, or contained in the Buyer's purchase order, specification or similar document will form part of the Contract. No variation or addition to these Conditions (including the Buyer'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 Goods or any quantity of them shall be deemed to be acceptance by the Buyer of these Conditions.

2.2 Each order for the Goods by the Buyer to the Company shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions and shall be accepted by the Company either issuing an acknowledgement of order or (if earlier) delivering the Goods. 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 sending an acknowledgement of order to the Buyer or (if earlier) delivering the Goods.

2.3 The Company reserves the right to charge the Buyer an additional charge where (i) the delivery 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 any quantity specified in the quotation.

2.4 The Buyer 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 Goods 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 Buyer to satisfy itself of the suitability of the Goods for its own particular purposes and the Buyer accepts it does not rely on any such recommendation, suggestion or representation.

2.5 The quantity, quality, description and specification of the Goods shall be those set out in the quotation or otherwise as set out in the conveyance note at delivery.

2.6 Volumes will be reviewed every quarter and where arrears exist in the first month of the new quarter the volume in arrears will be deducted from the overall budgeted volume.

2.7 The parties agree that these terms and conditions constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances.

**3. DELIVERY**

3.1 Delivery of the Goods shall take place either on discharge into the Buyer's vehicle at the Company's premises or on discharge from the Company's vehicle at the Buyer's site or as otherwise agreed by the parties.

3.2 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 shall entitle the Company to refuse to make delivery and to invoice the Buyer for that load and any costs incurred returning to works.

3.3 When Goods need to be placed onto pallets at the delivery address it is the receiver's responsibility to set these out to facilitate safe offloading. Failure to comply shall entitle the Company to refuse to make delivery and to invoice the Buyer for that load and any costs incurred returning to works.

3.4 Buyers can only move a scheduled load once in any given month. The second time the load will be cancelled and moved to the next available date.

3.4 Buyers need to collect loads by the 15<sup>th</sup> working day of the month. For loads left uncollected after this date, the Buyer will be offered a delivery date in the month (with cost) or cancelled.

3.5 The Buyer shall indemnify the Company and its drivers against any damage or injury caused by the acts and/or omissions of the Buyer, its employees, sub-contractors or agents while the delivery vehicle is present on or accessing the Buyer's site.

3.6 On any delivery (howsoever effected), the Buyer must (i) satisfy itself as to the condition of the Goods; (ii) allow unhindered delivery of the Goods; (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, including standing time, or other records.

3.7 Where the Buyer fails to comply with any of the conditions contained in Condition 3.6, or the Company is unable to deliver the Goods on time because of the Buyer's default then (i) the Goods will be deemed to have been delivered; and (ii) 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);

3.8 Any time, period or date specified by the Company for delivery of the Goods is an estimate only. The Company shall not be liable for any damages or losses arising out of failure to meet such time, period or date.

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

3.10 The Company reserves the right to supply Goods within a tolerance in quantity of plus or minus 5%, and the Buyer may not reject them (unless otherwise agreed by the Company in writing). The quantity is defined as the amount expected per individual delivery or the total amount detailed on the order. The Company gives no guarantee for the exact number of Goods delivered.

**4. RISK AND TITLE**

4.1 The risk in the Goods shall pass on delivery as provided by these Conditions.

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

4.3 If the Buyer fails to pay the contract price by the agreed date and until title to the Goods passes to the Buyer, the Buyer shall: (i) keep the Goods separately, in satisfactory condition and readily identifiable as the property of the Company; (ii) not attach the Goods to real property without the Company's consent; and (iii) keep the Goods insured against all risks for their full price from the date of delivery.

4.4 Any resale by the Buyer of Goods in which property has not passed to the Buyer shall (as between the Company and the Buyer) be made by the Buyer as principal.

4.5 At any time before title to the Goods passes to the Buyer (whether or not any payment to the Company is then overdue or the Buyer 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 Goods and enter any premises for that purpose (or authorise others to do so which the Buyer hereby authorises); or (ii) require delivery up to it of all or any part of the Goods and the Buyer shall indemnify the Company against all and any cost incurred in so doing.

**5. PRICE**

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

5.2 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.

**6. PAYMENT**

6.1 Payment for the Goods must be received by the Company not later than the 28<sup>th</sup> day of the month following the month the Goods are delivered by the Company to the Buyer. The Company may refuse under this Contract or other contracts with the Buyer or any of its associated companies to accept or complete any order, suspend supplies, impose special conditions or cancel the Contract if the Buyer's credit limit is or will be exceeded on delivery; or where the Buyer fails to comply with these Conditions; or if the Buyer is subject to any form of insolvency procedure.

6.2 In the case of late payment the Buyer shall pay the Company interest on the net payment due at the 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).

6.3 Whether in relation to this Contract or other contracts between the parties, the Buyer shall not have any right of set-off, counterclaim, discount, abatement or otherwise, nor to withhold any payments due to the Company in the event of any dispute.

6.4 All sums payable to the Company by the Buyer in respect of any Goods delivered by the Company to the Buyer shall become due immediately on termination of the Contract, on commencement of proceedings against the Buyer, or upon any failure by the Buyer to make payment for the Goods by the due date for payment.

6.5 In the event of any breach of these Conditions by the Buyer, or dispute between the parties relating to this Contract or any other contract between them, the Company shall be entitled to suspend, withdraw or terminate any discount or rebate agreement between the parties, affecting this Contract or any other contract between them.

6.6 Annual rebates are paid subject to budgeted volumes being taken during the contracted period.

6.7 Any rebate that is payable by the Company to the Buyer 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 The Buyer 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 Buyer's payment obligations under this clause or in connection with any other breach of or negligent or non-performance of the Buyer's obligations under these terms and conditions generally.

6.9 The Buyer 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 Buyer's instructions, whether express or implied or (ii) from the Buyer's infringement of the Company's Intellectual Property Rights.

## **7. QUALITY**

7.1 The Company warrants that the quality of the Goods shall be in accordance with the specification quoted by the Company; however the Company shall have no liability in respect of any minor deviations away from any specification if the Goods are still compliant with applicable regulations or an independent expert has opined that the Goods are still suitable for uses appropriate with such specification. Subject to Conditions 7.2 and 8, where Goods supplied by the Company are proved to be defective or otherwise not in accordance with the Contract ("Defective Goods") (a) the Company will at its sole discretion either (i) replace the Defective Goods as promptly as practicable or (ii) refunding the price paid for the Defective Goods; and (b) the Company shall reimburse the Buyer the cost of physically removing the Defective Goods.

7.2 In any event, the Company shall not be liable under Condition 7.1 for any defect or failure in the Goods (including frost damage) unless the Buyer (i) notifies the Company in writing of the alleged defect or failure within 14 days of delivery, or where the defect or failure was not apparent on reasonable inspection at the time of delivery, within 14 days of the time when the defect or failure ought reasonably to have been discovered; and (ii) allows the Company all reasonable facilities to investigate any such defect or failure promptly and to advise the Buyer of any remedial action which may be appropriate; and (iii) follows reasonable remedial action recommended to it by the Company; and (iv) provides documentary evidence satisfactory to the Company that the Goods do not meet the applicable specification. If any Goods are known by the Buyer to be outside of specification or the terms of any order, under no circumstances shall the Company ever be liable for costs or liabilities relating to the continuance of works of further constructions, any such works or constructions at the sole risk of the Buyer.

7.3 No warranty or representation is given that the Goods 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, to the fullest extent permitted by law, excluded from the Contract.

7.4 Any sampling and testing shall be carried out in accordance with such British Standard or European Standard or specification as is accepted by the Company to be appropriate. Compliance with such standard or specification shall be discharged by the Company at the Buyer's cost 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.

7.5 The Company shall not be liable to the Buyer (a) for any losses or costs resulting from unsuitable application, wrongful handling or placing of the Goods; or (b) for the presence of any lignite or other deleterious material in any of the aggregates contained in the Goods; or (c) for efflorescence or any other aesthetic deterioration.

7.6 Where the Company manufactures special orders for the Buyer the Company shall have no liability for any costs and or losses (including but not limited to delay damages) which may arise through failure (including but not limited to cracking or colour discrepancies) of the Goods within the kiln. The Buyer shall reimburse the Company for any such failures.

## **8. LIMITATION OF LIABILITY**

8.1 Nothing in these Conditions shall limit or exclude the liability of the Company for death or personal injury resulting from the negligence of the Company, its employees or agents or for fraudulent misrepresentation. Save as specified in Condition 7.1, the Company shall not be liable whether in contract, tort (including negligence or breach of statutory duty), or otherwise to the Buyer 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 Goods or their use by the Buyer.

8.2 The maximum aggregate liability of the Company arising out of Condition 7.1 or in connection with the supply of Goods or their use by the Buyer shall (including any refund made pursuant to clause 7.1 (ii) above) be limited to three times the Price of the Defective Goods. The Buyer acknowledges that it bears the risk of all additional expenses, costs, losses, damages and liabilities which may be incurred. The Company strongly advises the Buyer to insure against all such potential expenses, costs, losses and liabilities. Should the Buyer 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 will use reasonable endeavours to inform the Buyer if the Company is 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 but shall be under no liability to the Buyer for failure to deliver in such circumstances.

## **9. GENERAL**

9.1 Any notice to be given by either party to the other under these Conditions shall be in writing addressed to the party's registered office or principal place of business or such other address as may be notified to the other party from time to time.

9.2 The benefit of this Contract may not be assigned by the Buyer but is fully assignable by the Company. A person who is not party to this Contract shall not have any rights to enforce its terms.

9.3 Any provision of the Contract held to be illegal, invalid, void, voidable or unenforceable, in whole or in part, shall be deemed severable and all remaining conditions of the Contract shall not be affected.

9.4 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.

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