



# STANDARD TERMS AND CONDITIONS OF SALE FOR STEWART BROTHERS CONCRETE

## 1. FORMATION

1.1 In these Conditions the following expressions have the following meanings:

1.1.1 "we" or "us" refers to Stewart Brothers Concrete Limited.

1.1.2 "you" or "yourselves" refers to the buyer who places an order for Goods.

1.1.3 "Conditions" refers to these terms and conditions of sale, including those described as commercial terms at the front of this document,

1.1.4 "confidential information" refers to any reports or information disclosed to you by us in contemplation of, pursuant to, or in connection with this Contract (whether orally or in writing), whether or not such information is expressly stated to be confidential or marked as such,

1.1.5 "Contract" refers to the agreement for us to supply you with goods and services under the conditions of these terms,

1.1.6 "Force Majeure" refers to any cause or circumstance preventing either party from performing any or all its obligations to the other (including without limitation any strike, lockout or other industrial action). For the avoidance of doubt any fault in delay of deliveries from our sub-suppliers shall be considered a Force Majeure event,

1.1.7 "Goods" refers to the products you agree to buy from us as identified by your order,

1.1.8 "Insurance" refers to the combined product and public liability insurance policy taken out and maintained by us,

1.1.9 "working days" refers to the trading times between Monday and Saturday but excluding bank and public holidays,

1.2 Unless contradictory to Condition 3, the Contract - together with all schedules which form part of it - will be on the following Conditions to the exclusion of,

1.2.1 any other terms or conditions you purport to apply under any purchase order, confirmation of order, offer to acceptance, and/or:

1.2.2 any other written, oral or electronically transmitted communication and such other terms and conditions shall not be deemed to form part of the Contract.

1.3 In so far as this Contract concerns the general relationship between you and us, it shall come into force upon our acceptance of your credit application.

1.4 In relation to each individual supply of Goods, this contract shall come into force as provided in Condition 2.

## 2. QUOTATIONS

2.1 Quotations and any accompanying technical or other information supplied by us are illustrative only and are not offers from us capable of immediate binding acceptance. A Contract shall come into existence only when we accept your order.

2.2 You shall have no rights to or in any documents or materials forming or accompanying a quotation, you agree to return all documents and materials forming or accompanying the quotation to us immediately at our request.

## 3. VARIATIONS

3.1 No addition or variation to the quotation given or the contract is binding to us unless agreed in writing and signed by a Company Director(s).

3.2 None of our staff, other than the Director(s), are authorised to make any representations concerning the properties or qualities of the Goods or to make any addition or variation to the Contract. You agree by entering into this Contract that you do not rely on any representations other than those contained in this Contract or expressly agreed by us in accordance with Condition 3.1

## 4. DELIVERY

4.1 The Goods are considered delivered when:

4.1.1 you collect it from our Concrete Plant following our notification that they are ready for collection; or

4.1.2 if you have requested an alternative delivery point and we have agreed, when we have delivered the Goods to that place. If you do request changes to the delivery point you shall be made liable for any changes made by us or any additional costs or expenses incurred by us as a result of such change.

4.2 If you fail or refuse to accept delivery, or delivery is delayed at your request, then you will be responsible for paying or reimbursing us any additional costs we incur as a result. Furthermore, we may at our discretion withhold delivery of any further Goods or treat the Contract a repudiated by you.

4.3 Unless we have agreed otherwise, you shall provide adequate labour and other facilities at the point of delivery to enable the Goods to be safely and properly unloaded. You shall indemnify us against any claims arising from such unloading except to the extent that any such claims relate to personal injury, death or damage to property caused by the negligence of our employees or agents.

4.4 In the event that we deliver to you an incorrect quantity of the Goods you may not object to or reject the Goods on that grounds alone.

4.5 Subject to the other provisions of these Conditions, we shall not be liable for any direct, indirect or consequential loss, all of which include - without limitation - loss of profits, loss of business, depletion of goodwill and such similar, cost, damages, charges or expenses caused directly or indirectly by any delay in the Delivery or any other time given for delivery of the Goods (unless proven to be caused by our own negligence).

4.6 If we are prevented, hindered or delayed from delivering the Goods because of a Force Majeure event then we may give notice to you at any time in writing, electronically or by telecommunications cancelling our outstanding obligations to deliver Goods under the Contract.

4.7 If we give notice to you under Condition 4.6:

4.7.1 we shall not be liable to you in damages for any loss whether direct, indirect or consequential of whatever nature which you may incur as a result.

4.7.2 the time for delivery shall be extended accordingly and we shall not be in breach of Contract due to the late delivery.

4.8 The above provisions of this Condition 4 do not affect our right to recover the price of any Goods that have previously been invoiced to you.

## 5. PAYMENT AND PRICE

5.1 The Price of the Goods shall be that stated or referenced in the Commercial Terms.

5.2 Prices are stated on the basis of current running costs, exclusive and inclusive of VAT, and any cost of freight and insurance for deliveries inside the U.K

5.3 Prices are given in quotation may be increased in such cases as:

5.3.1 such amount as reasonably necessary to reflect any increase in the cost of manufacturing the Goods.

5.3.2 fluctuations in tax, duty, exchange rates and the like, between the date of quotation and the date dispatch. We shall give you notice of any such increase.

5.4 Goods will be invoiced on or before delivery or when we notify you that they are ready for collection as appropriate.

5.5 Invoices are calculated by reference to the weight or volumes of the Goods at the time of manufacture.

5.6 If you are an account customer and have an agreed credit limit us, we require payment by you on or before the last day of the following calendar month from the date of invoice for the net sales of ALL Goods and ALL related expenses.

5.7 We may ask you to pay money in advance or on account. If so, you must pay such amounts immediately with any balance being payable in accordance with Condition 5.6 above.

5.8 If payment is not received within the 30-day credit agreement:

5.8.1 we will suspend any and all further deliveries to you or collection by you,

5.8.2 at 60 days, an interest will be charged at 8% plus the Official Dealing Rate of the Bank of England on all outstanding balances which is payable immediately,

5.8.3 at 90 days, legal proceedings will be invoked to recover the full balance outstanding including 60-day interest, for which all costs incurred to us for legal proceedings will also be payable by yourselves.

5.9 If you fail to make any payment when it is due or if any of the following events occur:

5.9.1 you have a petition presented for your winding up, or

5.9.2 (if you are an individual) you die, become incapacitated, or

5.9.3 you pass a resolution for voluntary winding up otherwise than for the purpose of a bona fide amalgamation or reconstruction, or

5.9.4 you compound with your creditors or have a receiver appointed over all or any part of your assets, or

5.9.5 a petition for an administration order is presented or is intended to be presented in respect of you, or

5.9.6 you become bankrupt or insolvent, or



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**5.9.7** you enter into any arrangements with creditors, or

**5.9.8** you take or suffer any similar action in consequence of debts or carry out or undergo any analogous act or proceedings under UK law,

**5.9 (cont.)** then the Price of all Goods and any other Goods supplied by us to you shall immediately become due and payable and, without affecting any other remedy we may have, we may:

**5.9.9** treat this Contract and every other contract which has not yet been fulfilled between us and you as cancelled,

**5.9.10** be entitled to a general lien on the Goods and all Goods in our possession for the unpaid price of the Goods or any other goods sold to you.

**5.10** All payments to be made in Pounds Sterling (£)

**5.11** All payments must be paid in full and you are not entitled to withhold payment of any amount due or to set off against any crossclaim for any sum(s) for which we do not admit liability.

**5.12** Notwithstanding any other payment provisions, we reserve the right - in the event that you are a sole trader or partnership at the time of signing this Contract and subsequently decide to convert your status to that of a limited company - to issue forthwith an invoice for all outstanding amounts which you owe to us, for which we shall require payment within five (5) working days.

**6** Stewart Brothers Concrete Limited reserves the right to divisibility with a subset of payment on orders placed for which delivery of Goods is required over more than a single day.

### **6. RISK**

**6.1** Risk and responsibility for the Goods shall pass to you following:

**6.1.1** delivery by us to the Delivery point, or

**6.1.2** the collection of the Goods by you,

**6.2** You must examine the Goods upon delivery by us, and if you believe there is loss or damage to the Goods during transit which may be our responsibility, you must notify us by phone immediately on receipt of our delivery note. If we do not receive such notice immediately upon receipt of the delivery invoice, then we will not be liable to you for any loss or damage to the Goods arising during transit or thereafter.

### **7. OWNERSHIP**

**7.1** Ownership of the Goods shall not pass to you until we have received payment in full and such funds are cleared for the Goods, and any other goods delivered to you but for which payment is due and has not been received.

**7.2** Until ownership has passed to the Buyer, or you sell or use the Goods pursuant to Condition 7.3, you must:

**7.2.1** maintain the Goods in a satisfactory condition and keep them insured, on your insurance, for the Price against all risks (and provide us with a copy of such insurance at our request), and

**7.2.2** hold the proceeds of any insurance referred to in Condition 7.2.1 on trust for us and do not mix them with any other money or pay the money into an overdrawn bank account.

**7.3** You may resell or use the Goods before ownership has passed to you on the following conditions:

**7.3.1** any sale or use is in the ordinary course of your business,

**7.3.2** any sale shall be to an unconnected third party at not less than the value of the goods when sold to you,

**7.3.3** any such sale shall be deemed as a sale of our property on your behalf and you shall deal as principal when making such a sale, and

**7.3.4** you hold the proceedings of any resale on trust for us in a separate bank account and do not pay the proceedings into an overdrawn bank account.

### **8. RETURNED GOODS**

**8.1** If you discover before using them that the Goods we have delivered to you did not comply with the provisions of Condition 9.1 at the time of delivery then, provided that:

**8.1.1** immediate notice has been given to us regarding your reporting such a defect and it has been reasonably ascertained that said defect existed, and

**8.1.2** you have not in any way dealt with the Goods so as to alter their condition than when they were delivered to you, then

We will replace or refund the Price of any Goods that did not comply with provisions of Condition 9.1.

### **9 THE GOODS WARRANTY**

**9.1** We warrant that Goods will, at the time of delivery, display the technical data and yield the appropriate strength properties suitable for approved uses that are to be found on our website ([www.stewartbrotherskent.co.uk](http://www.stewartbrotherskent.co.uk))

**9.2** Any warranty given by us regarding the suitability of the Goods for any other use, other than its approved use, shall only be valid and binding if in writing and signed by one of our directors or a company secretary.

**9.3** If you intend to buy or buy and sell Goods for a non-approved use then you do so wholly at your own risk and must satisfy yourself as to the suitability of the Goods for that use.

**9.4** If we supply you with Goods manufactured to your own specification then we accept no liability whatsoever to you for their fitness for any anticipated purpose or use.

**9.5** We accept liability for appropriate strength properties and mix accuracy only up to and not following the point at which the Goods have been delivered.

**9.6** We shall not be liable to you for any loss you may incur as a result of your failure to comply with any of our technical instructions/guidelines for the Goods.

**9.7** If you sell the Goods, you shall grant no warranty greater in extent than is inclusive of this warranty.

### **10. LIABILITY**

**10.1** Unless expressly provided elsewhere in these Conditions (within which other provisions shall take precedence) the following provisions of this Condition 10 set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:

**10.1.1** any breaches of these Conditions:

**10.1.2** any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

**10.2** All warranties or agreed conditions are valid as to the fitness for purpose – use, satisfactory quality, compliance with sample, or condition (up to section 9.5) of the Goods, whether implied by statute, common law or otherwise (save conditions implied by section 12 of the Sale of Goods act 1974 (as amended) are, to the fullest extent permitted by law excluded from the Contract.

**10.3** You must inform us as soon as possible and in any event within five (5) working days of you becoming aware that the Goods may have:

**10.3.1** caused injury or death to any person, or

**10.3.2** caused damage to property and, where appropriate, allow us to inspect and at our discretion repair any alleged damage.

**10.4** Nothing in these Conditions excludes, limits or restricts our liability for fraudulent misrepresentation, death or personal injury caused by our negligence.

**10.5** If we incur any liability to you as a result of any defect in the Goods once used by you as intended by these Conditions which causes personal injury (so far as not caused by our negligence) or damage to property where our liability falls within the scope of our insurance, our liability is limited to sums recoverable under it (or which could be recovered but for any negligent act or omission by us which invalidates it) up to its maximum indemnity limit.

**10.6** Subject to Conditions 10.2, 10.4 and 10.5:

**10.6.1** our total liability in contract, tort (including negligence or breach or statutory duty), misrepresentation, restitution or otherwise, whether such liability arises as a result of a breach or series of breaches, of a material term of the Contract or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price.

**10.6.2** We do not accept liability to you for any loss of profits, depletion of goodwill, use, or any indirect or consequential loss or damage, whatsoever and howsoever caused arising from or in connection with the Contract.



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### 11. OTHER PROVISIONS RELATING TO LIABILITY

11.1 It may appear to any court, arbitrator or tribunal that any term of these Conditions which imposes any restrictions or limitations of or liability to the price, multiple of the Price or any specified summand to which the Unfair Contract Terms Act 1977 applies, and such provision does not satisfy the requirements or reasonableness, such restriction or limitation shall not be disregarded or treated as void but shall be construed as if there were substituted in that clause such greater minimum specified sum or multiple of the Price as would in the opinion of the court, arbitrator or tribunal be reasonable and shall be given accordingly.

11.2 Except as expressly provided in these Conditions (and except where the Goods are sold to a Consumer in violation of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law (subject to Condition 11.1)

11.3 Where the Goods are sold under a consumer transaction as defined by the Consumer Transactions (Restrictions on statements) Order 1976 (as amended), the statutory rights of the consumer are not affected by these conditions.

### 12. INDEMNITY TO STEWART BROTHERS CONCRETE

You shall indemnify us against all actions, claims or demands for losses suffered or incurred by us including (without limitation) claims by third parties for fraud, in tort or otherwise arising directly or indirectly in connection with the use, functioning or state of the Goods except to the extent that the same are caused by our negligence.

### 13. CONFIDENTIALITY

13.1 Each of the parties to this Agreement undertakes to the other to keep confidential all confidential information concerning the business and affairs of the other which it has obtained or received as a result of discussions leading up to the entering into of this Agreement or which it has obtained during the course of the Agreement, except any information which is:

13.1.1 subject to an obligation to disclose by law or to any regulatory authority entitled to require disclosure by notice or otherwise,

13.1.2 relevant or required by our bank or finance provider.

13.1.3 already in its possession other than as a result of a breach in the Condition 13, or

13.1.4 in the public domain other than as a result of a breach of this condition 13.

13.2 Each party undertakes to the other to take all such steps as shall be necessary to ensure compliance with the provisions of this condition 13 by its employees, agents and sub-contractors.

### 14. CREDIT CHECKS

14.1 We reserve the right to refuse to accept any order or undertake any Contract if your arrangements for payments or credit appear to be or become unsatisfactory.

14.2 We reserve the right, in the event that you are not a limited liability company, to make searches of your details, background and credit history with credit reference and fraud prevention agencies prior to carrying out any obligations laid out in these Conditions. Such credit reference agencies may, at their absolute discretion, keep a record of the search and share that information with other businesses.

### 15. GENERAL

15.1 We may at our absolute discretion accept the cancellation of any order, provided we are notified no less than 2 hours before delivery is due and has been accepted and we are indemnified by you in respect of all costs and an expense incurred prior to the cancellation being accepted by cancellations.

15.2 Any notice or communication regarding the Contract must be in writing, delivered or sent by prepaid first-class letter post and:

15.2.1 if delivered or sent to you, will be addressed to your last known trading address, or

15.2.2 if delivered or sent to us, will be addressed to our Director or Company Secretary at 77A Ellingham Industrial Centre, Ellingham Way, Ashford, Kent, TN23 6JZ.

15.3 Any such notice shall be deemed served:

15.3.1 if delivered by hand to you or your company, or

15.3.2 if posted, 48 hours after posting

15.4 We may assign, transfer, charge, sub-contract or deal in any other manner with the Contract, or any part of it to any person, firm or company. You may assign the Contract, or any part of it, only if you first obtain our written consent.

15.5 No waiver of any condition of this Contract shall be effective except where it is in writing and signed by the waiving party. No waiver of any particular breach of the contract by us shall be held to be a waiver of any other or subsequent breach by you. No omission or delay by us in exercising a right under this Contract shall constitute or operate as a waiver by us of any right to exercise that right in the future or of any other rights under this contract.

15.6 If any of the terms of this Contract are found by any court or administrative body of competent authority to be illegal, void, voidable, invalid, unreasonable or unforeseeable to that extent only and all other terms of the Contract shall remain legal, valid, reasonable and fully enforceable.

15.7 We reserve the right to vary these Conditions as necessary and pledge to give you reasonable notice in writing of such variation.

15.8 All Contracts shall be deemed to be made in England and shall be construed in accordance with and be governed by English law and shall be subject to the exclusive jurisdiction of the English courts.

15.9 A person who is not party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause does not affect any right or remedy of any new person that exists or is available otherwise pursuant to that Act.

**THE SERVICES:** Stewart Brothers Concrete Limited shall supply the Goods to the Buyer in accordance with these Conditions in return for the Buyer making Payment at the agreed Price.

**THE GOODS:** as stated in the invoice issued to you.

**THE PRICE:** as stated in the invoice issued to you.

**PAYMENT:** Bank transfer's, card payment's and cheque's accepted.