



TERMS & CONDITIONS OF SALE

1. GENERAL

These conditions shall apply to all sales made by the Company and no modifications or amendments shall be binding upon the Company unless otherwise agreed to in writing by an authorised officer of the Company.

2. OFFER ACCEPTANCE

a) A quotation addressed to the Purchaser by the Company does not constitute an offer to supply and no contract exists unless and until there has been an acceptance by the Company of an order placed (orally or in writing) by the Purchaser.

b) The placing of an order (whether orally or in writing) and whether or not based upon a quotation from the Company shall be deemed to be the terms and conditions herein contained and these terms shall apply to the exclusion of any other provisions contained in any document issued by the Purchaser and, in particular, but without prejudice to the generality of the foregoing, contained in any order sent by the Purchaser. Where the placing of an order is not preceded by any previous written communication from the Company in relation to that order, the Purchaser shall be deemed to have accepted the terms and conditions herein contained if, after receipt of these terms and conditions the Purchaser does any act referable to the purchase of the goods under that order notwithstanding that the Purchaser has not directly communicated his acceptance of these terms and conditions to the Company.

3. ACCURACY OF DESCRIPTION OF GOODS

Subject to any express term of this contract all descriptions, specifications, drawings and particulars of weights and dimensions submitted by the Company or otherwise contained in the Company's catalogues, brochures, price lists and other published matter are appropriate only and none of these form part of any contract or give rise to any independent or collateral liability upon the part of the Company being intended merely to present a general idea of the goods as described therein.

4. PRICE

a) Unless otherwise stated in writing on the Company's price lists, goods with the exclusion of Mastic Asphalt and Hot Charge Mastic Asphalt sold hereunder within the mainland of Great Britain shall be sold Carriage Paid.

b) Unless otherwise stated in writing, the prices for all goods shall include basic packaging but exclude VAT and all applicable taxes and duties the cost of which shall be determined as at the date of the invoice and shall be payable by the Purchaser.

c) The Purchaser shall not be entitled to make any deductions from the price of the goods in respect of any set-off or counter-claim unless both the validity and the amount thereof have been expressly admitted by the Company in writing.

d) The Company shall be entitled without notice to the Purchaser to adjust the price of the goods or any other sum constituting an obligation on the Purchaser under this contract whether before or after acceptance of the goods:

- 1) in the event of any increase howsoever arising in the cost to the Company of supplying the goods: or
- 2) in the event of any error or omission on the part of the Company, its servants and agents affecting the price or any sum constituting an obligation on the Purchaser under this contract or its or their calculation.

e) Any storage charges or costs and expenses for tests referred to in Condition 1-3 incurred by the Company in relation to the goods shall be added to, and be part of the price and be payable by the Purchaser.

5. PAYMENT

a) Unless otherwise stated in writing, payment of the price of the goods will be due and payable on the last day of the month following the month in which the goods are delivered.

b) Time of payment is of the essence.

c) Without prejudice to any other rights of the Company hereunder, if the Purchaser shall fail to give on or before the agreed date of delivery all instructions and all documents, licences, consents and authorities which the Company may reasonably require to enable it to make delivery of the goods in a manner satisfactory to the Purchaser or shall otherwise cause or request delay, the Purchaser shall pay to the Company all storage costs incurred and arising from such delay.

d) If the Purchaser shall not pay the price or any part thereof or any other sums payable hereunder in accordance with these terms and conditions, the Company, without prejudice to its other rights hereunder, shall be entitled to charge interest at the rate of 4% per annum above the base rate of Fortis Bank on such monies as remain payable to it by the Purchaser until payment of all those monies has been received by the Company in full.

e) In addition to any lien to which the Company may otherwise be otherwise entitled the Company shall, in the event of the Purchaser being insolvent or failing to pay the price due under any other contract with the Company (including any contract treated as a separate contract by virtue of Condition 7(d) hereof), be entitled to general lien (including a right of sale) on all goods of the Purchaser in the Company's possession for the unpaid price of the goods sold and delivered to the Purchaser by the Company under this or any other contract.

f) Without prejudice to any other rights to which the Company may otherwise be entitled, failure to pay the price or any part thereof or other monies payable by the Purchaser hereunder will also entitle the Company to refuse to make delivery of any further consignment of goods under this or any other contract and with out incurring any liability whatsoever to the Purchaser for any delay.

g) The Company reserves the right at any time at its discretion to demand immediate payment or other security for payment before continuing with or delivering any order.

6. PROPERTY and RISK

a) The property in and beneficial ownership of the goods sold hereunder by the Company shall remain in the Company until the Purchaser has paid the full price thereof as well as any other sum payable to the Company.

b) Until such payment has been made or the goods have been resold the Purchaser shall hold the goods as bailee for the Company and shall keep them separately and in such a manner that they are identifiable as the Company's property and shall maintain them in good condition.

c) The Purchaser shall be entitled to sell the goods supplied hereunder or incorporate them in any other products in the normal course of its business even although full payment thereof has not been made, provided that the Company has not retaken possession of the goods under sub-clause (f) of this Condition 6 and provided that none of the events entitling the Company to determine the contract under Condition 14 has occurred.

d) Where the Purchaser resells the goods before full payment of all sums payable to the Company hereunder has been made, the Purchaser shall sell the goods as agent for the Company pending payment of all sums due to the Company hereunder and shall keep the proceeds of sale (less the Purchaser's profit margin) in a separate account not using the same and holding the same on trust for the Company. Notwithstanding the provisions of this sub-clause, vis a vis a third party the Purchaser shall sell only as a principal.

e) The Purchaser shall not in any circumstances place the proceeds of sale of goods supplied by the seller in any overdrawn Bank Account so long as any sum payable to the Company in respect thereof remains outstanding.

f) So long as the property in and the beneficial ownership of the goods remains in the Company and the Purchaser either has failed to pay their falling due or becomes insolvent, the Company or any person nominated by ii shall have the right without prior notice to the Purchaser to retake possession of the goods, and for that purpose to go upon any premises occupied by the Purchaser.

g) So long as the property in and beneficial ownership of the goods remains in the Company the Purchaser shall keep the goods free from Charge lien or other encumbrance.

h) The goods shall be at the Purchaser's risk from the time at which delivery is deemed to take place under condition 7 hereof, save that if the property in the goods passes to the Purchaser prior to the time of delivery the risk in the goods shall pass to the Purchaser with the passing of property.

7. DELIVERY

a) Where specified, delivery periods shall commence from the date on which acceptance of the order is communicated to the Purchaser. Time for delivery shall not be of the essence. Whilst arrangements to supply or deliver goods on a specific date and time are made in good faith, no claim shall be made by the purchaser in respect of lateness or non- delivery for whatever cause in supply of delivery of goods or any consequence thereof.

b) Unless otherwise stated in writing delivery and the Purchaser's acceptance of the goods shall be deemed to take place upon the occurrence of the first time of the following:

- 1) the physical delivery of the goods to the Purchaser at the Company's works; or
- 2) the physical delivery of the goods to the Purchaser's carrier (or his agent); or
- 3) the physical delivery of the goods to the Purchaser's place of business by the Company; or
- 4) the physical delivery of the goods to such a place as the Purchaser shall reasonably specify in writing.

Signature of any delivery note by any agent, employee or representative of the Purchaser or by such a carrier or his agent or by the appropriate person at any place referred to in (4) above shall be conclusive proof of the delivery and the Purchaser's acceptance of the goods. Signing for goods "unchecked" shall mean all quantities delivered as stated on the delivery note.

Requests for signed copies of delivery notes will only be accepted in writing within 26 weeks of the invoice date.

Claims in respect of short delivery must be made in writing in any event within 10 days of the delivery time being of the essence.

c) Unless otherwise stated in writing the company shall be entitled to make partial deliveries or deliveries by instalments and to determine the route and manner of delivery of the goods and shall for the purposes of Section 32(2) of the Sale of Goods Act, 1893, be deemed to have the

Purchaser's authority to take such contract with any carrier as to the Company may seem reasonable.

d) Where delivery of the goods is made in instalments, each instalment shall be construed as constituting a separate agreement to which all the provisions of these conditions shall (with any necessary alterations) apply.

8. SPECIAL CONDITIONS RELATING TO HOT CHARGE MASTIC ASPHALT DELIVERIES

8.1 In addition to these Conditions of Sale the following provisions shall apply to deliveries of hot asphalt and in the case of inconsistency these provisions shall apply.

(a) The full amount booked and actually despatched to site will be invoiced if a part load only is required or used for whatever reason, the full delivery charge will be payable. No refunds will be allowed on any material returned once it has been despatched.

(b) Delivery charges are inclusive of fuel costs and the services of the driver for the discharge of the material from the vehicle.

(c) The driver's duties will only cover the operation of the Company's vehicle and equipment. Proper site access and hard standing must be procured by the purchaser for the Company's vehicle and equipment which will not be driven over excessively rough ground or terrain with a high risk of damage to such vehicle and equipment.

(d) The Company's equipment will only be available for discharging material on site for a standard 6 hour period commencing when the vehicle arrives on site. Daily deliveries, which involve exceeding this period, will be subject to specially negotiated rates. Additionally, if the vehicle is not unloaded and ready to leave the site by the allotted time stated overleaf due to circumstances beyond the Company's control the extra costs incurred by the Company as a result thereof will be borne by the purchaser.

(e) Where material is booked and then cancelled notification must be made by 3pm on the previous working day prior to delivery otherwise transport cost will be charged in full.

(f) Where material is booked and despatched to site, the purchaser shall pay the full price of the goods and delivery. Material remaining at the end of the day will be either discharged into a suitable area on site or returned to our factory where it will be available for collection within 7 days. Materials not collected within 7 days will be subject to an additional disposal charge.

(g) Time for delivery shall not be of the essence. Whilst arrangements to supply or deliver material on a specific date and time are made in good faith, no claim shall be made by the purchaser in respect of lateness or non delivery for whatever cause in supply of delivery of goods or any consequence thereof, nor shall and such delay or failure entitle the purchaser to cancel or otherwise terminate any provisions of the contract.

(h) Any discrepancy in weight must be notified to the Company when the goods are weighed on the Company's site.

9. DEVIATIONS IN QUALITY (Limitation of Liability)

Deviations in quantity of goods delivered from those stated in the contract shall not give rise to rights on the part of the Purchaser to repudiate the contract, to reject the goods delivered (except insofar as they materially exceed the quality contracted for) or to claim damages for breach of contract, and the Purchaser shall be liable to pay for the goods delivered at the contract rate (except insofar as the Purchaser has the right under this condition to reject the same).

10. INFRINGEMENT OF RIGHTS

a) The Purchaser shall indemnify the Company against all loss, damages, costs and expenses suffered by the Company or to which the Company may become liable as a result of any work done in accordance with the Purchaser's specification(s) which involves infringement or alleged infringement of a patent, registered design or other right in industrial property.

b) If the Purchaser uses or sells the goods in such manner as to infringe any such rights the Company shall not be responsible for such infringement and the Purchaser agrees to indemnify the Company from and against all liability arising therefrom.

11. FORCE MAJEURE

If the Company is prevented or delayed (directly or indirectly) from making delivery of the goods or any part thereof on the agreed date of delivery or from otherwise performing the contract or any part thereof by reason of act(s) of God, wars, embargo(es), riot(s), strike(s), lock-out(s), trade disputes(s), fire(s), breakdown(s), inclement weather, interruption(s) of transport, Government action(s), delay(s) in delivery to the Company of any goods or materials or by any cause whatsoever (weather or not of like nature to those specified above) outside its control, it shall be under no liability whatsoever to the Purchaser and shall be entitled at its option (to be notified in writing to the Purchaser) either to cancel the contract or without any liability to extend the time for delivery or installation or otherwise performing the contract or any part thereof by a period at least the equivalent to that during which such delivery or installation or performance has been prevented by any of the restrictions herein before referred to.

12. GUARANTEE and LIMITATION of LIABILITY (defective goods)

a) The Company guarantees for a period of 12 months from the date of delivery all goods sold hereunder against any defect of work or materials which can be proved to the Company's satisfaction to have been caused by circumstance occurring prior to the passing of risk under the provisions of Condition 6 hereof, provided that full details of any such defect are notified to the Company within ten working days from the date on which the Purchaser should reasonably have become aware of such defect. In the case of defects, which would be apparent from examination of the goods on delivery, it shall be deemed that the Purchaser should reasonably have become aware of any such defect on receipt of the goods and the Purchaser shall examine the goods accordingly.

b) The liability of the Company under this guarantee shall be limited at its option either to supplying replacement goods, which will be supplied subject to these terms and conditions or to refunding a proportionate part of the price of the goods.

c) Save as expressly provided in sub-clause (a) and (b) of this Condition 11, and save where the absolute prohibitions against exclusion and restriction of liability contained in Section 2(1) and Section 6(1) of the Unfair Contract Terms Act 1977 or in Section 7 of the Consumer Protection Act 1987 apply, the company shall be under no liability whatsoever to the Purchaser for or arising out of any defect in, failure of, or unsuitability for any purpose of the goods or any part thereof whether the same be due to any act, omission, negligence or wilful default in the design, workmanship or materials or to any other cause whatsoever, and all conditions, warranties or other terms whether express or implied, statutory or otherwise inconsistent with the provisions of this Condition are hereby expressly excluded.

d) All, if any, statements, recommendations and advice given (whether before or after the contract) by the Company or the Company's servants or agents to the Purchaser or its servants or agents as to any matter relating to the goods, are given without responsibility and shall not give rise to any liability whatsoever unless either given in writing in response to a specific written request from the Purchaser on or before or at the time the contract is made or if it is contained in published material issued by the Company.

e) The Purchaser shall retain possession of defective goods until such a time, as the Company shall have given the Purchaser instructions as to their disposal.

f) Without prejudice to Condition 11 (c) above, the Company shall have no liability whatsoever in relation to the suitability or fitness for any purpose of any goods manufactured to the Purchaser's design and/or specification.

g) The Company shall not be liable for any consequential or any indirect loss suffered by the Purchaser whether this loss arises from a breach of duty in Contract or Tort or in any other way including a loss arising from the Company's negligence save for death or personal injury resulting from such negligence.

13. INDEMNITY

The Purchaser shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature made by third parties caused in whole or in part or arising out of any act or omission of the Purchaser in connection with the use, storage or sale of the goods.

14. TESTS

If the Purchaser requires tests other than those which the Company may customarily make or carry out such a request must accompany the order. If the Company agrees to make or carry out such tests, all costs and expenses involved will be paid for by the Purchaser in addition to and as part of the price.

15. BREACH and PURCHASER'S INSOLVENCY

If the Purchaser shall default in or commit any breach of any of its obligations to the Company or if the Purchaser ceases or threatens to cease to carry on business or if any distress or execution shall be levied upon the Purchaser or if the Purchaser shall enter into any negotiations for arrangement or composition with its creditors or commit any act of bankruptcy or if any petition in bankruptcy shall be presented against it or, if the Purchaser is a corporate body, any resolution is proposed or petition presented to wind up the Purchaser or if a receiver of the Purchaser's assets or undertakings or any part thereof shall be appointed the Company shall be entitled to determine forthwith any contract then subsisting without prejudice to any other claim or right the Company might make or exercise.

16. SUB-CONTRACTS

The Company reserves the right to sub-contract the performance of the contract or any part thereof.

17. ASSIGNMENT

The Purchaser shall not assign or transfer or purport to assign any contract to which these conditions apply or the benefit thereof to any other person whatsoever.

18. ORDERED IN ERROR

Unless otherwise agreed in writing goods ordered in error can only be returned if they are of merchantable quality. A 20% re-stocking charge will apply.

19. PROPER LAW

All contracts made between the Company and the Purchaser shall be governed by and construed in accordance with the law of England.

20. SUPPLIES to SCOTLAND

Where goods are supplied by the Company to Customers in Scotland, Clause 6 of these conditions shall not apply. Title to the goods sold by the Company hereunder shall remain with the Company until payment thereof has been made in full.

21. WAIVER

No waiver of a breach of any of these Terms & Conditions or failure to enforce any of the provisions hereof shall operate as a waiver of any or other subsequent breach or constitute departure from the strict terms set out.