

# TERMS AND CONDITIONS OF SALE

In these terms and conditions of sale the "Seller" means Forticrete Ltd and the "Buyer" means the person, firm or company purchasing the goods from the Seller. "Goods" mean the products which are the subject of these terms and conditions of sale. "Order" means an order placed by the buyer for supply of goods.

## 1. Acceptance of Orders

All orders placed by the Buyer and accepted by the Seller are subject to these terms & conditions of sale, which are complete and exhaustive and override any other terms, conditions and provisions purporting to refer to the goods. All other forms, conditions, warranties, guarantees and representations (express or implied), are hereby expressly excluded. These terms and conditions of sales are not capable of being varied, supplemented or interpreted by reference to any prior course of dealing between the parties.

## 2. Risk

The risk in the goods shall remain with the Seller until the point of delivery stated in this contract, thereafter the risk shall be with the Buyer notwithstanding clause 3.

## 3. Retention of Title

The ownership of the goods shall remain with the Seller which reserves the right to dispose of the goods until payment in full for all the goods has been received by the Seller in accordance with the terms of this contract or until such time as the Buyer sells the goods by way of bona fide sale at full market value. If such payment is overdue in part or in whole the Seller may, without prejudice to any of its other rights, enter upon the Buyer's premises by its servants or agents and recover the goods for disposal as the Seller thinks fit. Payment of the contract sum shall become due immediately upon the commencement of any act or proceedings concerning the buyer's solvency.

## 4. Terms of Payment

Payment for the goods shall be made by the Buyer within 30 days of delivery of the goods by the Seller to the point of delivery contained herein. Interest at the rate of 1.5% per month will be charged on overdue accounts. It shall be a condition precedent to all deliveries that all payments due to the Seller from the Buyer (whether under this or any other contract) shall have been made and the Buyer's credit limit has not been exceeded. If such payments shall not have been made or the credit limit has been exceeded the Seller reserves the right to withhold the goods until such payments have been made or the Buyer's debt to the Seller has been reduced to below the credit limit. Notwithstanding clause 10 of these conditions, the Seller shall not be liable to the Buyer for non delivery of the goods for reasons contained within the clause.

## 5. Value Added Tax

Prices quoted are exclusive of United Kingdom value added tax, which will be charged at the rate prevailing at the time of despatch.

## 6. Part Loads

The goods shall be delivered to the delivery address stated on the quotation. Prices are based on minimum 15 tonne loads. Where part loads or restricted types of vehicles are required a surcharge will be made calculated by the seller on a fair and reasonable basis.

## 7. Supply of Goods

- 7.1 The goods are supplied in accordance with the appropriate EN or British standard (where applicable), Company specification, and/or Seller's printed catalogue and subject to the restrictions contained therein. The seller does not warrant that the goods are fit for any purpose or that they will meet performance data other than those contained in the said applicable standard, specification and/or Seller's current printed catalogue.
- 7.2 Any alteration to standard goods required by the Buyer shall be the subject of an extra charge. The Seller does not warrant that the goods so varied shall be fit for the purpose intended by the purchaser.

## 8. Liability for Defective Goods

The Seller's liability for defective goods is strictly limited to free replacement of the goods. No liability for defects will be accepted by the Seller if the defect has been caused by the Buyer.

## 9. Claims

- (1) Other than where it is agreed that the Buyer shall collect the goods from the Seller, the Seller shall not be liable for damage in transit, shortage of delivery or loss of goods in transit unless in the case of damage in transit or shortage of delivery, a separate notice in writing is given to the carrier and to the Seller and a complaint in writing is made within 14 days of the date of despatch. Where goods are accepted from the carrier without being checked the Seller will accept no complaint for either loss or damage.
- (2) Notwithstanding Clause 9(1), the Seller will not be liable for any claim arising out of events howsoever caused, occurring after ownership has passed to the Buyer.

## 10. Delivery & Offloading

The Buyer is responsible for unloading the goods once delivered to the delivery address unless at the Seller's discretion the delivery vehicle used is fitted with a mechanical device for unloading. Where the Seller does not deliver the goods, the Buyer on collecting the goods at the supplier's premises will be required to sign a Sales Docket form before departure. Time of delivery shall not be of the essence. The Seller will make all reasonable efforts to adhere to the agreed date for delivery, if any, contained herein. The Seller shall not be liable for any losses, costs, damages or expenses suffered by the Buyer or any other person or company, howsoever arising, whether caused directly or indirectly out of any failure to meet the date for delivery.

## 11. Variations

Instructions requiring a variation to the order will only be taken from site staff if the Seller receives in writing confirmation from the Buyer's head office that site personnel are authorised to issue such instructions.

## 12. Timber Pallets

There will be instances where goods are required to be supplied on timber pallets for ease of site transportation, protection of the product or in the interest of safety, the costs for which are as detailed in the sales quotation and literature details provided by the Seller. If timber pallets are provided by the Seller at the request of the Buyer such a request shall constitute a variation. payments shall be made in accordance with Clause 4 hereof.

## 13. Batching

Whilst every care is taken to ensure that goods shall be delivered where possible from single batches, the Seller cannot guarantee that all deliveries will be made from one batch. In such circumstances the Seller will use its best endeavours to ensure consistency but the goods shall not be deemed to be defective if there are slight inconsistencies. Samples are submitted as indicating only the class or type of goods quoted for or ordered and no guarantee is given as to size or particular shade of colour or texture of the goods delivered.

## 14. Clerical Errors

The Seller will not be bound by any clerical or arithmetical errors occurring in any tender, invoice or statement of account issued by it.

## 15. Specific Testing of Goods

- (a) Any tests of the goods or any part thereof undertaken by the Seller at the request or on the instruction of the buyer shall be at the expense of the latter who shall reimburse the Seller the cost thereof in accordance with the payment clause of this contract.
- (b) Without prejudice to the foregoing if the Buyer requires any such test to be witnessed by him or by any representative of his, and then the Seller will give to the Buyer reasonable notice in writing of the date and place thereof. If the Buyer or his representative fails to attend the same on the date and at the place so notified, the Buyer shall not be entitled to take an exception to the method, nature extent or results of the test and shall be bound by such results.

## 16. Third Party Liability

The Buyer shall indemnify the Seller against any loss, injury, damage, expense or claim of whatsoever nature and howsoever arising out of the storage, installation, use, operation or maintenance of the goods once the risk has been passed to the Buyer.

## 17. Legal Construction

The contract shall in all respects be construed and operated as an English contract and in conformity with English law. Title of the Clauses shall not affect the legal construction.

## 18. Cancellation and Alteration

Orders which have been accepted by the Seller shall not be subject to cancellation or alteration either wholly or in part without the Seller's written consent. If the Seller agrees to cancel or vary part or parts of the order the Buyer shall be liable to pay a cancellation or variation charge calculated by the Seller, on a fair and reasonable basis. Where this relates to non-standard products which have been manufactured this payment will amount to the full purchase price.

## 19. Limitation of Liability

Except in respect of damage or injury to a person or injury to a person other than the Buyer or property not belonging to or in the occupation or possession of the Buyer, the liability of the Seller shall in no case exceed the value of the order.

## 20. Orders in Excess of Requirements

Delivery of the quantity of goods ordered discharges the Seller's responsibility. Where quantities of goods are estimated by the Seller on the Buyer's request or instruction, the Seller accepts no responsibility for the sufficiency or otherwise of the quantities for the job in question. Surplus goods due to incorrect ordering cannot be taken back by the Seller nor can any credit be issued.

## 21. Workmanship and Fixing

General workmanship should be in accordance with relevant regulatory standards and current recommendations. Laying, fitting and fixing should be in accordance with the general guidance provided by the Seller but the Seller will not accept liability for the use or function to which the goods are applied. Health and Safety procedures should be observed in accordance with the relevant regulatory standards.