# STANDARD TERMS AND CONDITIONS WHICH APPLY TO THE SUPPLY OF MOBILE CONCRETE SOLUTIONS BY MCS OR ANY MEMBER OF BREEDON GROUP PLC

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

"Additional Charge(s)" means the additional charge(s) payable in addition to the Contract Price for the Goods or Services provided for in the Conditions.

"Breedon Group" means Breedon Trading Limited (CRN: 00156531), Breedon Cement Limited (CRN: 08284549), Breedon Cement Ireland Limited (CRN IE237663), Breedon Group Services Limited (CRN: 02723957), Breedon Employee Services Ireland Limited (CRN: IE410580), Whitemountain Quarries Ltd (CRN NI018140), Breedon Surfacing Solutions Ireland Limited (CRN: IE115014), Breedon Materials Limited (CRN: IE123494), Breedon Brick Limited (CRN: IE10541), Alpha Resource Management Ltd (CRN: NI059764), Robinson Quarry Masters Limited (CRN: NI009269), Minster Surfacing Limited (CRN: 04084446) and/or any other company within the Breedon Group of companies, further details of which can be found at www.breedongroup.com.

"Calendar Days" means all days including Saturdays, Sundays and Bank Holidays.

"Company" means either MCS or the member of the Breedon Group supplying the Services and/or Goods.

"Conditions" means the terms and conditions set out in this document and includes any special terms and conditions set out in the Quotation or otherwise agreed in writing between the Company and the Purchaser.

"Contract" means the contract between the Company and the Purchaser for the supply of Services and/or Goods incorporating these Conditions.

"Contract Price" means the amount payable by the Purchaser to the Company pursuant to the Contract in respect of the supply of the Services and/or the Goods.

"Defect" means any material shortcoming or material non-conformity in the condition and/or attributes of the Facility, the Equipment and/or the Goods as compared with the requirements of the Contract.

"Delivery" means the time when the Purchaser is notified that the Goods are available for collection or (in the case of delivered Goods) the time when the Goods arrive at the Destination, subject to Clauses 8.1 to 8.3 as the context requires.

"Delivery Ticket" means the proof of delivery/collection ticket to be signed by the Purchaser or the Purchaser's authorised representative relating to the sale of Goods and returned to the Company.

"Destination" means the point of discharging the Goods at the Site.

"Equipment" means the equipment forming part of the Facility, the principal component parts of which

are set out in the Quotation.

"Facility" means the mobile concrete batching facility erected by the Company including the Equipment forming part of the provision of the Services.

"Goods" means ready mixed concrete agreed in the Contract to be supplied by the Company to the Purchaser included as part of the provision of the Services and shall (in the context of exclusions or limitations of the Company's liability contained in the Conditions or where the context admits or requires) include goods, materials or parts as aforesaid which are defective or otherwise non-compliant with the obligations of the Company pursuant to the Contract or otherwise.

"Labour" means the supply of personnel to operate the Equipment as part of supplying the Services and/or Goods pursuant to the Contract.

"Losses" means all and any costs claims damages or liabilities whether direct or indirect suffered or incurred by the Company.

"MCS" means Mobile Concrete Solutions, a joint venture between BTL and TSL.

"Minimum Volume" means such minimum volume as may be specified in the Quotation.

"Party" means a party to the Contract.

"Purchaser" means the person, firm or company who purchases the Services and/or the Goods from the Company.

"Quotation" means the Company's quotation for the supply of the Services and/or sale of the Goods.

"Schedule" means a schedule to these general terms and conditions.

"Services" means the temporary supply, erection and commissioning of the Facility and for the Goods and/or Labour as more particularly set out in the Quotation.

"Sites" means the actual place where the Facility is to be erected or from which the Services shall be supplied and where applicable from where the Goods shall be delivered.

"Third Party" means any person firm or company other than the Purchaser or the Company.

"TSL" means TSL Contractors Limited.

1.2 Headings are for convenience only and do not affect interpretation.

1.3 A reference to a particular law is a reference to that law as it is in force for the time being and from time to time taking account of any amendment, extension, variation or re-enactment and includes any subordinate legislation for the time being and from time to time in force made under it.

1.4 Words in the singular include the plural and in the plural include the singular.

1.5 A person includes a natural person, company or unincorporated association (whether or not having a separate legal personality). A reference to a party includes its personal representatives, successors or permitted assigns.

1.6 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.7 A reference to writing or written includes email but not facsimile communications.

## 2. FORMATION OF CONTRACT, QUOTATIONS AND ORDERS

2.1 All Services and/or Goods sold or supplied by the Company shall be subject to these Conditions, and any Contract shall be on the basis of these Conditions and the applicable Schedule, to the exclusion of all other terms and conditions.

2.2 Any quotation or estimate issued by the Company may be withdrawn at any time before acceptance of an order and shall be deemed to be withdrawn if an order is not received within 30 days of its date.

2.3 A quotation or estimate does not constitute an offer to supply the Goods and/or Services on any other basis than a Contract incorporating these Conditions and no contract shall exist until there has been an order from the Purchaser which has been accepted by the Company and any such order shall be deemed to be an offer by the Purchaser to buy the Goods and/or Services subject to these Conditions.

2.4 The scope of the Services, the Equipment, the Labour and the quality and description of the Goods shall be as set out in the Quotation.

2.5 The Company reserves the right to make any change to the specification of the Services, the Equipment, the Labour and/or Goods which does not materially affect the quality and performance of the Goods or which is required by law or applicable regulatory requirements.

2.6 The Purchaser is responsible for ensuring the terms of the Quotation and associated scope or order are complete and accurate.

2.7 Any purported amendment or variation to these Conditions or purported cancellation by the Purchaser of the Contract in whole or in part shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.

2.8 Subject to Clause 10.3.4 (Limitation of Liability) below, the Purchaser acknowledges that it has not relied on any statement, promise or representation in relation to the Services and/or Goods (including its use, strength, fitness for any purpose, surface area yield, storage or handling) made or given by or on behalf of the Company either before or after the date of the Contract which is not set out in the Contract.

2.9 All samples, drawings, descriptive matter, specifications and advertising issued by the Company for Purchasers and any descriptions or illustrations contained in the Company's literature or web sites are issued or published for the sole purpose of giving product information or as a guide for Purchasers

in relation to the Services and/or Goods described in them. They shall not form part of the Contract with a Purchaser or be treated as a description of the Services and/or Goods unless expressly stated in writing to be such in the Contract. Where the Company provides to the Purchaser a sample of the Goods for testing or otherwise which are later supplied in bulk the Company does not guarantee that every item in the bulk corresponds with the sample. No Goods are sold by sample.

2.10 The Purchaser shall be responsible to the Company for ensuring the accuracy of the documentation of any order (including, but not limited to any applicable specification) submitted by the Purchaser and for giving the Company any necessary information relating to the Services and/or the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

## 3. THE SERVICES: SPECIFICATION, USE AND QUALITY

3.1 The Quotation sets out the basis on which the Company is prepared to supply the Services and/or the Goods.

3.2 In relation to the supply of the Services the Company warrants:

3.2.1 that the Services shall be carried out in a good and workmanlike manner; and

3.2.2 that it shall use reasonable care and skill and use appropriately qualified Labour.

3.3 The Company does not warrant the Facility or the Equipment are free from Defects and the Purchaser accepts that where the Company, on the Purchaser's request, only supplies one Facility at the Site, the Company shall not be liable for any Losses in the event of a failure of the Facility.

3.4 The Company does not guarantee continuous supply of Goods from the Facility.

3.5 The Company shall not be liable for any Losses arising out of the following:

3.5.1 breakdown or mechanical failure of the Equipment or the Facility; or

3.5.2 suitable hard standing for the Equipment; or

3.5.3 willful, negligent, careless or deliberate acts of damage by the Purchaser or anyone under their control to the Equipment.

3.6 Where the Company hires in any plant and/or machinery to provide the Services and/or the Goods, the hire of all such plant and machinery shall be made on the latest version CPA model conditions of hire in force at the time of the hire as if expressly stated herein.

3.7 The Purchaser shall provide safe and adequate access to the Site or to the Destination. Where the Company, (or its servant or agent) in its absolute discretion considers conditions of access to be unsuitable it reserves the right to refuse to attend Site or the Destination, perform the Services or deliver the Goods and to charge the Purchaser for all costs incurred. "Safe and adequate access" means an access road of sufficient width, stability, durability and compaction to enable heavy plant and machinery to pass over without risk of damage to persons, property or the environment. The

Purchaser shall indemnify the Company against any failure to provide safe and adequate access to the Site

3.8 The Purchaser shall be liable for and shall indemnify the Company against any loss or damage caused to the Company and/or the Company's subcontractors or the Company's property and/or any property of a subcontractor of the Company (excluding loss or damage caused by the negligence of the Company or a subcontractor of the Company) occurring at any time from the point that any delivery vehicle utilised by the Company in the provision of the Services and/or the Goods from the time that it leaves a public highway, in the case of the construction or erection of the Facility, to the point on the Site where the facility is to be erected, and, in the case of the discharge of the Goods, up to the Destination.

3.9 For the avoidance of doubt nothing in the Contract shall pass title in the Facility or the Equipment to the Purchaser, which shall at all times remain the absolute property of the Company.

## 4. THE GOODS: SPECIFICATION, USE AND QUALITY

4.1 The quantity, specification, quality, description and suggested use and application of the Goods are described in the Company's Safety Data Sheet in respect of the Goods, available on Breedon Group's website from time to time ("**Website**"), and in the Quotation or the Purchaser's order (if accepted by the Company) relevant British or European Standard applicable to the Goods ("the **Specification**"). The Company shall have no liability to the Purchaser as to the suitability of the Goods for any particular purpose and the Purchaser must rely on its own skill and judgment.

4.2 All sampling of the Goods, the making and testing of samples and interpretation of results must be carried out in accordance with such appropriate British or European Standards or other specification, as notified by the Company to the Purchaser, and, in the absence of any appropriate specification, in accordance with the Company's instructions.

4.3 References to compressive strength in any Specification, shall unless otherwise agreed, refer to compressive strength obtained from concrete cubes made, cured and tested in accordance with BS EN 12350 and BS EN 12390 as amended or replaced from time to time. Estimates of the in situ strength of concrete shall be provided on the interpretation of the estimated potential strength of concrete obtained from cores taken from hardened concrete in accordance with the recommendations of Concrete Society Report No 11 "Concrete Core Testing for Strength" as amended from time to time.

4.4 Where the consistency of Goods is to be determined by identity criteria for slump or flow, any sample of the Goods shall be a spot sample taken in accordance with BS 8500-1 annex B, (as amended or replaced from time to time) and assessed for conformity in accordance with BS 8500-1, tables 8.1 or 8.4 (as appropriate), as amended or replaced from time to time.

4.5 The density of the foamed concrete has been established by reference to a sample tested in accordance with the procedures in BS EN 12350-6 as amended or replaced from time to time and assessed for conformity in accordance with any relevant Company technical procedure.

4.6 The Company shall not be liable for any Losses arising out of any failure to comply with all and any recommendations in relation to the handling, transportation, storage, use, laying, curing, preparing, sealing, finishing, discharge, loading or maintenance of the Goods either generally or in accordance with good industry practice or customs or as set out on any of the Breedon Group's webpages or literature relevant to the Goods or otherwise as notified to the Purchaser orally or in writing ("**Recommendations**") or for any Losses arising out of any act or omission which is inconsistent, not recommended or otherwise advised against pursuant to the Specification or good industry custom and practice. The Company shall not be liable for any Losses arising out of any failure to comply with the Recommendations.

4.7 The Company shall not be liable for (or for the characteristics of) any of the Goods which are, at the request of the Purchaser, not manufactured in accordance with the Specification.

4.8 The Purchaser acknowledges and accepts that the Goods may contain substances which can cause harm or damage to humans and animals, plants, property or the environment and the Purchaser shall take all necessary steps in the use of the Goods to ensure no such harm or damage is caused. The Company shall not be liable for any failure of the Purchaser to store, transport, handle or use the Goods in accordance with good industry practice and generally applicable or recognised health and safety obligations and procedures and/or the Recommendations.

4.9 The Purchaser undertakes to the Company that it has in place all necessary permits, licences, consents and authorisations of any type whatsoever, in relation to the supply of the Services and to the activities carried out by the Purchaser for which the Goods are required ("**Authorisations**") or related to the nature and type of the Site and Destination and its surrounding areas and habitat including without limitation, any engineering works in or around water courses at or near to the Site or Destination. The Purchaser shall supply to the Company on request and prior to performance of the Services or Delivery, copies of all Authorisations. The Company shall not be liable for any failure of the Purchaser to obtain or comply with the Authorisations.

4.10 Each provision of this Clause 4 which states that the Company shall not be liable for a matter or thing shall include an obligation on the part of the Purchaser fully and effectually to indemnify the Company from and against all Losses arising from or in consequence of that matter or thing.

4.11 The Company warrants that (subject to the other provisions of the Conditions) on Delivery the Goods shall:

4.11.1 be of satisfactory quality and manufactured in accordance with any applicable British Standards (as set out in the Specification) so as to be free from Defect;

4.11.2 be reasonably fit for the purpose for which they are normally used; and

4.11.3 be reasonably fit for any particular purpose for which the Goods are being bought if the Purchaser has made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Purchaser to rely on the skill and judgment of the Company in that regard.

4.12 Goods referred to in the Specification as covered by harmonised European Standards shall, where required under relevant EU legislation, carry CE marking to the extent and in the manner required by EU legislation.

4.13 Whilst every effort is made to maintain consistency in the characteristics of the Goods, the Purchaser may find that the Goods are affected by the following matters or variances, and the Purchaser hereby agrees to such matters or variances and acknowledges that they shall not constitute a Defect:

4.13.1 variations in the colour, consistency, texture, and size of the particles forming all or part of the Goods;

4.13.2 the surface finish or visual appearance of the Goods;

4.13.3 the presence in the Goods of lignite, carbonaceous particles or organic material, or the consequences of such presence;

4.13.4 variations arising from permitted tolerances to the formula to which the Goods are manufactured;

4.13.5 interchangeable use by the Company in the Company's discretion of ground granulated blast furnace slag ("GGBS") or pulverised fuel (or fly) ash ("PFA") as an ingredient or extender in readymixed concrete;

4.13.6 the interchangeable use by the Company in the Company’s discretion of the aggregates forming part of the Goods;

4.13.7 any other specific variances that are drawn to the Purchaser’s attention before entering into the Contract; and/or

4.13.8 the Company manufacturing the Goods to an approved British Standard notwithstanding the Purchaser has requested manufacture to a withdrawn standard or designation.

4.14 The Company does not guarantee any particular weight of Goods will cover any particular area or yield any particular volume. Any "product calculator" forming part of any Breedon Group website is intended as a general guide as to volume requirements and the Purchaser must take specialist advice to ascertain its precise requirements as to quantity of Goods it requires for a specific task or project.

4.15 Subject always to Clause 4.16, the Company shall not be liable for a breach of Clause 4.11 (in whole or in part) unless:

4.15.1 the Purchaser gives written notice of any Defect to the Company within 35 days of either discovery of the Defect or when the Purchaser ought reasonably to have discovered the Defect; and

4.15.2 the Company is thereafter given a reasonable opportunity of examining the Goods and in any case before the Goods are further used, interfered with added to or constructed upon in any way; and

4.15.3 the Purchaser has complied with the Recommendations; and

4.15.4 the Purchaser has complied with the recommended time for use of the Goods as may be notified by the Company and has not tampered with the Goods in an attempt to rectify any alleged Defect.

4.16 Subject always to Clause 4.13 and 4.14, the Company shall not be liable for a breach of Clause 4.11 in any case where the Defect has arisen as a result of:

4.16.1 the Purchaser's failure to use the Goods in accordance with the guidelines set out in the Specification, the Recommendations or good industry practice; or

4.16.2 the Purchaser mixing the Goods with an incompatible product or any product which is not consistent with the normal and proper use of the Goods or any admixture or fibre forming part of the Goods; or

4.16.3 the Goods being manufactured processed or mixed by the Company to the specification of the Purchaser which is not consistent with the Specification or to a specification which has been withdrawn; or

4.16.4 the Purchaser's breach of Clause 7.9; or

4.16.5 the use of the Goods by the Purchaser after the end of their recommended useful life or use by date; or

4.16.6 fair wear and tear; or

4.16.7 the failure of the Purchaser to stop the discharge or offloading of the Goods where a Defect is apparent on inspection of discharge or unloading; or

4.16.8 the Purchaser's pump not being in good condition or the Purchaser's personnel not operating the pump correctly. The Company is not liable for the discharge and/or offloading of the Goods at the Destination; or

4.16.9 the failure of any fibres or other specialist admixtures forming part of the Goods; or

4.16.10 the failure of the Purchaser to ensure it has sufficiently qualified personnel at the Destination to offload and receive, cure, lay and/or finish the Goods; or

4.16.11 any spoiling material or contamination being added to the Goods without the written agreement of the Company including, without limitation, water; or

4.16.12 the Purchaser not having cubed, sampled or tested any Defect in accordance with British Standard EN13791, any British Standard relevant to the Goods, or other standard agreed in writing with the Company.

4.17 Subject always to Clauses 4.9, 4.10, 4.11 and 4.12, if the Goods do not conform with Clause 4.11, and the Goods are consequently the subject of a Defect, then the Company shall at its option:

4.17.1 re-supply such Goods free of charge; or

4.17.2 issue a credit note at the pro rata Contract Price for the Goods.

4.18 If the Company either re-supplies the Goods or issues a credit note under Clause 4.17 then it shall have no further liability for a breach of Clause 4.11. This Clause does not affect any other rights or claims of the Purchaser arising out of any other provision of the Contract.

## 5. PRICE

5.1 Unless agreed otherwise by the Company in writing, the Contract Price for the Services and/or the Goods shall be as set out in the Quotation.

5.2 The Contract Price may be increased or decreased at any time by the Company upon giving to the Purchaser at least one month's notice in writing. Any orders accepted by the Company after the expiry of the one month period referred to in this Clause 5.2 shall automatically be made subject to and in accordance with the Conditions and the Contract Price shall be determined by reference to the increased or decreased rate as the context requires.

5.3 Clauses 5.1, 5.2 and 5.3 shall override any other provision relating to price in any estimate given by the Company or which the Purchaser seeks to impose, or incorporate, or which are implied by trade, custom, practice or course of dealing.

5.4 The Contract Price shall be exclusive of any VAT or other applicable sales taxes (save for those provided for in Clause 5.7) and of any Additional Charges, all of which amounts the Purchaser shall pay in addition to and together with and on the same due date as the Contract Price for the Goods.

5.5 Without prejudice to any other rights or remedy available to the Company an Additional Charge may be made if:

5.5.1 the Purchaser incurs any of the additional charges set out on the Quotation; or

5.5.2 the Purchaser is notified prior to or at the time of acceptance of the order that an additional charge will be made for a deliveries below the Minimum Volume; or

5.5.3 delivery is notified outside the Company's normal working hours (8am to 5pm Monday to Friday) or on a bank or public holiday; or

5.5.4 the Purchaser re-directs, refuses or fails to take or permit a delivery, fails to give sufficient delivery instructions, or its failure to obtain appropriate licences or authorisations prevents or delays delivery; or

5.5.5 the Purchaser returns part of the delivery having failed to accept the full ordered quantity of Goods; or

5.5.6 the unloading of the delivery vehicle is delayed or the Goods are not discharged within the times permitted as are set out in the Quotation (time being of the essence for the purposes of this Clause 5.5.6); or

5.5.7 the delivery is aborted due to unsuitable or unsafe access to the Site and/or Destination; or

5.5.8 the Purchaser makes a request to change the delivery dates, quantity or types of the Services, the Equipment or the Goods ordered; or

5.5.9 the Company will use reasonable endeavours to deliver the Goods within two hours of the time specified by the Company.

5.5.10 Where appropriate, the Purchaser shall provide a minimum of 24 hours' notice for cancellations or material changes to any orders. If the Purchaser does not provide 24 hours' notice of cancellation the Company will be entitled to terminate the order and, subject to the Company mitigating any Losses, recover from the Purchaser any loss or costs incurred by the Company as a result of the cancellation.

5.6 Where the Purchaser has requested specialist admixtures or fibres be used in the manufacture of the Goods the Purchaser shall pay the Company in full the additional costs of the admixtures or fibres before the Company is obliged to deliver the Goods or otherwise perform the Contract, or where the Purchaser cancels any order after the Company has accepted a purchase order the Purchaser shall pay the costs of these specialist admixtures or fibres in full as a debt due to the Company.

5.7 Unless stated otherwise in the Quotation, the Contract Price is inclusive of the aggregates levy due and payable at the appropriate rate (if any).

## 6. PAYMENT AND DEFAULT

6.1 Subject to Clause 6.2 and 6.3 below, payment of the Contract Price for the Services shall be paid in accordance with the Quotation and for the Goods shall be made in pounds sterling in cleared funds on or before the end of the month following the month of delivery of the Goods to the Purchaser, or their collection by or on behalf of the Purchaser (the "Final Date for Payment").

6.2 Time for payment shall be of the essence and notwithstanding any other provision of the Contract all sums owing to the Company under the Contract shall become due and payable immediately on its termination.

6.3 The Purchaser shall make all payments due under the Contract without deduction for set off, counterclaim, abatement or otherwise.

6.4 The Company reserves the right in its absolute discretion to require payment by the Purchaser for any Services or Goods that have already been supplied or are due to be supplied by way of cleared funds before further Goods are supplied notwithstanding any previous agreement to provide credit to the Purchaser.

6.5 If the Purchaser:

6.5.1 fails to make any payment to the Company on the due date; or

6.5.2 suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts; or

6.5.3 exceeds any credit limit assigned to the Purchaser from time to time by the Company; or

6.5.4 commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts; or

6.5.5 has a petition filed, notice given, resolution passed, or order made, for or in connection with its winding up or bankruptcy; or

6.5.6 is the subject of an application to court or order for the appointment of an administrator; or

6.5.7 has a receiver or an administrative receiver or administrator appointed over any of its assets; or

6.5.8 is in breach of any term of this Contract and (where such breach is capable of remedy) fails to remedy such breach within 14 days of being so requested to do so by the Company; or

6.5.9 (being an individual) is the subject of a bankruptcy petition or order; or

6.5.10 (being an individual) dies or by reason of illness or incapacity (whether physical or mental), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or

6.5.11 suspends, or threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

6.5.12 suffers deterioration in its financial position to such an extent that in the Company's reasonable opinion the Purchaser's capability adequately to fulfil its obligations under the Contract has been placed in jeopardy; or

6.5.13 is in breach of, or the Company suspects the Purchaser is in breach of, any provisions of Clause 14 of the Conditions;

then the full balance outstanding on any account between the Company and the Purchaser shall become immediately payable and the Company shall be entitled to do one or more of the following (without prejudice to any other right or remedy it may have):

(i) require payment in cash or cleared funds in advance of delivery of any Services and/or undelivered Goods; or

(ii) cancel or suspend any further delivery to the Purchaser under the Contract; or

(iii) sell or otherwise dispose of any Goods which are subject of the Contract; or

(iv) remove the Facility from the Site forming part of the Services; and

(v) terminate the Contract with immediate effect by giving written notice to the Purchaser.

6.6 Where any payments or sums due to the Company under the Contract are not paid by the Final Date for Payment then the payments or sums remaining due shall carry interest at the rate of 4% per annum above Barclays Bank Plc base rate in force from time to time from the Final Date for Payment until the date on which the payment is made, whether before or after judgment. The Purchaser shall pay the interest together with the overdue amount.

## 7. DELIVERY

7.1 The Purchaser shall ensure that the Purchaser gives to the Company such notice for delivery of the Facility at the Site to include sufficient time for commissioning and mobilisation of the Facility, as set out in the Quotation. This is a pre-condition of the Purchaser's obligation to deliver the Facility pursuant to Clause 7.2.

7.2 The Company shall use reasonable endeavours to deliver the Facility to the Site within the period stated in the Quotation.

7.3 The Purchaser shall ensure that the Company has reasonable prior notice (which shall not be less than 24 hours) of the required time and date of delivery or collection of the Goods, and where the Goods are being delivered, that the Company (or its agent or contractor) is given sufficient particulars of the Destination and in the case of orders for large pours or multiple pours on the same day, indicative times for delivery of given amounts of the Goods to ensure that the Company is able to deliver the Goods without returns.

7.4 The Purchaser shall ensure the Company is given 5 Business Days' notice for any Goods containing one or more of the following:

7.4.1 specialist admixtures or fibres; or

7.4.2 steel fibres.

7.5 If the Company is unable to deliver Goods because of inadequate instructions, unsuitable personnel at the Site or Destination at the time of delivery to receive the Goods, inadequate or unsafe discharge

conditions at the Site or Destination or the Purchaser fails to take or permit delivery of the Goods, or the Purchaser's failure to obtain appropriate licences or authorisations prevents or delays delivery, Delivery shall be deemed to take place at the time when the Company has tendered delivery of the Goods.

7.6 The Company shall use reasonable efforts to comply with any time or date agreed by the Company for the supply of the Services or delivery of the Goods, but any dates and times are intended for guidance purposes only and shall not be of the essence, and shall not be capable of being made of the essence by notice from the Purchaser. If no times or dates are agreed, the Services shall be supplied and/or the Goods shall be delivered to the Purchaser within a reasonable time of the acceptance of the order. The Company may supply the Services or deliver the Goods earlier as well as later than any dates and times agreed by the Company, and the Purchaser must accept the performance of the Services or delivery of the Goods accordingly.

7.7 The Company may deliver the Goods by separate instalments and each instalment shall be invoiced and paid for in accordance with the Contract. Each instalment shall for the purpose of delivery be treated as a separate supply and a failure to deliver any instalment or any claim by the Purchaser in respect of any instalment shall not entitle the Purchaser to repudiate, cancel or terminate the Contract.

7.8 The Company, its agents and/or contractors shall not be obliged to supply the Services or deliver any Goods to the Site or Destination if the Company or its agents or contractors suffer failure of any of the safety equipment designed for use in the course of delivery by the Company, its agents or contractors; or where the access to the Site or Destination, equipment at the Site or Destination or onsite manoeuvrability of the Site or Destination is unsuitable, hazardous or inadequate for the proper and safe supply of the Services or unloading of the Goods, or where personnel at the Site or Destination are rude, offensive or abusive to the Company's employees, contractors or agents. The Purchaser shall indemnify and keep the Company indemnified against any Losses arising from the access to the Site or Destination, equipment at the Site or Destination or onsite manoeuvrability of the Site or Destination being unsuitable, hazardous or inadequate or the Purchaser's personnel being rude, offensive or abusive.

7.9 The Company shall have no obligation to provide any Goods to the Purchaser in the event that the Company has no availability of Goods due to, without limitation, any of the following:

7.9.1 lack of mineral or material at any Breedon Group site whether due to production or operational issues or otherwise; or

7.9.2 lack of any other materials which are necessary for the Company to provide the Goods; or

7.9.3 lack of haulier services necessary to transport the Goods to the Purchaser; or

7.9.4 where the Company is prevented from leaving any Breedon Group site due to protestor activity within or around any Breedon Group site.

7.10 Any operational issues which may prevent the Company being able to supply the required volumes shall be notified to the Purchaser as soon as practicable.

7.11 The Company shall not be obliged to perform the Services or deliver any Goods to any Destination where the conditions for safe performance or delivery have not been met. In this Clause 7.9, "unsafe" shall mean that it poses a risk, actual or potential, to persons, property or the environment.

7.12 Subject to Clause 7.9, the Company shall not be liable to a Purchaser for any Losses whether:

7.12.1 direct; or

7.12.2 indirect or consequential (including, for the avoidance of doubt, any liability to any Third Party, pure economic loss, loss of profits, loss of business, and loss of goodwill); or

7.12.3 costs, charges or expenses

resulting from any delay in the supply of the Services or delivery of the Goods or failure to supply the Services or deliver the Goods within a reasonable time (whether such delay or failure is caused by the Company's negligence or otherwise). No delay or failure to perform the Services or deliver the Goods shall entitle the Purchaser to terminate the Contract unless it continues for 60 days or more without liability to the Company.

7.13 Where the Purchaser signs a Delivery Ticket or advice note this shall be conclusive evidence that the Goods have been inspected and accepted in full by the Purchaser.

7.14 Where the Purchaser signs the Delivery Ticket which details additional water which has been added to the Goods the Purchaser accepts full liability for the Goods and the Company shall have no liability for the Goods should any Defect subsequently arise.

## 8. INSPECTION AND SHORTAGES

8.1 The Company shall use reasonable endeavours to supply the quantity of Goods provided for by the Contract and to notify the Purchaser of any surplus or shortfall in the quantity of Goods delivered. Subject to Clause 8.2, if a surplus or shortfall occurs the Company shall discuss with the Purchaser the possible options to resolve the surplus or shortfall and the Purchaser shall not be entitled to object to or reject the Goods (or part) by reason of any such surplus or shortfall.

8.2 If the Purchaser has a claim for short delivery it must telephone the Company as soon as reasonably practicable and shall then advise the Company in writing within 48 hours of Delivery of any such claim (the "Notice Procedure"). The Purchaser shall use reasonable endeavours to assist the Company in putting in place measures for verifying a shortfall (including without limitation use of measuring boxes at the Site, or use of the weighbridge at the Site) the results of which shall be binding on the Parties, save in respect of fraud or manifest error.

8.3 If the Notice Procedure is not followed the Goods will be deemed to have been Delivered in the quantities shown on the Delivery Ticket or, where there is no Delivery Ticket containing such details, the quantities shown on the consignment note, and the Purchaser shall not be entitled to make a claim in respect of an alleged shortfall in the Material.

8.4 Subject to Clause 8.2 above, the Company's liability to a Purchaser for any shortfall is limited to:

8.4.1 making good the shortfall within a reasonable time; or

8.4.2 issuing a credit note for the shortfall at the pro rata Contract Price.

8.5 The Purchaser must also follow the Notice Procedure where it is or would have been apparent on a reasonable inspection at the time of Delivery that the Goods are not in conformity with the Contract. If the Purchaser fails to follow the Notice Procedure the Goods will be deemed to have been accepted and the Purchaser shall not be entitled to reject the Goods.

8.6 The Company shall not be obliged to provide to the Purchaser copies of any Delivery Tickets which are, at the time of the request from the Purchaser, more than six months old.

## 9. RISK AND TITLE

9.1 Risk in the Goods shall pass to the Purchaser on loading of the Goods onto a vehicle at the Site for delivery to the Destination, or in the case of collection by the Purchaser, at the point of discharge from the Facility.

9.2 The Company shall be entitled to recover payment for the Goods (and also VAT, other sales taxes and Additional Charges) from the Purchaser even though the ownership of the Goods has not passed from the Company to the Purchaser.

9.3 The Company shall be entitled at any time to inspect or recover any or all of the Goods in the Purchaser's possession to which the Company has title and for that purpose the Purchaser hereby permits the Company or its servants, agents or contractors to enter upon any premises occupied by the Purchaser or to which the Purchaser has access and where the Goods may be or are believed to be situated.

9.4 On termination of the Contract, the Company's rights under this Clause 9 shall remain in effect.

## 10. LIMITATION OF LIABILITY

10.1 Save for where the Contract provides specific remedies to the Purchaser under the Conditions, the following provisions set out the total liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) for loss and damage suffered by the Purchaser in respect of:

10.1.1 any breach of the Contract including any matter in respect of which specific remedies are provided (as aforesaid) but where those remedies are for any reason held by a court of competent jurisdiction to be insufficient or unreasonable in a particular case; and

10.1.2 any use made by the Purchaser of the Facility; and

10.1.3 any use made or resale by the Purchaser of the Goods, or any product incorporating the Goods; and

10.1.4 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract or the supply of the Services and/or Goods.

10.2 All warranties, conditions and other terms implied by statute or common law which may be excluded by the agreement of the Purchaser (which do not include the conditions implied by Section 12 of the Sale of Goods Act 1979 and section 17 of the Consumer Rights Act 2015) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions shall exclude or restrict the Company's liability:

10.3.1 for death or personal injury resulting from the Company's negligence; or

10.3.2 under Section 2(3) of the Consumer Protection Act 1987; or

10.3.3 for any matter which it would be unlawful for the Company to exclude or attempt to exclude its liability; or

10.3.4 for fraud or fraudulent misrepresentation.

10.4 Subject to Clauses 10.2 and 10.3:

10.4.1 The Company's total liability to the Purchaser in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the Contract, the Services and/or Goods, or the supply of the Services and/or Goods shall be limited to a maximum financial cap of the lesser of:

10.4.1.1 £50,000.00; and

10.4.1.2 a sum equivalent to the Contract Price.

10.4.2 The Company shall not be liable to the Purchaser for any of the following (whether direct or indirect):

10.4.2.1 pure economic loss;

10.4.2.2 loss of profits;

10.4.2.3 loss of business;

10.4.2.4 loss of goodwill and/or reputational damage;

10.4.2.5 losses arising from any liability to a Third Party; or

10.4.2.6 claims for consequential costs, charges, expenditure or compensation (including legal costs).

10.5 The Company shall have no liability for any Defect to the extent that the loss or damage suffered by the Purchaser or any Third Party arises from:

10.5.1 normal wear and tear; or

10.5.2 the Purchaser's or a Third Party's wilful damage, negligence, abnormal working practice, misuse, alteration or repair of the Equipment, the facility or the Goods; or

10.5.3 use of the Equipment, the Facility or the Goods in unsuitable conditions; or

10.5.4 matters in respect of which the Company is relieved from liability under Clauses 8.4 or 8.5.

10.6 If the Facility is erected or the Goods are manufactured processed or mixed by the Company to the specifications of the Purchaser or its agents, the Purchaser shall fully and effectually indemnify the Company against all loss, damages, costs, liability, and direct and indirect economic loss or expenses awarded against or incurred by the Company in connection with any claim arising from such manufacture processing or mixing (including for infringement of any patents copyright design trademark or any other industrial or intellectual property rights of any Third Party) or the defence or settlement of such claim.

## 11. FORCE MAJEURE

11.1 The Company may defer delivery, terminate the Contract, cease to provide the Services or supply the goods or reduce the volume of Goods delivered to the Purchaser and shall not be liable to the Purchaser or be deemed to be in breach of the Contract by reason of the aforesaid deferment, termination, or reduced delivery, or by reason of any failure to perform any of the Company's obligations, in any case where a Force Majeure Event exists.

11.2 A Force Majeure Event means any event beyond a party's reasonable control, including without limitation strikes, lock-outs or other forms of industrial action (whether involving its own work force or a Third Party's) failure of energy sources, or transport networks, acts of God, war, terrorism, riot, civil commotion, interference by civil, governmental, regulatory or military authorities, road traffic accidents; road closures; ice, snow, vehicle breakdown; ill health or incapacity of the driver of any vehicle or equipment, breakdown of plant or machinery, fire, industrial action, lightning, power surges or shortfalls, chemical or biological contamination, explosions, floods, storms and collapse of buildings or structures.

11.3 If the Force Majeure Event in question continues for a continuous period in excess of 90 days, either the Company or the Purchaser may give notice in writing to the other terminating the Contract.

## 12. ANTI-BRIBERY AND COMPETITION

12.1 The Purchaser shall comply and use reasonable endeavours to ensure that all subcontractors, suppliers and all persons associated with the Purchaser (as defined by section 8 of the Bribery Act 2010) comply with all applicable anti-bribery and anti-corruption legislation including without limitation the Bribery Act 2010. The Purchaser shall maintain and enforce its own policies and procedures,

including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable anti-bribery and anti-corruption legislation.

12.2 The Purchaser shall comply with the provisions of the Modern Slavery Act 2016 ("**MSA**") and shall take all reasonable steps to ensure its supply chain is slavery free and the Purchaser shall use all reasonable endeavours to assist the Company in its compliance with the MSA.

12.3 The Purchaser shall not engage in any agreement, arrangement, concerted practice, information exchange or behaviour in breach of UK, EU or other competition law in force from time to time.

## 13. HEALTH AND SAFETY

13.1 The attention of the Purchaser is specifically drawn to the need for care in the handling of the Goods which are irritants and can cause skin diseases and burns. Guidance is given in the Company's Safety Data Sheet, available on the Breedon Group website.

13.2 If the Purchaser is trading with the Company in the course of its business, the attention of the Purchaser is drawn to the provision of section 6 of the Health and Safety at Work etc. Act 1974 (as amended) ("Act").

13.3 Whether the Purchaser is trading with the Company in the course of its business or not, the Company gives notice to the Purchaser that the Company has available information (including product safety data sheets) and product literature concerning the conditions necessary to ensure that, as far as is reasonably practicable the Goods supplied will be safe and without risks to health when properly used, handled, processed, stored or transported by a person at work or in a non-work environment. If the Purchaser is not already in possession of such literature or requires any information or advice in connection with the safe use of the Goods at work or in a non-work environment the Purchaser should immediately contact the Company.

13.4 The Purchaser hereby undertakes pursuant to section 6(8) of the Act to take such measures as are communicated in writing to it and take such other steps as are sufficient to ensure, so far as is reasonably practicable, that the Goods will be safe and without risk to health at all times when they are being used, handled, processed, stored or transported by a person at work and shall not use them or permit them to be used without regard to any relevant information or advice relating to their use which has been communicated to the Purchaser pursuant to these Conditions.

13.5 The Purchaser shall indemnify and keep indemnified the Company in respect of any liability, claim or fine in respect of or in connection with the Goods incurred directly or indirectly by the Company under the Act or any regulation order or direction made thereunder or any other instrument relating to health and safety.

## 14. GENERAL

14.1 The Company reserves the right to audio record all telephone orders, enquiries and Purchaser communications in order to monitor and improve the Company's service, and to use or disclose the audio recording or a written transcript thereof to third parties to assist the Company or the Breedon Group in the resolution of any Purchaser complaints, for the prevention or detection of crime, for tax

collection purposes, where the Company is required to do so by law (including under any legislation, or by a court or tribunal in any jurisdiction) or where disclosure is necessary for or in connection with any legal proceedings (including prospective legal proceedings), for obtaining legal advice or for establishing, exercising or defending legal rights.

14.2 Breedon Group and MCS reserve the right to have closed circuit television ("CCTV") installed at any of its places of business or on the Company's vehicles and may through the CCTV capture the personal data of the Purchaser or employees of the Purchaser or individuals working for the Purchaser, who are not directly employed (including officers, consultants, contractors, interns and agency workers) in still form or video recordings. The Company may use or disclose the still or video footage to the Breedon Group and/or third parties to assist the Company in the resolution of any Purchaser complaints, for the prevention or detection of crime, for tax collection purposes, where the Company is required to do so by law (including under any legislation, or by a court or tribunal in any jurisdiction) or where disclosure is necessary for or in connection with any legal proceedings (including prospective legal proceedings), for obtaining legal advice or for establishing, exercising or defending legal rights.

14.3 The Purchaser consents, on behalf of itself and its employees and workers, to the use and disclosure of personal data as referred to in clauses 14.1 and 14.2.

14.4 If any clause or sub-clause of these Conditions is held by any court or other authority of competent jurisdiction to be wholly or partly void or unenforceable the validity and enforceability of the other clauses or sub-clauses of these Conditions shall not be affected and they shall remain in full force and effect. If any provision or part provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision shall be deemed deleted.

14.5 The Purchaser shall not be entitled to transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company. The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.6 The waiver by the Company of any breach or default under any provision of these Conditions by the Purchaser shall not be construed as a continued waiver of that breach or default nor as a waiver of any subsequent breach or default of the same or any other provision.

14.7 Termination of the Contract, however arising, shall not affect any rights or remedies of either party which have accrued prior to the date of termination; and termination of the Contract shall not affect the continuing force and effect of any provision of the Contract which, whether expressly or by implication, is to survive termination of the Contract.

14.8 Save for any member of the Breedon Group, the Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it. Any member of the Breedon Group may enforce the terms of the Contract as if it were an original contracting party.

14.9 Any notice by either Party to the other shall be in writing addressed to that other Party at its registered office or principal place of business or such other address as notified by the receiving Party to the Party giving the notice.

14.10 Notices shall be deemed to have been received 48 hours after posting (exclusive of the day of posting) if sent by first class post; on the day of delivery if delivered by hand; or at the time of transmission if sent by email. Notices shall not be sent by facsimile.

14.11 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, English Law, and the parties submit to the non-exclusive jurisdiction of the Courts of England and Wales.