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**Breedon Group:**  
**Standard Terms and Conditions of Purchasing of Goods and Services**  
**(5 October 2021 Edition)**

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## 1. DEFINITIONS

1.1 In these terms the following definitions shall apply:

**Associates** has the meaning as set out in Clause 21.1.

**Breedon Group** means Breedon Cement Limited (CRN: 08284549), Breedon Trading Limited (CRN: 00156531), Whitemountain Quarries Ltd (CRN NI018140), Alpha Resource Management Ltd (CRN NI059764), Breedon Brick Limited (CRN: IE10541), Lagan Asphalt Limited (CRN: IE115014), Lagan Materials Limited (CRN: IE123494), Breedon Cement Ireland Limited (CRN: IE237663), Breedon Group Services Limited (CRN: 02723957), Breedon Employee Services Ireland Limited (CRN: IE410580) and/or any other company within the Breedon Group of companies, further details of which can be found on the Website.

**Charges** means the prices or rates specified in the Purchase Order.

**Code of Conduct** has the meaning as set out in Clause 7.2.2.

**Company** means the member of the Breedon Group purchasing the Goods and/or Services.

**Company Policies** means all relevant policies, compliance programmes, and site rules of the Company including health and safety, Site specific rules and regulations, data protection, anti-bribery, competition law, and environmental.

**Conditions** means the terms and conditions of contract set out in this document and references to Clause numbers are to the Clause numbers of the Conditions.

**Contract** means the contract between the Company and the Supplier, in relation to the provision of Goods and/or Services comprising the Purchase Order, the Scope, the Conditions, the RFP and the Response and any other documents referred to in the Conditions.

**Contract Change** means any variation, addition to, removal or other change in or to the Goods or the scope of the Services, to be delivered or performed pursuant to the Contract, including variations to the scope, specification, method of delivery or performance, or a change to any of the terms of the Contract.

**Contract Change Request** means a request by the Company or a proposal by the Supplier for a Contract Change.

**Data Protection Laws** has the meaning as set out in Clause 20.3.

**Defect** means any defect (whether actual or anticipated) in all or any part of the Goods, or all or any part of the provision of the Services, arising from the Supplier's negligence or any breach of the Supplier's obligations either under the Contract or in law, including the Supplier's faulty

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design, the Supplier's erroneous instructions as to use, inadequate or faulty materials, poor workmanship, or incomplete or undelivered goods or incomplete or unperformed services; and Defects shall be construed accordingly.

**Defects Liability Period** means in relation to Goods, the period of thirty six (36) months from the date of the first use of the Goods by the Company, and in relation to Services, the period of thirty six (36) months from the last day of the provision of the Services by the Supplier to the Company.

**Delivery Method** means delivery shall be made "delivered duty paid" to the Site in accordance with INCOTERMS 2010.

**Document** means a written document or documents which shall include specifications, either technical operational or otherwise, designs, drawings, methodologies, methods of working, samples, patterns, models or information as varied or amended from time to time.

**Due Amount** has the meaning as set out in Clause 10.3.

**Force Majeure** means any circumstances beyond the control of the parties including but not limited to (a) war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition or embargo; (b) ionising radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives, or other hazardous properties of any explosive nuclear assembly or nuclear components thereof; (c) rebellion, revolution, insurrection, military or usurped power and civil war; (d) riot, commotion or disorder, except where solely restricted to employees of the Supplier; (e) terrorism; or (f) strikes lock outs or other forms of industrial action but excluding by the Supplier or its sub-contractors or employees.

**GDPR** has the meaning as set out in Clause 20.3.

**Goods** means goods, equipment, plant and/or materials as defined in the RFP, the Response and/or the Purchase Order.

**H & S Standard** has the meaning as set out in Clause 7.2.1.

**Intellectual Property Rights** means patents, registered designs, trademarks and service marks (whether registered or otherwise), copyright, database rights, design rights and other intellectual property rights, including equivalents in other jurisdictions that grant similar rights as the foregoing, and including rights subsisting in inventions, drawings, performances, software, semiconductor topographies, improvements, discussions, business names, logos, devices, know how, trade secrets, goodwill and the style of presentation of goods or services, and rights in applications for the protection thereof, throughout the world.

**MSA** means the Modern Slavery Act 2015.

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**Necessities** has the meaning as set out in Clause 10.5.

**Processes** means the processes and procedures which the Supplier shall comply with in delivering the Goods and/or Services as set out in the RFP, the Response and/or in the Purchase Order.

**Purchase Order** means the Company's purchase order for the Goods and/or Services.

**Response** means all or part of any response by the Supplier in writing to an RFP (if any) which includes any Document prepared by the Supplier or on the Supplier's behalf in response to the Company's requirements for the Goods and/or Services set out in the RFP.

**Relevant Currency** means the currency applicable to the jurisdiction in which the Company is registered being either pounds sterling or euros.

**Relevant Jurisdiction** means the country in which the Company is registered.

**Relevant Laws** shall mean each and every obligation imposed by law relating to the sale and supply of the Goods and/ or the provision of the Services, including all statutes, statutory instruments, regulations, planning requirements, by-laws, any requirements of any statutory bodies or local authorities, or statutory undertakers, and any directly effective EU law applicable in the Relevant Jurisdiction.

**RFP** means a request for proposal, request for quotation, or invitation to tender (if any) issued by the Company in relation to the Goods and/or the Services which includes any Document prepared by or on behalf of the Company which set out the Company's requirements for the Goods and/or Services.

**Sale of Goods Acts** means the Sale of Goods Act 1979 (UK) or the Sale of Goods and Supply of Services Act 1980 (Ireland).

**Scope** means the scope and specification of the Goods and/or Services to be supplied under the Contract as set out in the RFP, the Response and/or the Purchase Order.

**SHE Rules** has the meaning as set out in Clause 13.3.

**Services** means "the Services" as defined in the RFP, the Response and/or the Purchase Order.

**Site** means the actual place or places to which the Goods are to be delivered or at which the Services shall be performed.

**Specific Requirements** means those additional items which must be shown on the invoice relating to the import and/or export of Goods and/or Services as required under Relevant Laws.

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**Supplier** means the person, firm or company to whom the Purchase Order is issued.

**Valid Invoice** means the Supplier's invoice which shows the Supplier's name, address and VAT number, the Purchase Order number, the invoice date and number, a description of the Goods or Services invoiced, the date(s) and location of the supply of the Goods or the performance of the Services invoiced, Specific Requirements, and VAT payable by the Company, which, where applicable, shall be shown as a separate item on all invoices.

**Variation Order** means such written record of any changes to the Contract as the Company and the Supplier may agree in writing from time to time in accordance with Clause 19.

**Website** means [www.breedongroup.com](http://www.breedongroup.com).

- 1.2 The words "includes", "include", or "including" shall be construed without prejudice to the generality of foregoing words.
- 1.3 Unless the context otherwise requires, reference in these Conditions to any enactment order, regulation, legislation, Relevant Laws or other similar instrument shall be construed as a reference to the statute or law as from time to time amended, consolidated, extended, re-enacted or replaced.
- 1.4 Any reference to a "day" or period of "days" means a calendar day or days, "business days" means a day which is not a Saturday, Sunday, public or bank holiday in London, "month" means a calendar month and "year" means 365 days.
- 1.5 Use of the singular includes the plural and vice versa, according to context. The headings herein are for ease of reference only and shall not affect the construction of these Conditions.

## **2. PURCHASE ORDER**

- 2.1 A Purchase Order raised electronically or in writing by the Company constitutes an offer by the Company to purchase the Goods/and or the Services upon and subject to the terms of the Contract and shall be accepted by the Supplier either in writing or by commencement of performance by the Supplier in response to the Purchase Order.
- 2.2 Acceptance of the Purchase Order shall bind the Supplier to the terms of the Contract and the Goods and/or the Services shall be supplied or performed by the Supplier in accordance with the terms of the Contract, to the exclusion of all other terms and conditions which the Supplier may seek to impose or incorporate.
- 2.3 No terms and conditions shall form part of the Contract unless agreed by the parties in writing. The receipt by the Company of an order acknowledgement after the date of the Purchase Order shall have no effect or impact on these Conditions.

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2.4 Unless expressly stated to the contrary, nothing in the Contract shall prejudice any conditions or warranties (express or implied) or right or remedy to which the Company or the Supplier is entitled in relation to the Contract by virtue of statute or common law, and the rights and remedies conferred on the Company and the Supplier by the Contract are in addition to and in no way in substitution for any conditions, warranties or any other rights or remedies conferred or implied by the law.

**3. THE GOODS AND/OR SERVICES**

3.1 In relation to Goods, the Supplier warrants and undertakes to the Company that the Goods shall:

3.1.1 comprise only materials and goods which are new and of sound and good quality;

3.1.2 correspond and conform to the terms of the Contract;

3.1.3 be of satisfactory merchantable quality and fit for their normal purpose and any other purpose set out in the Contract and in this respect the Company shall rely on the Supplier's skill and judgment;

3.1.4 be free from defects in design, manufacture, fabrication, material and workmanship;

3.1.5 comply with all standards and codes of practice in the Relevant Jurisdiction and Relevant Laws relating to the sale or supply of the Goods;

3.1.6 be capable of all standards of performance specified in the Contract;

3.1.7 where necessary, be marked with (and on any external packaging) any appropriate marks (CE or otherwise), symbols or wording in English relating to place of origin, declarations of conformity, inspection by any government or similar body, or hazard labelling applicable in the Relevant Jurisdiction; and

3.1.8 be supplied otherwise in accordance with the terms of the Contract.

3.2 In relation to Services, the Supplier warrants and undertakes to the Company that the Services shall be carried out:

3.2.1 in a good and workmanlike manner;

3.2.2 with the care, skill and diligence expected of a specialist in his field;

3.2.3 in accordance with all Relevant Laws;

3.2.4 in accordance with the Company's Policies;

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- 3.2.5 in accordance with the terms of the Contract;
  - 3.2.6 in accordance with the lawful, reasonable and proper instructions or directions of the Company;
  - 3.2.7 in accordance with all standards of performance specified in the Contract;
  - 3.2.8 when completed, comply with all relevant standards and codes of practice in the Relevant Jurisdiction and Relevant Laws relating to the provision of the Services; and
  - 3.2.9 using appropriately qualified and trained personnel.
- 3.3 The Supplier shall at all times during the Contract comply with the Processes.
- 3.4 If the Company orders Goods, then, unless otherwise stated in the Purchase Order, the order is deemed to include the supply of all relevant user and product documentation, and any services necessary to commission the Goods, so that the Company can use the Goods for their intended purpose or purposes.
- 3.5 If the Company orders Services, then, unless otherwise stated in the Purchase Order, the order is deemed to include the complete performance of those Services, including any instructions to recipients, manuals, explanations or certifications necessary to enable the Company to benefit from them for their intended purposes.
- 3.6 If the Company orders Goods or Services, then, unless stated in the Purchase Order, the order is deemed to include any legal rights necessary to use those Goods and/or Services for their intended purposes.
- 3.7 The Supplier accepts entire responsibility for the design of the Goods and delivery of the Services, provided that the Supplier shall not be liable for any design supplied by the Company if the Supplier, acting reasonably, objects to it and disclaims responsibility promptly in writing and in any event prior to implementing the design.
- 3.8 The Supplier acknowledges and accepts that it is not being appointed as an exclusive supplier of any of the Goods or exclusive provider of any of the Services and the Company may at any time purchase or procure all of its requirements for Goods and/or Services or any part of the Goods and/or Services from a third party, or perform any part of the Services itself without liability to the Supplier.
- 3.9 The Supplier shall assign in writing to the Company the benefit of all and any warranties and/or guarantees received by the Supplier from its suppliers when required by the Company to do so. The assignment shall be in such form and executed by the Supplier in such manner as the Company shall specify.

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- 3.10 Where all or any part of the Services includes the hire of any plant or equipment (**Plant and Equipment**) by the Company from the Supplier the following additional terms shall apply:
- 3.10.1 The Plant and Equipment shall only be accepted by the Company on hire subject to the Supplier complying in all respects with the Company Policies and the Relevant Laws relating to the Plant and Equipment. The owner of the Plant and Equipment shall provide a fully competent operator with the operated plant, when requested;
  - 3.10.2 Operators provided with the Plant and Equipment must at all times comply with the H & S Standard and the Company Policies;
  - 3.10.3 Any Plant and Equipment which comprises a vehicle to be used on the public highway must be comprehensively insured, licensed and taxed by the Supplier to comply with Relevant Laws and the Supplier shall indemnify the Company against any claims whatsoever arising from a breach of this Clause 3.10.3;
  - 3.10.4 The specific terms applicable to the hire of the Plant and Equipment are under the CPA model conditions strictly on the basis that clauses 2, 3, 8, 12, 13(b), 24, 31, 32 and 35(a) of the CPA model conditions are excluded and shall have no effect and notwithstanding any other terms which the Supplier seeks to impose by conduct or course of dealing or otherwise; and
  - 3.10.5 The Company shall be entitled to off-hire the Plant and Equipment at any time on immediate notice to the Supplier.
- 3.11 The Supplier shall provide to the Company, at any time on request from the Company, all such information and reporting data which the Company may reasonably require relating to environmental, social and governance policies, procedures or laws which may include climate change and carbon reduction; fuel usage, transportation and distribution; water and waste handling; human rights and responsible sourcing of goods.
- 3.12 The Company may on reasonable notice inspect the books and records of the Supplier to ensure the Supplier is operating in compliance with the Contract or to obtain the information reasonably requested pursuant to Clause 3.11.
- 4. DELIVERY AND PACKAGING**
- 4.1 The Supplier shall meet all dates for delivery of the Goods and/or performance of the Services set out in the Contract. Time for performance pursuant to this Clause 4.1 shall be of the essence of the Contract.
  - 4.2 Unless it is provided in the Contract that the Company has agreed to collect the Goods, the Supplier shall deliver the Goods, correctly addressed and despatched by the Delivery Method to the Site(s) to arrive in good condition on or before the date(s) stated in the

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Contract, accompanied by an appropriate delivery note.

- 4.3 The Goods shall be securely packed in trade packages of the type normally used by the Supplier for commercial delivery of the same or similar goods within the United Kingdom. the Company shall not be liable for any Goods lost or damaged in transit.
- 4.4 The Company shall not be obliged to return to the Supplier any packaging or packing material, but if any relevant requirement for packaging or packing recycling applies, the Supplier shall take all packaging or packing materials back free of charge on request.
- 4.5 The Company has the right to instruct the Supplier to take such action as is required to bring the Contract to completion in accordance with the terms of the Contract at no extra cost to the Company (save where the Company has caused the delay) or to reject the Goods or the Services for late delivery or performance.

**5. CHARGES**

- 5.1 Unless expressly stated in the Scope or the Purchase Order, the Charges shall be as stated in the Purchase Order and shall be:
- 5.1.1 fixed for the duration of the Contract;
  - 5.1.2 inclusive of all tax, levies and duties other than value added tax;
  - 5.1.3 inclusive of any information or audit requests made by the Supplier pursuant to Clause 3.11;
  - 5.1.4 inclusive of all charges for packaging, packing, shipping, carriage, insurance, delivery of the Goods to the Site, commissioning of the Goods, and the provision of the Services at each Site;
  - 5.1.5 inclusive of all plant (including lifting Goods), scaffolding, tools, materials, labour, haulage, accommodation, welfare facilities, and other things necessary to perform the Services;
  - 5.1.6 inclusive of the cost of all and any consents, licences and permits from any relevant authority which are necessary for the sale and supply of the Goods and/or the Services;
  - 5.1.7 inclusive of all transportation of personnel and any plant or vehicle between Supplier bases and Sites;
  - 5.1.8 inclusive of all operating and maintenance manuals, spare parts manuals, and as-built drawings written in the English language. Unless otherwise agreed, the operation and maintenance manuals shall include test certificates, relevant



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passwords, pass codes and access codes, isolation procedures, maintenance frequency schedules for lubrication, adjustments, part wear checking and the like, and method statements on safe working and maintenance procedures;

5.1.9 the total costs of supplying all Goods and/or Services at the required times and locations detailed in the Contract; and

5.1.10 payable in the Relevant Currency.

5.2 The Supplier is deemed to have understood the nature and extent of the supply requirements (for the Goods and/or Services) and to have visited and inspected the Site including ground conditions and any existing structures. No failure on the part of the Supplier to discover or foresee any site conditions, or any risks, contingencies or circumstances shall entitle the Supplier to claim damages, an increase in the Charges, or an extension of time. The Company shall, on request of the Supplier, grant such access to the Site as may be reasonable for the purpose of site inspection.

5.3 Unless otherwise agreed by the Company, any Goods and/or Services provided by the Supplier, prior to receipt of a Purchase Order shall be deemed to have been provided under the Contract, and any payment made by the Company, prior to issuing a Purchase Order shall be deemed to be included in the Charges, and paid on account of the Charges.

**6. TERMS OF PAYMENT**

6.1 If the Company has ordered Goods, the Supplier shall submit a Valid Invoice when (and not before) the Goods have been delivered to the Site.

6.2 If the Company has ordered Services, the Supplier shall submit a Valid Invoice at the intervals or occasions as set out in the Scope or the Purchase Order.

6.3 The Charges shall be paid within 45 days of the end of the month of the date of the Valid Invoice.

6.4 The Company shall not be obliged to make any payment to the Supplier under the Contract unless it has received a Valid Invoice from the Supplier.

6.5 If the Company shall default in making payment on time, the Supplier shall be entitled to simple interest at the rate of 2% above the base rate of Barclays Bank Plc.

6.6 The Company shall deduct such sum from payment of a Valid Invoice in relation to taxation as it shall be obliged to do under any Relevant Jurisdiction.

6.7 The Company may without notice deduct from the Charges any amounts which are due

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and owing by the Supplier to the Company or any other member of the Breedon Group on any account whatsoever.

**7. SUPPLIER WARRANTIES**

7.1 The Supplier warrants and undertakes to the Company that at all times during the Contract:

7.1.1 the Supplier shall obtain any consents, licences and permits from any relevant authority which are necessary for the Supplier's performance of its obligations under the Contract;

7.1.2 the Supplier shall comply with the terms of any planning permissions, building regulation approvals, and wayleave consents notified to it by the Company from time to time;

7.1.3 save in respect of any design or information given to the Supplier by the Company, neither the sale nor supply of the Goods and/or the Services shall infringe any Intellectual Property Rights of any other person or breach any confidence or confidential information of any other person;

7.1.4 the Supplier shall pay all and any import and customs duties incurred in order for the Supplier to perform the Supplier's obligations under the Contract;

7.1.5 in the performance of the Supplier's obligations under the Contract the Supplier shall comply with all the Supplier's duties imposed under the Health and Safety at Work etc. Act 1974, the Construction Design and Management Regulations or similar legislation in the Relevant Jurisdiction, the Company Policies and all or any other Relevant Laws;

7.1.6 the Supplier shall ensure that all the Supplier's employees, agents and contractors have received sufficient training in all areas of health and safety relating to the performance of the Contract and that they shall carry out their duties in conformity with the Company Policies and Relevant Laws;

7.1.7 the Supplier shall ensure that all the Supplier's employees, agents and contractors shall observe correct and safe procedures for the lifting handling and moving of equipment;

7.1.8 the Supplier shall have procedures in place for the reporting and investigation of injuries and accidents that comply with all Relevant Laws and good industry practice, and shall follow those procedures;

7.1.9 for any Goods which comprise in whole or in part chemicals, mixtures or other substances hazardous to health, the Supplier shall ensure that:

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- 7.1.9.1 the Company is fully informed by the Supplier of the risks or hazards known or believed to exist in exposure to, the transport, storage, handling or use of the Goods;
  - 7.1.9.2 the Supplier complies with all Relevant Laws; and
  - 7.1.9.3 an English version of the appropriate material safety data sheet, relevant safety information and instructions for use accompanies such Goods during transportation and a copy of such documentation is presented to the Company at the point of delivery.
- 7.2 The Supplier shall ensure that it and all of its employees, agents and contractors shall at all times comply with:
  - 7.2.1 the Breedon Group Health & Safety Standard for Contractor Management (**H & S Standard**) which gives clear direction on the safe and disciplined management of the Supplier's employees, agents and contractors. The Supplier shall ensure the H & S Standard applies not only to its employees, agents and direct contractors, but to any person engaged by the Supplier or any of them to carry out tasks on behalf of the Company at any of Breedon's Sites or other premises; and
  - 7.2.2 the Breedon Group Supplier Code of Conduct (**Code of Conduct**) available at [www.breedongroup.com](http://www.breedongroup.com) as amended from time to time.
- 8. OWNERSHIP OF GOODS AND RISK**
  - 8.1 The Goods shall become the property of the Company immediately on delivery or payment or part payment of the Charges, whichever occurs first.
  - 8.2 The Supplier warrants that it shall transfer to the Company title to Goods free from all claims, liens and encumbrances to all Goods supplied to the Company under the Contract.
  - 8.3 Subject to Clauses 8.1 and 8.2, risk in the Goods purchased under the Contract shall pass to the Company once the Goods have been unloaded at the Site, and visually checked against the delivery note for content, loss and reasonably and readily apparent damage.
  - 8.4 Any Goods rejected or returned shall be at the risk of the Supplier from the earlier of the time when the Company gives to the Supplier notice of rejection or return or commencement of transit back to the Supplier.

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**9. ACCEPTANCE AND REJECTION**

- 9.1 Goods shall not be deemed to have been accepted until the Company has unpacked and fully inspected the Goods following delivery, regardless of any signature confirming receipt on any advice note or delivery note.
- 9.2 Where an advice note or delivery note is endorsed with “goods unchecked” or similar wording the Company shall be entitled to rely upon this wording as conclusive evidence that the relevant Goods had not been inspected on the date of the advice note or delivery note.
- 9.3 The Company shall notify the Supplier as soon as reasonably practicable after discovery of any shortage of Goods. The Supplier shall at its own expense replace the missing Goods as quickly as possible.
- 9.4 Notwithstanding any provision of the Sale of Goods Acts, the Company shall be entitled to reject the Goods in whole or in part whether paid in full or in part within a reasonable period of time after receipt if they defective, inferior in quality, material or performance, or do not otherwise comply with any express or implied term of this Contract. The Company may exercise its rights of rejection irrespective of whether the Company has legally accepted the Goods.
- 9.5 The Supplier shall collect and replace any rejected Goods as quickly as possible.

**10. DEFECTS**

- 10.1 If at any time during the Defects Liability Period, the Company discovers a Defect, then as soon as reasonably practicable the Company shall give to the Supplier notice in writing describing the Defect.
- 10.2 If a Defect arises during the Defects Liability Period, then (without prejudice to the Company’s other rights and remedies) the Company may by written notice to the Supplier at its sole discretion take all or any of the following steps (in no particular order and (save for Clause 10.2.8) on any number of occasions):
- 10.2.1 require that the Supplier at the Supplier's expense and as quickly as possible, having regard to the circumstances, make good the Defects to the satisfaction of the Company, including supplying replacement Goods or carrying out remedial works in respect of the Services or re-performing the Services;
- 10.2.2 take, at the cost of the Supplier (payable on a full indemnity basis and including internal costs of time and materials) such steps as may in all the circumstances be reasonable to make good such Defects or satisfy the requirements of the Contract, including procuring that third parties do so;

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- 10.2.3 accept the Goods and/or the Services, notwithstanding the Defect, but subject to a reasonable reduction in the Charges;
- 10.2.4 require that the Supplier at the Supplier's expense and as quickly as possible removes from the Site all Goods which are subject to a Defect and that the Supplier delivers replacement Goods in conformity with the Contract;
- 10.2.5 reject such Goods and require the Supplier to refund any monies paid by the Company in respect of the Goods rejected and require the Supplier to pay to the Company a sum equal to the expenditure reasonably incurred by the Company in disposing of and replacing the rejected Goods;
- 10.2.6 require the Supplier to pay to the Company a sum equal to such damages, costs and expenses as the Company may have sustained in consequence of any breach of the terms of the Contract or failure by the Supplier to comply with any statutory or other obligations implied by law;
- 10.2.7 any other combination of all or any parts of the above; and/or
- 10.2.8 terminate the Contract.
- 10.3 In the event that any sums are due from the Supplier to the Company pursuant to all or any part of the exercise of the Company's rights under Clause 10.2, as determined by the Company acting reasonably (the **Due Amount**), then the Due Amount shall be payable within 14 days of the date of determination and notification of the Due Amount by the Company to the Supplier. The Due Amount shall be payable to the Company as a debt due by the Supplier, and the Company may deduct all or any part of the Due Amount from the amount of the Charges which remain outstanding to the Supplier.
- 10.4 Where required by the Company, the Supplier shall ensure that compatible spares are available to facilitate repairs for a period of at least five years from the date of delivery of the Goods.
- 10.5 If the Company shall be reliant on the Supplier for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services to benefit fully from the Goods and/ or the Services (**Necessities**), then the Supplier shall provide those Necessities or use reasonable endeavours to procure them to be provided, for at least thirty six months following delivery of the Goods or performance of the Services, at fair and reasonable prices which take no advantage of the Company's dependency on the Supplier for their supply.
- 10.6 Replacement Goods and re-performed Services (including repair services) shall themselves be subject to the remedies and provisions of the Contract (including Defects Liability Period) as if they had been supplied under the Contract in the first place.

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**11. INDEMNITY**

11.1 Without prejudice to the Supplier's liability for breach of any of the Supplier's obligations under the Contract, the Supplier shall indemnify and defend the Company, keep the Company indemnified, and hold the Company harmless (together with any of the Company's employees, sub-contractors, assignees or agents) in full and on demand (with no duty on the Company to mitigate its loss), from and against any demands, actions, liabilities, monies, losses, amounts paid or payable, damages, costs, expenses, interest and penalties and/or legal costs and expenses (all of which whether direct or indirect) to the full extent of that loss (together the Losses), awarded against, incurred, paid or payable by the Company, howsoever arising (including in contract, tort, negligence and/or debt) wholly or in part resulting directly or indirectly from the matters listed below, whether or not such Losses or the consequences of the matters listed below were foreseeable at the date of the Contract:

11.1.1 any claim of infringement of the Intellectual Property Rights of any other person;

11.1.2 any loss or damage to property of any nature or type whether movable or immovable, real or personal;

11.1.3 any injury to any person, including injury resulting in death;

11.1.4 any failure (by act or omission) of the Supplier, to comply with and use all reasonable endeavours to ensure all persons associated with it (as defined by section 8 the Bribery Act 2010) comply with all applicable anti-bribery and anti-corruption legislation including, the Bribery Act 2010 and any applicable EU directives.

11.1.5 any failure (by act or omission) of the Supplier, its agents, servants or subcontractors, to comply with the provisions of the MSA or the Code of Conduct;

11.1.6 any failure to comply with Data Protection Laws;

11.1.7 the Supplier, its agents, servants or subcontractors, engaging in or allegedly engaging in any agreement, arrangement, concerted practice or information exchange or behaviour in breach of UK, Irish, EU or other competition law in force from time to time; and

11.1.8 any failure by the Supplier, its agents, servants or contractors to comply with the Code of Conduct.

except insofar as such loss, damage or injury shall have been caused by negligence on the part of the Company, its servants or agents.

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**12. TRAINING AND MEETINGS**

- 12.1 The Supplier shall at the Supplier's cost provide sufficient training for the Company's plant operators and maintenance staff to enable them to operate and maintain the Goods safely and efficiently. The Supplier shall provide the Company's plant operators and maintenance staff with additional training if so required at such additional cost as may be agreed by the Supplier and the Company.
- 12.2 At the Supplier's expense, the Supplier shall, when reasonably required to do so by the Company, attend meetings with the Company and any other suppliers to the Company.

**13. SITE REGULATIONS**

- 13.1 All minerals, metals, objects and other things found or discovered on, under or around the Site shall as between the Supplier and the Company be the property of the Company and shall be dealt with as the Company may direct.
- 13.2 The Supplier shall make no delivery nor commence work on Site if the Company objects to the same.
- 13.3 The Supplier shall comply with the Company's safety, health and environmental rules (**SHE Rules**) as from time to time published by the Company and all other safety requirements applicable to the Site and shall ensure that the Supplier's employees, agents and sub-contractors so comply.
- 13.4 The Supplier shall ensure that prior to attending on Site it shall complete any Site specific inductions, or requirements, provide task and wear the correct PPE.
- 13.5 The Company shall have the right to require the removal from the Site of any person brought or introduced to the Site by the Supplier who has failed to comply with the SHE Rules, or has, in the opinion of the Company, been guilty of misconduct or been negligent or incompetent.

**14. SITE WORK BY SUPPLIER**

- 14.1 If any work on Site is to be carried out by the Supplier other than the supervision of erection and/or commissioning, then the Supplier shall ensure that no work is covered up until the Company has had a reasonable opportunity to inspect it.
- 14.2 The access to and possession of the Site shall not be exclusive to the Supplier but only such as shall enable the Supplier to perform the Supplier's obligations under the Contract without undue hindrance.
- 14.3 Without prejudice to any other provisions of the Contract, the Supplier shall at all times prevent any nuisance or trespass (including, but without limitation, any noisy working

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operations, or interference with access or use of public or private roads and/or footpaths) or interference with the rights of the owner, or any tenant or occupier of the Site or any adjoining land, arising out of the supply of the Goods and/or Services.

- 14.4 The Supplier shall prior to commencing any work on Site complete a task specific risk assessment and method statement and provide a copy to the Company.

**15. CONFIDENTIALITY**

- 15.1 Except in accordance with the Contract, the Supplier shall not at any time take any photograph of the Site or any part thereof, or of any employee, agent or contractor (or contractor's employee) of the Company, and shall take all reasonable steps to ensure that no such photographs shall be taken or published or otherwise circulated by any person employed by the Supplier, unless the Supplier has obtained the prior written consent of the Company.

- 15.2 All information obtained by the Supplier in the course of dealings, negotiations or the performance of the Contract shall be held confidential and shall not be divulged by the Supplier to any third party save to the extent necessary to effect the due performance of the Contract, and then only when the Supplier has procured that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the Supplier hereunder provided however that this obligation shall not apply to information which:

15.2.1 is or shall become part of the public domain otherwise than in consequence of a breach by the Supplier of the Supplier's obligations under the Contract;

15.2.2 was in the Supplier's possession prior to the award of the Contract and which the Company did not notify to the Supplier as being confidential or which would not reasonably be regarded as confidential by its very nature; or

15.2.3 is required by law to be disclosed, or by the order of any court or tribunal, or by any rules or regulations of any recognised stock exchange, government department or agency.

- 15.3 This Clause shall remain binding on the Supplier notwithstanding the termination of the Contract for any reason.

**16. INTELLECTUAL PROPERTY RIGHTS**

- 16.1 All Intellectual Property Rights are and shall remain the exclusive property of the owner thereof and, save as expressly granted under the Contract, neither the Company nor the Supplier shall acquire any right, title or interest in or to the Intellectual Property Rights of the other or any third party.



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- 16.2 The Supplier hereby grants to the Company and its group companies from time to time a perpetual, non-exclusive, personal, royalty-free worldwide licence to use its Intellectual Property Rights in the ordinary course of business for any purpose relating to the use and enjoyment of the Goods and/ or the Services.
- 16.3 The Supplier shall do and execute or arrange for the doing and executing of, each necessary act, document and thing that the Company may consider reasonably necessary or desirable to perfect the right, title and interest of the Company and its group companies from time to time in and to the Intellectual Property Rights acquired pursuant to Clause 16.2.
- 16.4 When the Purchase Order includes manufacture to the Company's designs the Supplier agrees to inform the Company of any invention or improvement in design or method of manufacture arising out of the performance of the Contract by or on behalf of the Supplier and any such invention or improvement and any patent or registered design rights in respect thereof and copyright in any drawings, documents or specifications relating thereto shall be the property of the Company. The Supplier shall give the Company at the Company's expense all necessary assistance to enable the Company to obtain patent, registered design and similar rights throughout the world.

**17. INSURANCE**

- 17.1 Without prejudice to Clause 11, the Supplier shall take out prior to the Commencement Date, and maintain during the Defects Liability Period, such insurance cover commensurate with the Supplier's obligations under the Contract, with an insurance company of repute carrying on business in the European Union, (each a **Policy** and together the **Policies**). The Policies shall be for not less than five million pounds (£5,000,000) for each event and series of connected events in respect of each of public liability, employer's liability, and product liability.
- 17.2 The Supplier shall ensure that the Company's interest is noted on each Policy, or that a generic interest clause has been included. On the written request of the Company, the Supplier shall provide the Company with a copy of each Policy. On the renewal of each Policy or as and when reasonably required by the Company, the Supplier shall promptly send to the Company a copy of the Policy and the receipt for the premium paid by the Supplier.
- 17.3 If the Supplier fails to take out and/or maintain any of the Policies, the Company may do so and recover the premiums paid from the Supplier as a debt.

**18. TERMINATION**

- 18.1 Notwithstanding any other term of this Contract, this Contract may be terminated:

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18.1.1 by either party immediately on giving notice in writing to the other if the other party:

18.1.1.1 commits any serious or persistent breach of any term of the Contract and in the case of a breach capable of being remedied, shall have failed so to do within 30 days after the receipt of a request in writing from the other party, to remedy the breach (such request to contain a warning of such party's intention to terminate); or

18.1.1.2 has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or passes a resolution or petition for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or if the other party becomes insolvent, subject to an administration order or enters into any voluntary arrangement with its creditors, or ceases or threatens to cease to carry on business.

18.1.2 by the Company:

18.1.2.1 immediately, on giving notice in writing to the Supplier if the performance of the Contract requires the Company to have any permit or licence from any government or other authority, and such permit or licence is not held by the Company at the required time; or

18.1.2.2 on giving not less than one months' notice in writing to the Supplier at any time.

18.2 Any termination of the Contract (howsoever occasioned) shall not:

18.2.1 affect any accrued rights or liabilities of either party;

18.2.2 release the Supplier from any of the Supplier's obligations or liabilities which have accrued under the Contract;

18.2.3 affect the rights and powers conferred by the Contract on the Company; or

18.2.4 the coming into force or the continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such termination.

18.3 Upon termination by the Company, the Company may remove or eject the Supplier from the Site.

18.4 Upon termination by the Company, the Company shall not be liable to make any further

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payments to the Supplier until all expenses incurred by the Company in exercising its rights under Clause 10.2 or under the Contract generally and a sum equal to all loss and damage suffered by the Company as a consequence (direct or indirect) of the termination of the Contract and the breach of contract giving rise to termination, and any other sums due from the Supplier to the Company under or in connection with the Contract, have all been ascertained and recovered by the Company from the Supplier.

**19. VARIATIONS AND CHANGE OF SCOPE**

- 19.1 Where either party requires a Contract Change at any time, the Company may request, and the Supplier may recommend such change by submitting a Contract Change Request in writing to the other party.
- 19.2 Any discussions which may take place between the parties in connection with a Contract Change Request before the agreement of a Variation Order shall be without prejudice to the rights of either party.
- 19.3 Until such time as a change to this Contract is made pursuant to a Variation Order, the parties shall (unless otherwise agreed in writing), continue to perform the Contract in compliance with its terms prior to any required or recommended change.
- 19.4 If the Company submits a Contract Change Request, the Supplier shall, within a reasonable period of time (and in any event within 5 working days) provide a written estimate to the Company setting out:
- 19.4.1 the likely time required to implement the Contract Change Request;
  - 19.4.2 any necessary variations to the Charges arising from the Contract Change Request (having regard to the provisions of Clause 10.5);
  - 19.4.3 the likely effect on the Goods or Services already provided or being provided;
  - 19.4.4 the likely effect of the Contract Change Request on any dates for performance or delivery; and
  - 19.4.5 any other impact of the change on the Contract.
- 19.5 If the Company elects not to proceed with Contract Change Request, there shall be no change to the Contract or its performance by the Supplier. If the Company does wish to proceed with any Contract Change Request the Supplier shall proceed to make such changes without unreasonable delay, following agreement to the terms of a Variation Order. Any change to the Charges as a result of a Contract Change Request shall be specified in a Variation Order.

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**20. ANTI-BRIBERY, MODERN SLAVERY, COMPETITION AND DATA PROTECTION**

- 20.1 The Supplier shall comply with and use reasonable endeavours to ensure all persons associated with the Supplier (as defined by section 8 the Bribery Act 2010) comply with all applicable anti-bribery and anti-corruption legislation including, the Bribery Act 2010 and any applicable EU directives.
- 20.2 The Supplier shall, where obliged to do so by law, comply with the provisions of the MSA and shall use all reasonable endeavours to assist the Company in its compliance with the MSA.
- 20.3 The Supplier shall carry out its obligations under the Contract in compliance with all European and any other applicable data protection laws and with the EU Regulation 2016/679 General Data Protection Regulation (the **GDPR**) and any act of parliament implementing the GDPR in the Relevant Jurisdiction (together the **Data Protection Laws**) which term shall include any statutory extension or modification amendment or re-enactment thereof and any regulations or orders made thereunder.
- 20.4 The Supplier warrants that if it is deemed to be acting as a data processor in relation to any personal data (as defined in the Data Protection Laws) it may receive about the Company as part of the Contract it:
- 20.4.1 has and shall at all times maintain appropriate technical and organisational measures in place against unauthorised and unlawful processing of personal data (as defined for the purpose of the Data Protection Laws) and against accidental loss or destruction of or damage to personal data held or processed by it and that it has taken and shall at all times take all reasonable steps to ensure the reliability of any of its staff who have access to personal data processed in connection with the performance of the Contract.
  - 20.4.2 shall act only on the written instructions of the Company in relation to the processing of any of the Company's personal data in connection with the performance of the Contract.
  - 20.4.3 shall ensure that people processing the data are subject to a duty of confidence.
  - 20.4.4 shall take appropriate measures to ensure security of processing.
  - 20.4.5 shall only engage a sub-processor with the prior consent of the data controller and a written contract.
  - 20.4.6 shall assist the data controller in providing subject access and allowing data subjects to exercise their rights under the Data Protection Laws.

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- 20.4.7 shall assist the data controller in meeting its obligations arising under Data Protection Laws in relation to the security of processing, the notification of personal data breaches and data protection impact assessments.
- 20.4.8 shall delete or return all personal data to the controller as requested at the end of the contract.
- 20.4.9 shall submit to audits and inspections, provide the controller with whatever information it needs to ensure that they are both meeting their Article 28 obligations, and tell the controller immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state.
- 20.4.10 shall indemnify the Company and hold the Company harmless against all and any costs liabilities and losses whatsoever incurred by the Company arising out of any action or inaction of the Supplier its servants agents or contractors that results in the Company being in breach of any of its obligations or duties under the Data Protection Laws.
- 20.5 The Supplier shall not engage in any agreement, arrangement, concerted practice, information exchange or behaviour in breach of UK, Irish, EU or other competition law in force from time to time.
- 20.6 The Company may, at any time forthwith by written notice to the Supplier, terminate this Contract in the event of a breach or suspected breach of any provision of this Clause 20.
- 20.7 The provisions of this Clause 20 shall survive expiry or earlier termination of the Contract.

**21. USE AND PROCESSING OF THE SUPPLIER'S DATA**

- 21.1 The Company is a data controller for the purposes of the Data Protection Laws and the Supplier on behalf of itself and any of its directors, shareholders, members, employees, servants and agents (**Associates**) hereby acknowledges the use and processing of personal data described in this Clause 21.
- 21.2 The Company processes personal data of the Supplier and its Associates in accordance with the Privacy Notice: All Breedon Group Suppliers, a copy of which can be found at [www.breedongroup.com](http://www.breedongroup.com).

**22. MISCELLANEOUS**

- 22.1 Neither the Company nor the Supplier shall be liable for any delay or failure to perform its obligations under the Contract caused by Force Majeure. In such event, the party unable to meet its obligations shall promptly notify the other in writing of the circumstances, and the time for performance of the Contract shall be automatically

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extended by a reasonable period. If the circumstances continue for at least sixty days after such notification, either party may terminate the Contract without fault with immediate effect on giving written notice to the other.

- 22.2 The Supplier shall not assign, sub contract (save for approved sub-contractors) or transfer or in any other manner make over to any third party the benefit and/or of the burden of the Contract without the prior written consent of the Company. The Company may freely assign, subcontract or transfer or in any other manner make over to any third party the benefit and/or the burden of the Contract without the consent of the Supplier.
- 22.3 No forbearance, delay or indulgence by either party in enforcing the provisions of the Contract shall prejudice or restrict the rights of that party, nor shall any waiver of its rights operate as a waiver of any subsequent breach; and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.
- 22.4 The Contract and the documents expressly referred to in it, supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of the Contract. No variation, addition to or modification of any provision of the Contract shall be binding upon the parties unless made pursuant to the terms of the Contract.
- 22.5 Any notice to be given to a party under the Contract shall be given in writing in the English language and delivered by hand or sent by first class prepaid post or otherwise as mentioned below to the other party.
- 22.6 Any notice to be given to the Company shall be addressed to the Company Secretary and delivered or sent to its registered office or such other address as the Company may have notified to the Supplier as its proper address for service.
- 22.7 Any notice to be given to the Supplier shall be addressed or sent to its registered officer or the address of the Supplier stated on the last Purchase Order or the last known address notified in writing to the Company by the Supplier as being its proper address for service.
- 22.8 Notices given in accordance with this Clause 22 shall be deemed to have been received:
- (i) 48 hours after posting (exclusive of the day of posting) if sent by first class prepaid post; or
  - (ii) on the day of delivery if delivered by hand.
- 22.9 If any provision of the Contract shall be held to be invalid, illegal or unenforceable in whole or in part, such provision shall to that extent be deemed not to form part of the Contract, but the enforceability of the remainder of the Contract shall not be affected. In

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the event that any provision of the Contract shall be void or unenforceable by reason of any provision of applicable law, it shall be deleted and the remaining provisions of the Contract shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the spirit of the Contract so far as possible.

- 22.10 Nothing in the Contract is intended to, or shall be deemed to establish any partnership or joint venture between the parties, make any party the agent of the other party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 22.11 Save for the rights of each member of the Breedon Group to enforce any rights under the Contract, nothing in the Contracts (Rights of Third Parties) Act 1999 shall operate to give any third party any right to enforce any term of the Contract. "Breedon Cement", "Breedon", "Breedon Aggregates", "Breedon Trading", "1st Mix", "Express Minimix", "Fyfestone", "Heathfield", "Lagan", "Lagan Concrete", "Pro Mini Mix", "Welsh Slate" and "Whitemountain" are trading names of the Breedon Group.
- 22.12 Any dispute which may arise between the Parties arising out of or in connection with the Contract, its subject matter or formation shall be governed by, and construed in accordance with the law which prevails in the Relevant Jurisdiction and the parties hereby submit to the exclusive jurisdiction of the Courts of in the Relevant Jurisdiction for such purpose.