

**SCHEDULE 1**  
**TERMS AND CONDITIONS WHICH APPLY ONLY TO TRADERS**

Please in particular note **Clause 5.5 (Additional Charges)** and **Clause 9 (Limitation of Liability)**

**1. FORMATION OF CONTRACT, QUOTATIONS AND ORDERS**

- 1.1 Any purported amendment or variation to these Conditions or purported cancellation by the Trader 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.
- 1.2 Subject to Clause 9.3.4 (Limitation of Liability) below, the Trader acknowledges that it has not relied on any statement, promise or representation in relation to the Materials (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.
- 1.3 All samples, drawings, descriptive matter, specifications and advertising issued by the Company for Traders 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 Traders in relation to the services and/or Materials described in them. They shall not form part of the Contract with a Trader or be treated as a description of the services and/or Materials unless expressly stated in writing to be such in the Contract. Where the Company provides to the Trader a sample of the Materials which are later supplied in bulk the Company does not guarantee that every item in the bulk corresponds with the sample. No Materials are sold by sample.

**2. PRICE**

- 2.1 Unless otherwise agreed by the Company in writing, the Contract Price for the Materials, whether delivered to or collected by the Trader, shall be calculated by reference to the prices set out in the Purchaser's Price List applicable to the Trader, current at the time the order is accepted by the Company. The Contract Price for any order which is made by reference to weight or volume or cubic metre only shall be calculated accordingly. In any case where there is no applicable Purchaser's Price List, the Contract Price for the Materials, whether delivered to or collected by the Trader, shall be determined by reference to the price(s) set out in the quotation given by the Company.
- 2.2 The Contract Price may be increased or decreased at any time by the Company upon giving to the Trader 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 2.2 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.

- 2.3 Clauses 2.1 and 2.2 shall override any other provision relating to price in any estimate given by the Company or which the Trader seeks to impose, or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 The Contract Price shall be exclusive of any VAT or other applicable sales taxes (save for those provided for in Clause 2.7) and of any Additional Charges, all of which amounts the Trader shall pay in addition to and together with and on the same due date as the Contract Price for the Materials.
- 2.5 Without prejudice to any other rights or remedy available to the Company an Additional Charge may be made if:
- 2.5.1 the Trader incurs any of the additional charges set out on the relevant Company quotation; or
  - 2.5.2 the Trader is notified prior to or at the time of acceptance of the order that an additional charge will be made for a delivery below the Minimum Load or where two different types of the Materials are loaded onto one vehicle; or
  - 2.5.3 delivery is notified outside the Company's normal working hours (8am to 5pm Monday to Friday) or on a bank or public holiday; or
  - 2.5.4 the Trader 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
  - 2.5.5 the Trader returns part of the delivery having failed to accept the full ordered quantity of Materials; or
  - 2.5.6 the unloading of the delivery vehicle is delayed or the Materials are not discharged within the times permitted as are set out in the Company's quotation (time being of the essence for the purposes of this Clause 2.5.6); or
  - 2.5.7 the delivery is aborted due to unsuitable or unsafe access to the Destination; or
  - 2.5.8 the Trader makes a request to change the delivery dates, quantity or types of Materials ordered, or to change the Specification; or
  - 2.5.9 the Trader varies or cancels any delivery without giving at least 48 hours' notice to the Company; or
  - 2.5.10 the Trader changes a date for delivery of the Materials without giving at least 48 hours

written notice to the Company; or

2.5.11 the Trader fails to return on request any mortar containers supplied by the Company to the Trader or if upon return to the Company the mortar container is not in a good and serviceable condition. The Trader shall not use the mortar container for any purpose other than the holding or distribution of mortar.

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

2.7 Unless stated otherwise in the Purchaser's Price List, or in the absence of a Purchaser's Price List, on the Company quotation, the Contract Price is inclusive of the aggregates levy due and payable at the appropriate rate (if any).

### **3. MATERIALS: SPECIFICATION AND USE**

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

3.2 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 Materials 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 Materials or otherwise as notified to the Trader 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.

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

3.4 The Trader acknowledges and accepts that the Materials may contain substances which can cause harm or damage to humans and animals, plants, property or the environment and the Trader shall take all necessary steps in the use of the Materials to ensure no such harm or damage is caused. The Company

shall not be liable for any failure of the Trader to store, transport, handle or use the Materials in accordance with good industry practice and generally applicable or recognised health and safety obligations and procedures and/or the Recommendations.

- 3.5 The Trader undertakes to the Company that it has in place all necessary permits, licences, consents and authorisations of any type whatsoever, in relation to the activities carried out by the Trader for which the Materials are required ("Authorisations") or related to the nature and type of the Destination and its surrounding areas and habitat including without limitation, any engineering works in or around water courses at or near to the Destination. The Trader shall supply to the Company on request and prior to Delivery, copies of all Authorisations. The Company shall not be liable for any failure of the Trader to obtain or comply with the Authorisations.
- 3.6 Each provision of this Clause 3 which states that the Company shall not be liable for a matter or thing shall include an obligation on the part of the Trader fully and effectually to indemnify the Company from and against all Losses arising from or in consequence of that matter or thing.

#### **4. PAYMENT AND DEFAULT**

- 4.1 Subject to Clause 4.2 and 4.3 below, payment of the Contract Price for the Materials shall be made in pounds sterling in cleared funds on or before the end of the month following the month of delivery of the Materials to the Trader, or their collection by or on behalf of the Trader (the "Final Date for Payment").
- 4.2 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.
- 4.3 The Trader shall make all payments due under the Contract without deduction for set off, counterclaim, abatement or otherwise.
- 4.4 The Company reserves the right in its absolute discretion to require payment by the Trader for any Materials that have already been supplied by way of cleared funds before further Materials are supplied notwithstanding any previous agreement to provide credit to the Trader. Likewise, in its absolute discretion, the Company reserves the right to require payment by the Trader in cleared funds for the supply of such further Materials, notwithstanding any previous agreement to provide credit to the Trader.
- 4.5 If the Trader:
- 4.5.1 fails to make any payment to the Company on the due date; or
  - 4.5.2 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
- 4.5.3 exceeds any credit limit assigned to the Trader from time to time by the Company; or
- 4.5.4 commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts; or
- 4.5.5 has a petition filed, notice given, resolution passed, or order made, for or in connection with its winding up or bankruptcy; or
- 4.5.6 is the subject of an application to court or order for the appointment of an administrator; or
- 4.5.7 has a receiver or an administrative receiver or administrator appointed over any of its assets; or
- 4.5.8 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
- 4.5.9 (being an individual) is the subject of a bankruptcy petition or order; or
- 4.5.10 (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
- 4.5.11 suspends, or threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 4.5.12 suffers deterioration in its financial position to such an extent that in the Company's reasonable opinion the Trader's capability adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- 4.5.13 is in breach of, or the Company suspects the Trader is in breach of, any provisions of Clause 12 of this Schedule 1; or
- 4.5.14 in the opinion of the Company (in its absolute discretion) the Destination or the route to the Destination is unsafe as defined in clause 5.7.

then the full balance outstanding on any account between the Company and the Trader 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 undelivered Materials;  
or
- (ii) immediately and without notice cancel or suspend any further delivery to the Trader under the Contract; or
- (iii) immediately and without notice sell or otherwise dispose of any Materials which are subject of the Contract; or
- (iv) terminate the Contract with immediate effect by giving notice to the Trader.

4.6 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 8% 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 Trader shall pay the interest together with the overdue amount.

## **5. DELIVERY**

5.1 The Trader shall ensure that the Company has reasonable prior notice (which shall not be less than 48 hours for small loads or pours and 5 Business Days for large loads or pours or where the Trader requires more than one load or pour in any one day) of the required time and date of delivery or collection, and where the Materials 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 or which exceed the Trader's available storage capacity, indicative times for delivery of given amounts of the Materials to ensure that the Company is able to deliver the Materials without returns.

5.2 The Trader shall ensure the Company is given 5 Business Days' notice for any Materials containing one or more of the following:

5.2.1 specialist admixtures or fibres;

5.2.2 steel fibres;

5.2.3 a specific colour; and/or

5.2.4 a polymer modified binder.

5.3 If the Company is unable to deliver Materials because of inadequate instructions, insufficient storage capacity of the Trader at the Destination, unsuitable personnel at the Destination at the time of delivery to receive the Materials, inadequate or unsafe discharge conditions at the Destination or the Trader fails

to take or permit delivery of the Materials, or the Trader'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 Materials.

- 5.4 The Company shall use reasonable efforts to comply with any time or date agreed by the Company for delivery of the Materials, 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 Trader. If no times or dates are agreed, the Materials shall be delivered to the Trader within a reasonable time of the acceptance of the order. The Company may deliver the Materials earlier as well as later than any dates and times agreed by the Company, and the Trader must accept the delivery of the Materials accordingly.
- 5.5 The Company may deliver the Materials 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 Trader in respect of any instalment shall not entitle the Trader to repudiate, cancel or terminate the Contract.
- 5.6 The Company, its agents and/or contractors shall not be obliged to deliver any Materials to the 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 Destination, equipment at the Destination or onsite manoeuvrability of the Destination is unsuitable, hazardous or inadequate for the proper and safe unloading of the Materials, or where personnel at the Destination are rude, offensive or abusive to the Company's employees, contractors or agents. The Trader shall indemnify and keep the Company indemnified against any Losses arising from the access to the Destination, equipment at the Destination or onsite manoeuvrability of the Destination being unsuitable, hazardous or inadequate or the Trader's personnel being rude, offensive or abusive.
- 5.7 The Company shall not be obliged to deliver any Materials to any Destination where, in the opinion of the Company (in its absolute discretion), the Destination or route to the Destination is unsafe or where the conditions for safe delivery have not been met (including the condition and state of repair of the receptacle for the Materials (if any)) or in the event of any such receptacle suffering any blockage in whole or in part or any other factor relevant to the rendering discharging of the load, in the reasonable opinion of the Company or the delivery driver, unsafe. In this Clause 5.7, "unsafe" shall mean that it poses a risk, actual or potential, to persons, property or the environment.
- 5.8 If the Materials are to be delivered and left on a street or public highway the Trader is responsible for compliance with all laws and regulations and the Trader shall take all measures required to ensure the safety and protection at all times of persons or property. The Trader shall indemnify the Company its agent or contractor against all damages, liabilities, costs, claims, losses or expenses which the Company, its agent or contractor may incur as a result of such delivery.

5.9 The Trader shall ensure that it provides to the Company the correct site address and contact names for Delivery, and the Company shall have no liability to the Trader where the Company is not given sufficient information to enable it to deliver the Materials to the correct location, or where a neighbouring site to the delivery address accepts the Materials intentionally or unintentionally.

5.10 Subject to Clause 5.11, the Company shall not be liable to a Trader for any Losses whether:

5.10.1 direct; or

5.10.2 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

5.10.3 costs, charges or expenses

resulting from any delay in the delivery of the Materials or failure to deliver the Materials within a reasonable time (whether such delay or failure is caused by the Company's negligence or otherwise). No delay or failure to deliver the Materials shall entitle the Trader to terminate the Contract unless it continues for 30 days or more.

5.11 Should the Trader not terminate the Contract under Clause 5.10, then any liability of the Company for continued non-delivery shall be limited to either:

5.11.1 supplying Materials equivalent to the delayed or non-delivered Materials, free of charge; or

5.11.2 issuing a credit note in respect of the delayed or non-delivered Materials at the pro rata Contract Price.

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

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

5.14 The Trader shall, at no cost to the Company, make available to the Company, sufficient wash out facilities to enable any delivery truck to be cleaned before leaving the Destination.

## **6. INSPECTION AND SHORTAGES**

6.1 The Company shall use reasonable endeavours to supply the quantity of Materials provided for by the Contract and to notify the Trader of any surplus or shortfall in the quantity of Materials delivered.



Subject to Clause 6.2, if a surplus or shortfall occurs the Company shall discuss with the Trader the possible options to resolve the surplus or shortfall and the Trader shall not be entitled to object to or reject the Materials (or part) by reason of any such surplus or shortfall.

- 6.2 If the Trader 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 Trader 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 Destination, or use of the weighbridge at the Destination) the results of which shall be binding on the Parties, save in respect of fraud or manifest error.
- 6.3 The Trader acknowledges and accepts that in the case of mortar the volume delivered shall be based on measurements in units of approximately one third of a cubic metre tub and the Company cannot guarantee the volume of mortar delivered, save in respect of fraud or manifest error.
- 6.4 If the Notice Procedure is not followed the Materials 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 Trader shall not be entitled to make a claim in respect of an alleged shortfall in the Material.
- 6.5 Subject to Clauses 6.2 and 6.3 above, the Company's liability to a Trader for any shortfall is limited to:
- 6.5.1 making good the shortfall within a reasonable time; or
- 6.5.2 issuing a credit note for the shortfall at the pro rata Contract Price.
- 6.6 The Trader 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 Materials are not in conformity with the Contract. If the Trader fails to follow the Notice Procedure the Materials will be deemed to have been accepted and the Trader shall not be entitled to reject the Materials.
- 6.7 The Company shall not be obliged to provide to the Trader copies of any Delivery Tickets which are, at the time of the request from the Trader, more than six months old.

## **7. RISK AND TITLE**

- 7.1 Risk in the Materials shall pass to the Trader on loading of the Materials onto a vehicle at a Depot.
- 7.2 Ownership of the Materials shall not pass to the Trader until the Company has received payment in cleared funds of all sums owed by the Trader to the Company under the Contract and under any other contract between the Company and the Trader in respect of which payment has become due.

- 7.3 Until ownership passes to the Trader, the Trader shall; subject to Clause 7.5:
- 7.3.1 hold the Materials as the Company's fiduciary agent and bailee;
  - 7.3.2 keep (at no cost to the Company) the Materials separately and safely stored, satisfactorily protected and identified as the Company's property;
  - 7.3.3 only be entitled either to re-sell the Materials at full market value or use the Materials in the ordinary course of its business. For the avoidance of doubt, it shall not be considered the "ordinary course of business" for the Trader to trade while subject to any of the matters or events described in Clause 4.5;
  - 7.3.4 not remove, deface or obscure any identifying mark or packaging on or relating to the Materials; and
  - 7.3.5 maintain the Materials in satisfactory condition and keep them insured against all usual risks for their full price from the date of delivery.
- 7.4 The Company shall be entitled to recover payment for the Materials (and also VAT, other sales taxes and Additional Charges) from the Trader even though the ownership of the Materials has not passed from the Company to the Trader.
- 7.5 The Company shall be entitled at any time to inspect or recover any or all of the Materials in the Trader's possession to which the Company has title and for that purpose the Trader hereby permits the Company or its servants, agents or contractors to enter upon any premises occupied by the Trader or to which the Trader has access and where the Materials may be or are believed to be situated.
- 7.6 On termination of the Contract, the Company's rights under this Clause 7 shall remain in effect.

## **8. QUALITY**

- 8.1 The Company warrants that (subject to the other provisions of the Conditions) on Delivery the Materials shall:
- 8.1.1 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;
  - 8.1.2 be reasonably fit for the purpose for which they are normally used; and
  - 8.1.3 be reasonably fit for any particular purpose for which the Materials are being bought if the

Trader has made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Trader to rely on the skill and judgment of the Company in that regard.

- 8.2 Materials 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.
- 8.3 Whilst every effort is made to maintain consistency in the characteristics of the Materials, the Trader may find that the Materials are affected by the following matters or variances, and the Trader hereby agrees to such matters or variances and acknowledges that they shall not constitute a Defect:
- 8.3.1 variations in the colour, consistency, texture, and size of the particles forming all or part of the Materials;
  - 8.3.2 the surface finish or visual appearance of the Materials;
  - 8.3.3 the presence in the Materials of lignite, carbonaceous particles or organic material, or the consequences of such presence;
  - 8.3.4 variations arising from permitted tolerances to the formula to which the Materials are manufactured;
  - 8.3.5 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;
  - 8.3.6 the interchangeable use by the Company in the Company's discretion of the aggregates forming part of the Materials;
  - 8.3.7 in the case of trowel-ready mortar any loss of workability in the Materials over time;
  - 8.3.8 any other specific variances that are drawn to the Trader's attention before entering into the Contract; and/or
  - 8.3.9 the Company manufacturing the Materials to an approved British Standard notwithstanding the Trader has requested manufacture to a withdrawn standard or designation.
- 8.4 The Company does not guarantee any particular weight of Materials 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 Trader must take specialist advice to ascertain its precise requirements as to quantity of Materials it requires for a specific task or project.

8.5 Subject always to Clause 8.3, the Company shall not be liable for a breach of Clause 8.1 (in whole or in part) unless:

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

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

8.5.3 the Trader has complied with the Recommendations; and

8.5.4 the Trader has complied with the recommended storage conditions as may be notified by the Company and has not tampered with the Materials in an attempt to rectify any alleged Defect.

8.6 Subject always to Clause 8.3 and 8.4, the Company shall not be liable for a breach of Clause 8.1 in any case where the Defect has arisen as a result of:

8.6.1 the Trader's failure to use the Materials in accordance with the guidelines set out in the Specification, the Recommendations or good industry practice; or

8.6.2 the Trader mixing the Materials with an incompatible product or any product which is not consistent with the normal and proper use of the Materials or any admixture or fibre forming part of the Materials; or

8.6.3 the Materials being manufactured processed or mixed by the Company to the specification of the Trader which is not consistent with the Specification or to a specification which has been withdrawn; or

8.6.4 the Trader's breach of Clause 5.7; or

8.6.5 the use of the Materials by the Trader after the end of their recommended shelf life or use by date; or

8.6.6 fair wear and tear; or

- 8.6.7 the failure of the Trader to stop the discharge or offloading of the Materials where a Defect is apparent on inspection of discharge or unloading; or
- 8.6.8 the Trader's pump not being in good condition or the Trader's personnel not operating the pump correctly. The Company is not liable for the discharge and/or offloading of the Materials at the Destination; or
- 8.6.9 the Trader requesting more than one type of Materials being loaded onto the same delivery vehicle and cross contamination of the Materials occurring; or
- 8.6.10 the failure of any fibres or other specialist admixtures forming part of the Materials; or
- 8.6.11 the failure of the Trader to ensure it has sufficiently qualified personnel at the Destination to offload and receive, cure, lay and/or finish the Materials; or
- 8.6.12 the use of loading shovels to transfer Materials from the plant to the vehicle which gives rise to cross contamination; or
- 8.6.13 the ground conditions into which the Materials are to be discharged not being suitable or appropriate to receive them; or
- 8.6.14 in respect of readymixed concrete due to:
  - 8.6.14.1 any spoiling material or contamination being added to the Materials without the written agreement of the Company including, without limitation, water; or
  - 8.6.14.2 the Trader has not cubed, sampled or tested any Defect in accordance with British Standard EN13791, any British Standard relevant to the Materials, or other standard agreed in writing with the Company.
- 8.6.15 in respect of asphalt due to:
  - 8.6.15.1 any spoiling material or contamination being added to the Materials without the written agreement of the Company including, without limitation, water or a non approved proper releasing agent; or
  - 8.6.15.2 the Trader's failure to discharge the materials within 15 minutes after arrival at the Destination and/or to regularly record the temperature of the Materials and utilise them within the correct temperature range; or
  - 8.6.15.3 the Trader requesting small batches or loads which the Trader accepts lose heat

and workability quickly; or

8.6.15.4 the Trader's paver or roller not being in good condition, or the Trader's personnel not operating the paver or roller correctly, including, without limitation, laying the Materials too fast, too slowly, dragging or incompetent workmanship or the laying, curing, sealing or finishing of the Materials using the wrong equipment using the wrong rolling matrix, or roller size; or

8.6.15.5 the Trader laying asphalt over a concrete joint; or

8.6.15.6 the Trader laying asphalt to an unconfirmed edge; or

8.6.15.7 the Trader has not regularly measured and monitored the temperature of the Materials from the point of arrival at the Destination until used by the Trader. The Company has no liability for any decision of the Trader not to discharge the Materials immediately on arrival at the Destination; or

8.6.15.8 the Trader allows traffic onto the surface of the asphalt too early or before the Materials have hardened.

8.6.16 in respect of mortar, due to:

8.6.16.1 the poor workmanship of the Trader; or

8.6.16.2 the Trader failing to store the Materials at the ambient temperature (including leaving the Materials exposed to excess heat or cold, sunlight or frost); or

8.6.16.3 the laying or finishing of the Materials; or

8.6.16.4 the Trader's request as to the workability of the Materials; or

8.6.16.5 the failure of the Trader to take adequate precautions against any frost or adverse or extreme weather in the finished work in which the mortar has been applied or the containers in which it is stored; or

8.6.16.6 the addition of water to increase workability during the retardation period; or

8.6.16.7 the Trader failing to clean any mortar tub properly before delivery of Materials; or

8.6.16.8 any failure to reseal the mortar within the liner in the mortar tub; or

8.6.16.9 the use of mortar which has been frozen;

8.6.17 in respect of pigmented mortar:

8.6.17.1 the Trader fails to have a colour match completed by the Company and/or a sample panel built; or

8.6.17.2 the issue relates to colour variation caused by different absorption rates within the bricks or blocks to which the pigmented mortar is applied; or

8.6.17.3 any variations in colour or tone associated with changes to pointing techniques or timing or finishing generally; or

8.6.17.4 use of pigmented mortar which has been frozen; or

8.6.17.5 relates to the occurrence of efflorescence in the mortar; or

8.6.17.6 use or application of remix mortar in temperatures over 30°C or below 3°C; or

8.6.17.7 the failure to store mortar away from direct sunlight.

8.7 Subject always to Clauses 8.3, 8.4, 8.5 and 8.6, if the Materials do not conform with Clause 8.1, and are consequently the subject of a Defect, then the Company shall at its option:

8.7.1 re-supply such Materials free of charge; or

8.7.2 issue a credit note at the pro rata Contract Price.

8.8 If the Company either re-supplies the Materials or issues a credit note under Clause 8.7 then it shall have no further liability for a breach of Clause 8.1. This Clause does not affect any other rights or claims of the Trader arising out of any other provision of the Contract.

## **9. LIMITATION OF LIABILITY**

9.1 Save for where the Contract provides specific remedies to the Trader in respect of delay under Clauses 5.9 and 5.10 (Delivery), short delivery under Clause 6.4 (Inspection and Shortages) and breach of Clause 8.1 (Quality), 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 Trader in respect of:

9.1.1 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

- 9.1.2 any use made or resale by the Trader of the Materials, or any product incorporating the Materials; and
  - 9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract or the supply of the Materials.
- 9.2 All warranties, conditions and other terms implied by statute or common law which may be excluded by the agreement of the Trader (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.
- 9.3 Nothing in these Conditions shall exclude or restrict the Company's liability:
- 9.3.1 for death or personal injury resulting from the Company's negligence; or
  - 9.3.2 under Section 2(3) of the Consumer Protection Act 1987; or
  - 9.3.3 for any matter which it would be unlawful for the Company to exclude or attempt to exclude its liability; or
  - 9.3.4 for fraud or fraudulent misrepresentation.
- 9.4 Subject to Clauses 9.2 and 9.3:
- 9.4.1 The Company's total liability to the Trader in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the Contract, the Materials, or the supply of the Materials shall be limited to a maximum financial cap of the lesser of:
    - 9.4.1.1 £50,000.00; and
    - 9.4.1.2 a sum equivalent to the Contract Price.
  - 9.4.2 The Company shall not be liable to the Trader for any of the following (whether direct or indirect):
    - 9.4.2.1 pure economic loss;



- 9.4.2.2 loss of profits;
- 9.4.2.3 loss of business;
- 9.4.2.4 loss of goodwill and/or reputational damage;
- 9.4.2.5 losses arising from any liability to a Third Party; or
- 9.4.2.6 claims for consequential costs, charges, expenditure or compensation (including legal costs).

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

- 9.5.1 normal wear and tear; or
- 9.5.2 the Trader's or a Third Party's wilful damage, negligence, abnormal working practice, misuse, alteration or repair of the Materials; or
- 9.5.3 failure to comply with the recommended conditions for the storage of the Materials set out in Clause 11 (Recommended Shelf Life and Conditions for Storage); or
- 9.5.4 use of the Materials in unsuitable conditions; or
- 9.5.5 matters in respect of which the Company is relieved from liability under Clauses 8.4 or 8.5.

9.6 If the Materials are manufactured processed or mixed by the Company to the specifications of the Trader or its agents, the Trader 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.

## **10. FORCE MAJEURE**

10.1 The Company may defer delivery, terminate the Contract or reduce the volume of Materials delivered to the Trader and shall not be liable to the Trader 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.

10.2 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.

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

## **11. RECOMMENDED SHELF LIFE AND CONDITIONS FOR STORAGE**

- 11.1 The Company shall use reasonable endeavours to deliver Materials to the Trader within a reasonable period after the date of manufacture and in any event within a reasonable time before the expiry of the recommended shelf life.
- 11.2 The Company shall have no liability to the Trader for the use of Materials following the expiry of the recommended shelf life or if the Materials are not stored in the recommended conditions as notified by the Company to the Trader.

## **12. ANTI-BRIBERY AND COMPETITION**

- 12.1 The Trader shall comply and use reasonable endeavours to ensure that all subcontractors, suppliers and all persons associated with the Trader (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 Trader 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 Trader 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 Trader shall use all reasonable endeavours to assist the Company in its compliance with the MSA.
- 12.3 The Trader 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.