

**TERMS AND CONDITIONS WHICH APPLY TO THE SUPPLY OF SURFACING AND CONTRACTING SERVICES BY
ANY MEMBER OF THE BREEDON GROUP**

Please in particular note **Clause 3.6 (Additional Charges)** and **Clause 10 (Limitation of Liability)**

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

"Additional Charge(s)" means the additional charge(s) payable in addition to the Contract Price for the Materials provided for in Clause 3.6.

"Advance Payment" means the initial payment required of the amount set out in the Quotation (if any) prior to the Company commencing the provision of the Services.

"Breedon Group" means Breedon Cement Limited (CRN: 08284549) Breedon Southern Limited (CRN: 00156531) both having their registered office at Pinnacle House, Breedon Quarry, Breedon on the Hill, Derby, DE73 8AP and/or Breedon Northern Limited (CRN: SC144788) having its registered office at Ethiebeaton Quarry, Kingennie, Monifieth, Angus, DD5 3RB or any other company within the Breedon Group of companies, further details of which can be found at www.breedongroup.com.

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

"Company" means the member of the Breedon Group supplying the Services to the Purchaser.

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

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

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

"Defect" means any material shortcoming or material non-conformity in the condition and/or attributes of the Services and/or Materials as compared with the requirements of the Contract.

"Finished Product" means the finished Surface after completion of the Services.

"Losses" means all and any costs claims damages or liabilities whether direct or indirect suffered or

incurred by the Company.

"Maintenance" means maintenance of the surface of certain roads and highways, in accordance with the Scope.

"Materials" means asphalt and other bituminous bound materials and any goods and materials forming part of the Services to be supplied by the Company to the Purchaser (including any part or parts of them) and shall (in the context of exclusions or limitations of the Company's liability contained in the Conditions or where the context admits or requires) include goods, materials or parts as aforesaid which are defective or otherwise non-compliant with the obligations of the Company pursuant to the Contract or otherwise.

"Party" means a party to the Contract.

"Payment Dates" means the dates for payment of the Contract Price as set out in the Quotation.

"Proposal" means the proposal prepared by the Company in relation to the Services.

"Purchaser" means the person who purchases the Services from the Company.

"Quotation" means the Company's quotation given to the Purchaser for the supply by the Company of the Services and/or Maintenance.

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

"Scope" means the scope of the Services to be provided to the Purchaser in the Purchaser's request for a Quotation (subject to acceptance by the Company), the Quotation or any special or additional instructions requested by the Purchaser and agreed to by the Company in writing.

"Services" means the laying of the Materials including ancillary preparation, planning and/or Maintenance in accordance with the Scope.

"Site" means the location(s) or point(s) where the Company shall provide the Services.

"Specification" means the specification of the Materials in British Standards BS59849, together with any other Surface specific or specific to the Services Specification accepted by the Company in writing as being the Specification.

"Surface" means any type of surface carriageway either vehicular or pedestrian including roads, highways or pavement or agricultural silage pads, car parks, cycleways, tow paths, tracks, runways and taxiways wherever located or situated.

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

"Works" means the works to be carried out by or on behalf of the Purchaser at the Site of which the Services shall form part.

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

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

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

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

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

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

2. BASIS AND FORMATION OF THE CONTRACT

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

2.2 Any Quotation issued by the Company may be withdrawn at any time before acceptance of an order and shall be deemed to be withdrawn if an order is not received within 30 days of its date unless stated otherwise on the Quotation.

2.3 A Quotation does not constitute an offer to supply the Services on any other basis than a Contract incorporating these Conditions and no contract shall exist until there has been an order from the Purchaser which has been accepted by the Company and any such order shall be deemed to be an offer by the Purchaser to purchase the whole of the Services as set out in the Quotation (and not part only) subject to these Conditions.

2.4 The Scope of the Services shall be as set out in the Scope or the Quotation or, to the extent there is no conflict with the Scope or the Quotation and provided it has been accepted by the Company, in the Purchaser's order.

- 2.5 The Quotation shall set out, in detail, the Scope of the Services required, and the Purchaser shall be responsible for checking the Quotation is accurate and complete. Details required include the location and size of the Site, the location and extent of the Services, any restrictions as to access to the Site (including any parking or unloading restrictions on the public highway adjacent to the Site), and the type(s) of Services that the Purchaser wishes the Company to supply.
- 2.6 The Company reserves the right to make any change to the specification of the Materials or the Services which do not materially affect the quality and performance of the Materials or the Services or which is required by law or applicable regulatory requirements.
- 2.7 Any purported amendment or variation to these Conditions or purported cancellation by the Purchaser of the Contract in whole or in part shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.
- 2.8 Subject to Clause 10.3.4 (Limitation of Liability) below, the Purchaser acknowledges that it has not relied on any statement, promise or representation in relation to the Materials and/or the Services (including design, planning or logistics of the Services or the use, strength, fitness for any purpose, surface area yield, storage or handling of the Materials) made or given by or on behalf of the Company either before or after the date of the Contract which is not set out in the Contract.
- 2.9 All samples, drawings, descriptive matter, specifications and advertising issued by the Company to Purchasers and any descriptions or illustrations contained in the Company's literature or web sites are issued or published for the sole purpose of giving product information or as a guide for Purchasers in relation to the Services and/or Materials described in them and can be relied upon by the Purchaser. They shall not form part of the Contract with a Purchaser or be treated as a description of the Services and/or Materials unless expressly stated in writing to be such in the Contract. No Materials are sold by sample.
- 2.10 The Company may withdraw any Order, at any time after acceptance, if the Purchaser does not meet any credit checks carried out by the Company, or the Company is unable to obtain credit insurance in respect of the debts (actual or anticipated) of the Purchaser in relation to the Services, on commercially sensible terms.

3. PRICE

- 3.1 At the time of accepting the Purchaser's order or not more than five Business Days thereafter, the Purchaser shall if requested to do so pay the Advance Payment to the Company. Orders shall not be deemed confirmed until the Advance Payment is paid in full. The Advance Payment shall be refundable in the circumstances set out in the Quotation.

- 3.2 The final values of the Services carried out by the Company (except such as may have been instructed on a daywork basis) shall be established by measurement on completion and calculated by reference to the prices set out in the Quotation. All Services shall be re-measured in accordance with the Method of Measurement for Highway Works, current at the time of execution of the Services, unless otherwise stated in the Quotation.
- 3.3 The Contract Price is fixed for the period set out in the Quotation.
- 3.4 Clauses 3.1 to 3.4 shall override any other provision relating to price in any estimate given by the Company or which the Purchaser seeks to impose, or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.5 The Contract Price shall be exclusive of any VAT or other applicable sales taxes duties and/or levies and of any Additional Charges, all of which amounts the Purchaser shall pay in addition to and together with and on the same due date as the Contract Price. The Contract Price is inclusive of aggregates levy and carbon levy as at the rate in force at the date of the Conditions. The Company reserves the right to increase the Contract Price in the event of any such increase in the aggregates levy and/or carbon levy.
- 3.6 Without prejudice to any other rights or remedy available to the Company an Additional Charge may be made if:
- 3.6.1 the Purchaser incurs any of the additional charges set out on the relevant Quotation; or
 - 3.6.2 Services are to be performed outside the Company's normal working hours (8am to 5pm Monday to Friday) or on a bank or public holiday; or
 - 3.6.3 the Purchaser re-directs, refuses or fails to allow the Company on to Site to perform the Services, fails to give sufficient Site instructions, or fails to obtain appropriate licences or authorisations which prevents or delays performance; or
 - 3.6.4 the Materials are not discharged within the times permitted as are set out in the Quotation (time being of the essence for the purposes of this Clause 3.6.4); or
 - 3.6.5 the Company is obliged to use sundry parts (including bituminous grit, bituminous emulsion, cleaning existing services or compacting foundations), additional Materials or other products required in order to properly perform the Services in accordance with the Contract; or
 - 3.6.6 the Services cannot be performed due to unsuitable or unsafe access to the Site (but for the avoidance of doubt the Company is under no obligation to provide the Services in such circumstances); or

- 3.6.7 the Purchaser makes a request to change the delivery dates, quantity or types of Services ordered, or to change the Specification; or
- 3.6.8 the Purchaser varies or cancels any delivery or changes the date for performance of the Services without giving at least 48 hours' notice to the Company; or
- 3.6.9 the Purchaser requests the Company to carry out cleaning or any preparatory work required prior to or during the performance of the Services; or
- 3.6.10 the Purchaser requests the Company to provide the forming of any tie-in detail, either transverse or longitudinal, to existing pavement; or
- 3.6.11 the Purchaser requests the sampling or testing of Materials other than the Company's routine laboratory analysis and quarry control; or
- 3.6.12 the Company has to lay the Materials by hand if insufficient space or onsite manoeuvrability is available on Site for the Company's machinery; or
- 3.6.13 in providing the Services, the Purchaser has not constructed all kerbing before the Company commences the performance of the Services; or
- 3.6.14 in providing the Services, where the construction does not include for kerbs or concrete haunches, the Purchaser fails to provide and maintain accurate side levels at not more than ten metre intervals including the provision of all pins and equipment and such other setting out as may be necessary for the completion of the Services and all such levels and setting out shall have been agreed previously with the Purchaser's engineer (the Company shall not be liable for any delay in providing the Services caused by a delay in the Purchaser's engineer giving approval in accordance with this Clause); or
- 3.6.15 the Purchaser requires to lay Material to a depth other than that stated in the Quotation, whether to overcome a variation in level or other irregularity or by reason of any other requirement on a pro rata basis for the additional thickness of Material laid; or
- 3.6.16 the Company has to attend on Site on a greater number of occasions than shown on the Quotation. Any additional visits will be subject to an extra charge for all additional costs incurred including transporting labour and Plant to and from the Site, reduced output and any other consequential effects; or
- 3.6.17 if the Company considers the depth of the sub-base provided for the Quotation is not sufficient to meet surface level tolerances, or otherwise in the reasonable opinion of the

Company, not sufficient to properly provide the Services, then the Company may charge such additional costs for an additional depth of relevant layer in order to properly provide the Services, unless instructed not to do so by the Purchaser in writing prior to the provision of the Services

- 3.6.18 the Company incurs any standing time due to the default by the Purchaser, their employees, agents or subcontractors, for which labour, plant and Materials shall be chargeable at standard daywork rates; or
- 3.6.19 the Company has to cut joints in existing surfaces either longitudinal or horizontal; or
- 3.6.20 the Company has provided the Quotation without an accurate plan or drawing of the Works and/or Site; or
- 3.6.21 if the base course binder course or surface course and other surfaces, ironwork or street furniture have not been constructed above the level of the surface on which the first course of such Materials is to be laid. The Company shall not be responsible for the breaking out, building up or making good of the surfacing to any such items; or
- 3.6.22 the Purchaser fails to ensure the Company has full uninterrupted access to the area of works forming part of the Site, so as not to impede the Services; or
- 3.6.23 the Purchaser fails to provide a safe working environment on the Site; or
- 3.6.24 the Company carries out additional tests pursuant to Clause 6.9; or
- 3.6.25 the Company is obliged to lay any additional thickness of the Material to regulate the Finished Product.

4. MATERIALS: SPECIFICATION AND USE

- 4.1 The Company warrants to the Purchaser that the Services shall conform in all material respects to the Specification. The Company shall have no liability to the Purchaser as to the suitability of the Materials or the Finished Product for any particular purpose and the Purchaser must rely on its own skill and judgment.
- 4.2 The Company does not accept any responsibility or liability for the design of the Services or the Materials and the Purchaser must independently verify that its choice of Materials and proposed method of delivering the Services is suitable for the Works.
- 4.3 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 use 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 the Scope or otherwise as notified to the Purchaser orally or in writing ("**Recommendations**") or for any Losses arising out of any act or omission which is inconsistent, not recommended or otherwise advised against pursuant to the Specification, the Scope or good industry custom and practice. The Company shall not be liable for any Losses arising out of any failure to comply with the Recommendations.

- 4.4 The Company shall not be liable for (or for the characteristics of) any of the Materials and/or the Services which are, at the request of the Purchaser, not supplied in accordance with the Specification.
- 4.5 The Purchaser 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 Purchaser 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 Purchaser to 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.
- 4.6 Each provision of this Clause 4 which states that the Company shall not be liable for a matter or thing shall include an obligation on the part of the Purchaser fully and effectually to indemnify the Company from and against all Losses arising from or in consequence of that matter or thing.
- 4.7 The Purchaser shall be responsible for the application of any tack coat and/or bond coat to any waterproofing system applied to bridge decks and/or viaduct decks of structures or other similar structure. The Company shall not be liable for any Defect which arises as a result of the failure of any waterproofing course applied to the Surface prior to the provision of the Services.

5. PAYMENT AND DEFAULT

- 5.1 Unless stated otherwise on the Quotation subject to Clause 5.2 and 5.3 below, payment of the Contract Price shall be made in pounds sterling in cleared funds on the Payment Dates or if there are no Payment Dates on or before the end of the month following the month of performance of the Services to the Purchaser (the "Final Date for Payment").
- 5.2 Unless stated otherwise on the Quotation or agreed to in writing by the Company payment for Services supplied on a daywork basis shall be calculated in accordance with the C.E.C.A. Schedule of Dayworks ruling at the time that the Services are carried out.
- 5.3 Unless stated otherwise on the Quotation payment shall be made to the Company each month for Services carried out in the month irrespective of any provisions to the contrary either in the Purchaser's main contract conditions, other subcontract or agreement.

- 5.4 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.
- 5.5 Unless stated otherwise on the Quotation the Purchaser shall make all payments due under the Contract without deduction for set off, counterclaim, abatement or otherwise either in relation to this Contract or any other contract which the Purchaser may have with the Company.
- 5.6 The Company reserves the right in its absolute discretion to require payment by the Purchaser for any Services that have already been supplied by way of cleared funds before further Services are supplied notwithstanding any previous agreement to provide credit to the Purchaser. Likewise, in its absolute discretion, the Company reserves the right to require payment by the Purchaser in cleared funds for the supply of such further Services, notwithstanding any previous agreement to provide credit to the Purchaser.
- 5.7 Unless stated otherwise on the Quotation or agreed to in writing by the Company, the Company shall not be obliged to provide to the Purchaser with any collateral warranty, performance adjudication, retention bond and/or parent company guarantee in respect of the Materials and/or the Services nor enter into any insurance obligations or commitments.
- 5.8 If the Purchaser:
- 5.8.1 fails to make any payment to the Company on the due date; or
 - 5.8.2 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
 - 5.8.3 exceeds any credit limit assigned to the Purchaser from time to time by the Company; or
 - 5.8.4 commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts; or
 - 5.8.5 has a petition filed, notice given, resolution passed, or order made, for or in connection with its winding up or bankruptcy; or
 - 5.8.6 is the subject of an application to court or order for the appointment of an administrator; or
 - 5.8.7 has a receiver or an administrative receiver or administrator appointed over any of its assets; or

- 5.8.8 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
- 5.8.9 (being an individual) is the subject of a bankruptcy petition or order; or
- 5.8.10 (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
- 5.8.11 suspends, or threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 5.8.12 suffers deterioration in its financial position to such an extent that in the Company's reasonable opinion the Purchaser's capability adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- 5.8.13 is in breach of, or the Company suspects the Purchaser is in breach of, any provisions of Clause 12;

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

- (i) require payment in cash or cleared funds in advance of delivery of any undelivered Materials; or
- (ii) cancel or suspend any further delivery to the Purchaser under the Contract; or
- (iii) sell or otherwise dispose of any Materials which are subject of the Contract; or
- (iv) terminate the Contract with immediate effect by giving written notice to the Purchaser.

5.9 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 prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 in force from time to time from the Final Date for Payment until the date on which the payment is made, whether before or after judgment. The Purchaser shall pay the interest together with the overdue amount.

6. PERFORMANCE OF THE SERVICES

6.1 The Purchaser shall ensure that the Company has reasonable prior notice (which shall not be less than

14 Business Days) of the required time and date of performance of the Services and that the Company (or its agent or contractor) is given sufficient particulars of the Site and indicative times for delivery of given amounts of the Materials to ensure that the Company is able to deliver the Materials without returns.

- 6.2 Prior to the start of the supply of the Services the Company shall carry out an inspection of the Site in order to ensure that the agreed Services are appropriate for the Site, are reasonably practical and can be rendered safely, so far as they are able. The Purchaser shall be liable for instructing a surveyor to ensure that the Services will not cause any harm either to persons or to the property of any third party and ensuring that any permissions necessary to carry out the Works are provided prior to the Services commencing.
- 6.3 The Company is under no obligation to do so, but if in its absolute discretion the Company provides sketches, plans, diagrams or similar documents in advance of the provision of the Services, then any such material is intended for illustrative purposes only and is not intended to provide an exact Specification of the Services nor to guarantee specific results. For the avoidance of doubt the Company is not liable for the design of the Specification, or all or any part of the Services.
- 6.4 If the Company is unable to supply Services because of inadequate instructions, unsuitable personnel at the Site, inadequate or unsafe conditions at the Site, the failure of the Purchaser to give uninterrupted access to the area of works, so as not to impede the works or provide a safe working environment, the Purchaser fails to permit supply of the Services, or the Purchaser's failure to obtain appropriate licences or authorisations prevents or delays the supply of Services, delivery shall be deemed to have taken place at the time when the Company has notified the Purchaser it is ready willing and able to perform the Services.
- 6.5 The Company shall use reasonable efforts to comply with any time or date agreed by the Company for supply of the Services, but any dates and times are intended for guidance purposes only and shall not be of the essence, and shall not be capable of being made of the essence by notice from the Purchaser. If no times or dates are agreed, the Services shall be supplied to the Purchaser within a reasonable time of the acceptance of the order.
- 6.6 The Purchaser shall ensure the Company has full uninterrupted access to the area of works forming part of the Site and shall provide a safe working environment including any additional procedures processes or equipment for night time working.
- 6.7 The Company, its agents and/or contractors shall not be obliged to provide the Services if the Company or its agents or contractors suffer failure of any of the safety equipment designed for use in the course of delivery by the Company, its agents or contractors; or where the access to the Site, equipment at the Site or on Site manoeuvrability is unsuitable, hazardous or inadequate for the proper and safe unloading of the Materials, or where personnel at the Site are rude, offensive or abusive to the

Company's employees, contractors or agents. The Purchaser shall indemnify and keep the Company indemnified against any Losses arising from the access to the Destination, equipment at the Destination or onsite manoeuvrability of the Destination being unsuitable, hazardous or inadequate or the Purchaser's personnel being rude, offensive or abusive.

- 6.8 Where the Purchaser signs a Delivery Ticket or advice note this shall be conclusive evidence that the Services have been inspected and accepted in full by the Purchaser.
- 6.9 If the Company lays Materials on construction previously prepared by a third party, this shall not signify our acceptance that such construction is acceptable to receive the Services in accordance with the Specification. Without obligation to do so the Company reserves the right to conduct whatever tests the Company feels advisable to verify the nature of such construction however the Company shall not be liable for any subsidence of the Surface due to inadequate design of the Works or inadequate compaction to the underlying layers within the Surface. The Purchaser shall on request by the Company supply evidence of suitable compaction of sub-base that the Surface can bear prior to the Company applying the Materials, or otherwise performing the Services.
- 6.10 The Company does not accept responsibility or liability for the shedding of surface water if the surface gradients do not comply with the recommendations of the current British Standard or such other relevant British Standards as may apply from time to time or of any compliance with any technical specification which is a pre-condition or requirement of the Company prior to the Company performing the Services.
- 6.11 The Purchaser shall ensure that the Company is given reasonable notice of the date for commencement of the Services which shall not be earlier than any date for commencement of the Services accepted by the Company. The Purchaser shall submit a programme of the timetable for performance of the Services to the Company not less than 4 weeks prior to any accepted start date. The Purchaser shall update the programme of works regularly and notify the Company immediately in respect of any changes. The Company shall use reasonable endeavours to perform the Services in accordance with any programme of works or agreed dates.
- 6.12 Subject to Clause 6.13, the Company shall not be liable to a Purchaser for any Losses whether:
- 6.12.1 direct; or
 - 6.12.2 indirect or consequential (including, for the avoidance of doubt, any liability to any Third Party, pure economic loss, loss of profits, loss of business, and loss of goodwill); or
 - 6.12.3 costs, charges or expenses

resulting from any delay in the performance of the Services or failure to provide 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 or perform the Services shall entitle the Purchaser to terminate the Contract unless it continues for 90 days or more.

7. PURCHASER'S OBLIGATIONS

- 7.1 The Purchaser must provide the following to the Company at no cost to the Company:
- 7.1.1 suitable access and egress to the point of providing the Services for the Company's vehicles and plant at all times;
 - 7.1.2 all water required for the performance of the Services, delivered into storage tanks on Site;
 - 7.1.3 full details of overhead and underground cables, gas and water pipes, together with locations, depths and voltages;
 - 7.1.4 all lighting and traffic control, together with all temporary diversions and ramps;
 - 7.1.5 all illumination for the safe access and egress for day and/or night time working and safe working conditions at the Site for day and/or night time working.
- 7.2 Prior to laying any Material in a single course construction or the first course of a multi course construction a grid of levels shall be taken and agreed jointly by the Purchaser and the Company.
- 7.3 The formation presented to the Company shall be of true line and level and to falls which will in particular ensure the removal of surface water. To permit accurate laying of the Materials the Purchaser shall provide and maintain accurate and suitable line and level control, the accuracy of which shall be the sole responsibility of the Purchaser. The Purchaser must ensure that cross-falls, cambers and longitudinal falls of the proposed Finished Product within the Scope comply with the minimum requirements of British Standard 594 987 or other such official standards relating to the laying of coated materials that apply to this Contract.
- 7.4 Where free edge work is specified the rates allow for the edge wastage on the various layers of the works but do not allow for any temporary from works or supports at the edge of the area to be surfaced where there are no kerbs. The Company cannot therefore be held liable for the cost of any additional sub-base or roadbase provided by the Purchaser to accommodate the natural angle of repose of the carriageway edges of Materials laid by the Company.
- 7.5 The Company cannot be held responsible for any failures resulting from base and binder courses being used as running surfaces. These non-surface course Materials will have a tendency to fret and lose aggregates from their surfaces which will ultimately create potholes and cause premature failures.

- 7.6 The Purchaser is at all times responsible for the protection of in-situ concrete, block paving, drainage systems potentially affected by the Services.
- 7.7 The Purchaser is at all times responsible for sweeping prior to the provision of the Services. Sweeping is defined as mechanical or hand sweeping and includes cleaning of the surface to which Services are to be supplied whether washing or jetting.
- 7.8 The Purchaser is at all times responsible for setting out, together with the provision of engineering support where string lines are ineffective due to distance on single and multiple layers.
- 7.9 The Purchaser is at all times responsible for protecting any Services carried out in instalments, including Materials laid, Surfaces completed in full or in part, and shall not permit them to be used until the Company has confirmed in writing it may do so.

8. TITLE

- 8.1 Ownership of the Materials shall not pass to the Purchaser until the Company has received payment in cleared funds of all sums owed by the Purchaser to the Company under the Contract and under any other contract between the Company and the Purchaser in respect of which payment has become due.
- 8.2 The Company shall be entitled to recover payment for the Materials or the Finished Product (and also VAT, other sales taxes and Additional Charges) from the Purchaser even though the ownership of the Materials has not passed from the Company to the Purchaser.
- 8.3 On termination of the Contract, the Company's rights under this Clause 8 shall remain in effect.

9. QUALITY

- 9.1 The Company warrants that (subject to the other provisions of the Conditions):
- 9.1.1 the Finished Product shall be manufactured in accordance with the Specification so as to be free in all material respects from Defect; and
- 9.1.2 the Company shall perform the Services with all reasonable skill and care; and
- 9.1.3 subject to Clauses 3.6.17 and 3.6.25 the Materials shall be laid to the thickness specified in the Bill of Quantities forming part of the Order or Specification; and
- 9.1.4 whilst supplying the Services, the Company shall try and ensure that the areas forming part of the Site that are not the subject of the Services are reasonably protected for the duration

of the Services; and

9.1.5 the Company shall properly dispose of all waste that results from its supplying the Services and in doing so, the Purchaser shall allow the Company a specific area for depositing of waste to enable the Company to remove waste in bulk; and

9.1.6 subject to Clause 9.5, if any damage to the Site is directly caused by the Company during the course of the Services, the Company shall make good that damage prior to completing the Services.

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

9.2.1 variations in the colour, consistency, texture, and size of the particles forming all or part of the Materials or the Finished Product;

9.2.2 the surface finish or visual appearance of the Materials or the Finished Product;

9.2.3 the presence in the Materials or the Finished Product of lignite, carbonaceous particles or organic material, or the consequences of such presence;

9.2.4 variations arising from permitted tolerances to the formula to which the Materials or the Finished Product are manufactured;

9.2.5 the interchangeable use by the Company in the Company's discretion of the constituents forming part of the Materials or the Finished Product;

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

9.2.7 the Company manufacturing or laying the Materials or the Finished Product to an approved British Standard notwithstanding the Purchaser has requested manufacture to a withdrawn standard or designation.

9.3 The Company does not guarantee any particular volume of Materials will cover any particular area or yield any particular volume.

9.4 Subject always to Clause 9.2, the Company shall not be liable for a breach of Clause 9.1 (in whole or in part) unless:

- 9.4.1 the Purchaser gives written notice of any Defect to the Company within 35 days of either discovery of the Defect or when the Purchaser ought reasonably to have discovered the Defect; and
 - 9.4.2 the Company is thereafter given a reasonable opportunity of examining the Materials or the Finished Product and in any case before the Materials and/or Finished Product are further used, interfered with, added to, or constructed upon in any way; and
 - 9.4.3 the Purchaser has complied with the Recommendations; and
 - 9.4.4 the Purchaser has complied with the recommended storage conditions as may be notified by the Company and has not tampered with the Materials and/or Finished Product in an attempt to rectify any alleged Defect.
- 9.5 Subject always to Clause 9.3 and 9.4, the Company shall not be liable for a breach of Clause 9.1 in any case where the Defect has arisen as a result of:
- 9.5.1 the Purchaser's failure to use the Materials and/or Finished Product in accordance with the guidelines set out in the Specification, the Recommendations or good industry practice; or
 - 9.5.2 the work of the Purchaser, any of its employees, agents or subcontractors; or
 - 9.5.3 the Materials being manufactured, processed, or mixed by the Company to the specification of the Purchaser which is not consistent with the Specification or to a specification which has been withdrawn; or
 - 9.5.4 movement or damage to the kerb adjacent to the Materials and/or Finished Product; or
 - 9.5.5 fair wear and tear; or
 - 9.5.6 the failure of the Purchaser to stop the discharge or offloading of the Materials where a Defect is apparent on inspection of discharge or unloading; or
 - 9.5.7 the failure of the Finished Product due to the inadequate design of the pavement, inadequate compaction to the underlying layers within the pavement or the sub-base, roadbase or base course which have not been prepared by the Company; or
 - 9.5.8 any fact matter or issue provided for in the Quotation; or
 - 9.5.9 the gradient of the surface to which the Materials are applied do not comply with the

Recommendations or relevant British Standards; or

- 9.5.10 the ground conditions onto which the Materials are to be discharged not being suitable or appropriate to receive them; or
 - 9.5.11 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 releasing agent; or
 - 9.5.12 the Purchaser not allowing the Company to discharge the Materials within 30 minutes (time being of the essence for this Clause 9.5.12) after arrival at the Site and/or to regularly record the temperature of the Materials and utilise them within the correct temperature range; or
 - 9.5.13 the Materials being laid to an unconfined edge; or
 - 9.5.14 the Purchaser allows traffic onto the surface of the asphalt too early or before the Materials and/or the Finished Product has sufficiently cooled/hardened; or
 - 9.5.15 the Purchaser breaches any part of Clause 7; or
 - 9.5.16 the Purchaser refuses to permit the Company to apply additional depth of surface course pursuant to Clause 3.6.17; or
 - 9.5.17 the failure, or any defects, in the waterproofing coat pursuant to Clause 4.7; or
 - 9.5.18 the Purchaser using the Materials for an application for which they are not suitable or appropriate in accordance with; or
 - 9.5.19 any specific maintenance requirements should be taken into consideration and completed after installation; or
 - 9.5.20 a failure of the Purchaser to comply with the precautions and limitations in respect of the Materials as set out in the data sheet for the Material available on the Company's website from time to time; or
 - 9.5.21 any fuel spillage on the Materials or Finished Product not caused by the Company.
- 9.6 Subject always to Clauses 9.3, 9.4, 9.5 and 9.6, if the Materials and/or the Finished Product does not conform with Clause 9.1, and are consequently the subject of a Defect, then the Company shall at its option:

9.6.1 re-perform the Services free of charge; or

9.6.2 remedy the Defect free of charge; or

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

9.7 If the Company either re-supplies the Materials or remedies the Defect or issues a credit note under Clause 9.7 then it shall have no further liability for a breach of Clause 9.1. This Clause does not affect any other rights or claims of the Purchaser arising out of any other provision of the Contract.

10. LIMITATION OF LIABILITY

10.1 Save for where the Contract provides specific remedies to the Purchaser in respect of delay under Clause 6 (Performance of the Services), and breach of Clause 9 (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 Purchaser in respect of:

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

10.1.2 any use made by the Purchaser of the Materials, or any product incorporating the Materials; and

10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract or the supply of the Materials.

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

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

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

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

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

10.3.4 for fraud or fraudulent misrepresentation.

10.4 Subject to Clauses 10.2 and 10.3:

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

10.4.1.1 £50,000.00; and

10.4.1.2 a sum equivalent to the Contract Price.

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

10.4.2.1 pure economic loss;

10.4.2.2 loss of profits;

10.4.2.3 loss of business;

10.4.2.4 loss of goodwill and/or reputational damage;

10.4.2.5 losses arising from any liability to a Third Party (including liquidated damages claims); or

10.4.2.6 claims for liquidated damages or lane occupancy charge; or

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

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

10.5.1 normal wear and tear; or

10.5.2 the Purchaser's or a Third Party's wilful damage, negligence, abnormal working practice, misuse, alteration or repair of the Materials or Finished Product; or

10.5.3 failure to comply with the recommended conditions for the Maintenance of the Materials; or

10.5.4 use of the Materials in unsuitable conditions; or

10.5.5 matters in respect of which the Company is relieved from liability under Clauses 9.2, 9.3, 9.4 or 9.5.

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

11. FORCE MAJEURE

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

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

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

12. ANTI-BRIBERY AND COMPETITION

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

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

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

13. GENERAL

13.1 "Breedon Cement", "Breedon", "Breedon Aggregates", "Breedon Southern" and "Breedon Northern" are trading names of the Breedon Group.

13.2 The Company is a data controller for the purposes of the EU Regulation 2016/679 General Data Protection Regulation ("GDPR") and the Purchaser on behalf of itself and any of its directors, shareholders, members, employees, servants and agents ("Associates") acknowledges the use and processing of personal data described in this Clause 13.

13.3 The Company processes personal data of the Purchaser and its Associates in accordance with the Privacy Notice: All Breedon Group Customers, a copy of which can be found at www.breedongroup.com ("Privacy Notice").

13.4 The Purchaser on behalf of itself and its Associates acknowledges and accepts the processing of its personal data as referred to in the Privacy Notice.

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

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

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

- 13.8 Termination of the Contract, however arising, shall not affect any rights or remedies of either party which have accrued prior to the date of termination; and termination of the Contract shall not affect the continuing force and effect of any provision of the Contract which, whether expressly or by implication, is to survive termination of the Contract.
- 13.9 Save for any member of the Breedon Group, the Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it. Any member of the Breedon Group may enforce the terms of the Contract as if it were an original contracting party.
- 13.10 Any notice by either Party to the other shall be in writing addressed to that other Party at its registered office or principal place of business or such other address as notified by the receiving Party to the Party giving the notice.
- 13.11 Notices shall be deemed to have been received 48 hours after posting (exclusive of the day of posting) if sent by first class post; on the day of delivery if delivered by hand; or at the time of transmission if sent by email. Notices shall not be sent by facsimile.
- 13.12 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, English Law, and where the Site is situated in England or Wales, the parties submit to the exclusive jurisdiction of the Courts of England and Wales and where the Site is situated in Scotland, the parties submit to the exclusive jurisdiction of the Courts of Scotland.