

**SCHEDULE 2**  
**TERMS AND CONDITIONS WHICH ONLY APPLY TO CONSUMERS**

**Please in particular note Clause 4.6 (Additional Charges) and Clause 10 (Liability of the Company and the Statutory Remedies of the Consumer)**

**1. VARIATIONS OF CONTRACT ETC.**

- 1.1 Any purported amendment or variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.
- 1.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company 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 in relation to the services and/or Materials described in them. 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 Consumer, shall be the price set out in the Purchaser's Price List. 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 Consumer, 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 Consumer at least one month's notice in writing.
- 2.3 Clauses 2.1 and 2.2 shall override any other provision relating to price in any estimate given by the Company.
- 2.4 The Contract Price shall be exclusive of any VAT or other applicable sales taxes and of any Additional Charges, all of which amounts the Consumer shall pay in addition to and together with and on the same due date as the Contract Price for the Materials.

**3. PAYMENT**

- 3.1 Payment of the Contract Price for the Materials shall be made in pounds sterling in cleared funds on or before the Delivery or collection of the Materials.

- 3.2 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.
- 3.3 The Consumer shall make all payments due under the Contract without deduction for set off, counterclaim, abatement or otherwise.
- 4. DELIVERY ETC.**
- 4.1 The Consumer shall ensure that the Company has reasonable prior notice 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.
- 4.2 If the Company is unable to deliver Materials because of inadequate instructions, or the Consumer fails to take or permit delivery of the Materials, or the Consumer'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.
- 4.3 The Company shall use all reasonable efforts to comply with any time or date given or agreed by the Company for delivery or collection of the Materials, but any such dates and times are intended for guidance purposes only and shall not be of essence, and shall not be capable of being made of the essence by notice from the Consumer. Whilst time is not of the essence, delivery of Materials shall be made to a Consumer without undue delay and in any event within 30 calendar days from the date that the Contract was entered into, failing which the Consumer shall have the right to terminate the Contract.
- 4.4 In the event that delivery is not made within 30 calendar days from the date that the Contract was entered into, and the Consumer exercises their right to terminate the Contract, then the Company shall reimburse to the Consumer the total amount that they have paid under the Contract.
- 4.5 The Company may deliver the Materials by means of separate instalment 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.
- 4.6 Without prejudice to the Consumer's rights of cancellation an Additional Charge may be made if:
- 4.6.1 the Consumer incurs any of the additional charges set out on the relevant Company quotation; or

- 4.6.2 the Consumer is notified prior to or at the time of acceptance of the order that an additional charge will be made for a delivery volume below the Company's minimum load; or
  - 4.6.3 delivery is to be made outside the Company's normal working hours or on a bank or public holiday; or
  - 4.6.4 the Consumer re-directs or fails to take or permit a delivery, fails to give sufficient delivery instructions, or the Consumer's failure to obtain appropriate licences or authorizations prevents or delays delivery; or
  - 4.6.5 the unloading of the delivery vehicle is delayed for more than 30 minutes from its arrival at the Destination; or
  - 4.6.6 the delivery is aborted due to unsuitable or unsafe access to the Destination.
- 4.7 The Company or its agent or contractor shall be entitled to refuse to deliver over roads or over ground which it considers unsafe or unsuitable, including in circumstances where 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.
- 4.8 If the Consumer requires that the Materials are to be delivered and left on a street or public highway the Consumer hereby acknowledges that the Consumer (and not the Company, its agent or contractor) is exclusively responsible for compliance with all laws and regulations and the Consumer shall take all measures required to ensure the safety and protection at all times of persons or property. The Consumer (and not the Company, its agent or contractor) shall be exclusively responsible for all damages, liabilities, costs, claims, losses or expenses which the Company, its agent or contractor may incur as a result of such delivery.
- 5. INSPECTION AND SHORTAGES**
- 5.1 The Company shall use reasonable endeavours to supply the quantity of Materials provided for by the Contract and to notify the Consumer of any surplus or shortfall in the quantity of Materials delivered.
- 5.2 It is the responsibility of the Consumer to check upon collection or Delivery that:
- 5.2.1 they have received all of the Materials provided for under the Contract; and

5.2.2 the Materials delivered comply with the Delivery Ticket or other documentation in relation to the Contract.

5.3 In the event of a problem, the Consumer must inform the Company as quickly as possible and must do so within 72 hours of Delivery or collection of the Materials.

5.4 Subject to compliance with Clauses 5.2 and 5.3, if a surplus or shortfall occurs the Company shall discuss with the Consumer the possible options to resolve the surplus or shortfall. The Consumer shall allow the Company to make good any shortfall within a reasonable time always provided that the Consumer's rights of cancellation under the Contract and the Consumer's statutory remedies under the Consumer Rights Act 2015 are not affected.

## **6. RISK AND TITLE**

6.1 Risk in the Materials shall pass to the Consumer on Delivery.

6.2 Ownership of the Materials shall not pass to the Consumer until the Company has received payment in cleared funds of all sums owed by the Consumer to the Company under the Contract and under any other Contract between the Company and the Consumer in respect of which payment has become due.

6.3 Until ownership passes to the Consumer, the Consumer shall:

6.3.1 hold the Materials as the Company's fiduciary agent and bailee; and

6.3.2 keep (at no cost to the Company) the Materials separately and safely stored, satisfactorily protected and identified as the Company's property.

6.4 The Company shall be entitled to recover the Contract Price (and also VAT, other sales taxes and Additional Charges) from the Consumer even though the ownership of the Materials has not passed from the Company to the Consumer.

6.5 On termination of the Contract, the Company's rights under this Clause 6 shall remain in effect.

## **7. CANCELLATION RIGHTS**

7.1 The Consumer may cancel the Contract with the Company without giving any reason but only provided that all of the following conditions are met:

- 7.1.1 the Contract was entered into by the Consumer by telephone, email, website, fax or post and other than by attending at any of the Company's premises ("a Site") in person; and
  - 7.1.2 notice of cancellation is received by the Company within 14 Calendar Days from the date that the Consumer, or someone on their behalf, acquires physical possession of the Materials, or in the case of a single Contract delivered in instalments, from the date that the Consumer, or someone on their behalf, acquires physical possession of the last instalment of the Materials; and
  - 7.1.3 the notice of cancellation is received by the Company in writing and includes a clear statement of the Consumer's intention to cancel the Contract by letter or email to the Company. The Consumer may use the template withdrawal form annexed to these Conditions; and
  - 7.1.4 the Contract is not one for Materials which when delivered to the Consumer, deteriorate rapidly so that they cannot then be returned intact or have become combined with other items so that they are inseparable. For example, packs of cement which have been opened by the Consumer or cement which has been used or mixed with other products; and
  - 7.1.5 the Contract is not one for Materials which have been the subject of special order or customized by the Company for the Consumer; and
  - 7.1.6 the Materials have been returned to, or have been dispatched to a Site (which the Consumer can verify to the reasonable satisfaction of the Company) at the expense of the Consumer. The Consumer may request collection of the Materials by the Company and the Company may make a reasonable charge for such collection which is non-refundable.
- 7.2 In the unlikely event that the Materials are mis-priced, defective, wrongly delivered, mis-described or where the Company is obliged to provide pre-Contract information under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, and such information has not been provided, the Company shall refund the price paid for the Materials and any applicable delivery charges paid by the Consumer as well as the costs to the Consumer of returning the Materials to a Site.
- 7.3 The right to cancel the Contract is in addition to, and does not affect, the Consumer's statutory rights and remedies under the Consumer Rights Act 2015.
- 7.4 More information about the cancellation and returns procedure is set out in the annexure to these Conditions. Advice about a Consumer's statutory rights is available from a local Citizens' Advice Bureau

or Trading Standards Office.

## **8. REIMBURSEMENT**

8.1 Provided that the cancellation has been carried out in accordance with Clause 7.1 above, the Company shall reimburse to the Consumer an amount equal to the Contract Price less any amounts deducted by the Company to reflect the fact that the Materials:

8.1.1 have been tampered with, damaged or removed from their original packaging;

8.1.2 are no longer in the same condition as they were upon delivery and cannot be re-sold; or

8.1.3 have not been stored in accordance with the recommended storage conditions as may be notified by the Company.

8.2 The Company shall make the reimbursement using the same means of payment as was used to pay the Contract Price unless there is a written agreement between the parties otherwise. If payment has been made by debit or credit card, the Company shall refund the debit or credit card used to pay the Contract Price.

8.3 If the Consumer requested that the Company begin the performance of any services associated with the sale of the Materials during the 14 calendar day cancellation period, the Consumer must pay to the Company an amount which is in proportion to the services which were performed before the Company received the notice of the cancellation.

## **9. QUALITY**

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

9.1.1 be of satisfactory quality and manufactured in accordance with any applicable British Standards so as to be free from Defect;

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

9.1.3 be reasonably fit for any particular purpose for which the Materials are being bought if the Consumer has made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Consumer to rely on the skill and judgment

of the Company in that regard.

- 9.2 Materials 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.
- 9.3 Whilst every effort is made to maintain consistency in the characteristics of the Materials, the Consumer may find that the Materials are affected by the following variances, and the Consumer hereby agrees to such variances and acknowledges that they shall not constitute a Defect:
- 9.3.1 variations in the colour, consistency, texture and size of the particles forming part or all of the Materials;
  - 9.3.2 variations arising from permitted tolerances to the chemical formula to which the Materials are manufactured; and
  - 9.3.3 any other specific variances that are drawn to the Consumer's attention before entering into the Contract.
- 9.4 In cases where the Materials are affected by variances, and provided that the main characteristics of the Materials are not affected, the Company shall not be liable to the Consumer for a breach of Clause 9.1 (Quality).
- 9.5 The Company shall not provide the Consumer with a remedy (other than its statutory remedy) unless:
- 9.5.1 the Consumer provides written notice of any Defect to the Company within 35 days of either discovery of the Defect or when the Consumer ought reasonably to have discovered the Defect; and
  - 9.5.2 the Company is thereafter given a reasonable opportunity of examining the Materials; and
  - 9.5.3 the Consumer 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.
- 9.6 Subject always to Clause 9.5, if the Materials are the subject of a Defect, then the Company shall at its option:
- 9.6.1 re-supply such Materials free of charge; or

9.6.2 refund the price of such Materials.

9.7 If the Company either re-supplies the Materials or issues a refund under Clause 9.6 then it shall have no further liability for a breach of Clause 9.1.

9.8 Nothing in this Clause 9 shall affect the Consumer's rights of cancellation under the Contract or the statutory remedies of the Consumer under the Consumer Rights Act 2015.

## **10. LIABILITY OF THE COMPANY AND THE STATUTORY REMEDIES OF THE CONSUMER**

10.1 The Company only supplies the Materials for the Consumer's domestic and private use. The Consumer agrees not to use the Materials for any commercial, business or re-sale purpose, and the Company shall have no liability to the Consumer for any loss of profit, loss of business, business interruption, pure economic loss, or loss of business opportunity or reputation.

10.2 The Company shall not be liable to the Consumer for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it is an obvious consequence of breach of the Contract by the Company or if the loss was contemplated as potential by the parties at the time the Contract was concluded.

10.3 Notwithstanding any other provisions of the Contract, the Company does not exclude or limit in any way its liability to the Consumer for:

10.3.1 death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors; or

10.3.2 misrepresentation (including fraudulent misrepresentation) which amounts to a breach of the Consumer Rights Act 2015; or

10.3.3 breach of the terms implied by section 17 of the Consumer Rights Act 2015 (title and quiet possession); or

10.3.4 breach of the terms implied by sections 9, 10, 11, 12, 13 and 15 of the Consumer Rights Act 2015 (satisfactory quality, fitness for purpose, pre-Contract information, description and samples); or

10.3.5 defective products under the Consumer Protection Act 1987; or



- 10.3.6 for any matter which it would be unlawful for the Company to exclude or attempt to exclude its liability.
- 10.4 The Company shall have no liability for any Defect to the extent that the loss or damage suffered by the Consumer, or any Third Party, arises from:
- 10.4.1 failure to comply with the information and instructions which accompany the Materials, including any Safety Data Sheets in respect of the Materials (available on the Company's website from time to time) concerning use, mixing and consistency, storage, safety and recommended applications of the Materials; or
- 10.4.2 materials which after Delivery are processed or mixed by the Consumer to the Consumer's own specification or the specification of a Third Party; or
- 10.4.3 normal wear and tear; or
- 10.4.4 the Consumer's or a Third Party's wilful damage, negligence, abnormal working practice, misuse, alteration or repair of the Materials; or
- 10.4.5 the failure to comply with the recommended conditions for the storage of the Materials including as set out in Clause 12 (Recommended Shelf Life and Conditions for Storage).
- 10.5 The statutory rights of a purchaser dealing as a Consumer under the Consumer Rights Act 2015 are not affected by the Conditions.

## **11. CIRCUMSTANCES BEYOND THE CONTROL OF THE COMPANY**

- 11.1 The Company shall not be liable to the Consumer for any failure or delay in performing the Company's obligations under the Contract where such failure or delay results from any cause that is beyond the Company's reasonable control which for this purpose shall be deemed to include strikes, lock outs and other forms of industrial action. In the event that such circumstances affect the performance of the Company's obligations under the Contract, the Company shall use reasonable endeavours to notify the Consumer as soon as reasonably possible, and the Company's obligations under the Contract shall be suspended, and the time for performance of the Company's obligations shall be extended for the duration of the circumstances beyond the Company's reasonable control. The Company shall use reasonable endeavours to contact the Consumer to arrange a new delivery or collection date after such circumstances have ceased to apply.

- 11.2 The Consumer may cancel the Contract where Clause 11.1 applies and the Consumer no longer wishes to buy the Materials and the Company shall reimburse to the Consumer a sum equal to any amount that the Consumer has paid in advance under the Contract for goods or services in respect of which the Company's obligations have been suspended.
- 11.3 The Company may cancel the Contract where Clause 11.1 applies for longer than 90 days whereupon the Company shall reimburse to the Consumer a sum equal to the amount that the Consumer has paid in advance under the Contract for goods or services in respect of which the Company's obligations have been suspended.
- 11.4 In the event of cancellation of the Contract in circumstances as aforesaid beyond the reasonable control of the Company, in a case where the Consumer has ordered Materials to be customised or made by special order and where the work has begun, the Company shall have no liability to make any refunds to the Consumer, but neither shall the Consumer owe any outstanding amounts to the Company.

**12. RECOMMENDED SHELF LIFE AND CONDITIONS FOR STORAGE**

- 12.1 The Company shall use reasonable endeavours to deliver Materials to the Consumer 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.
- 12.2 The Company shall have no liability to the Consumer 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 Consumer.

## **ANNEX - INFORMATION CONCERNING THE EXERCISE OF THE RIGHT OF WITHDRAWAL**

### **Instructions on right of withdrawal**

You have the right to withdraw from the Contract within 14 days without giving any reason. The withdrawal period shall expire after 14 days from the day on which you, or a third party nominated by you to do so on your behalf, acquires physical possession of the goods.

To exercise the right of withdrawal, you must inform Hope Cement Limited of your decision to withdraw from the Contract by an unequivocal written statement marked and sent for the attention of the Legal Department at Hope Cement, Hope Valley, Derbyshire, S33 6RP (e.g. a letter sent by pre-paid post or e-mail to [enquiries@breedongroup.com](mailto:enquiries@breedongroup.com)). You may use the attached model withdrawal form, but it is not obligatory. Please do not send any communication by fax.

To meet the withdrawal deadline, it is sufficient for you to send your communication concerning your exercise of the right of withdrawal before the withdrawal period has expired.

### **Return of the Goods**

You shall send back the goods (or hand them over to us) at any one of our normal places of business or to Hope Cement, Hope Valley, Derbyshire, S33 6RP, without undue delay, and in any event not later than 14 days from the day on which you communicate your withdrawal from the Contract. The deadline is met if you send back the goods before the period of 14 days has expired. You will bear the cost of returning the goods unless they cannot reasonably be returned without collection by us in our vehicle, in which case we will collect them from you and may make a reasonable charge to you for their collection.

### **Effects of withdrawal**

If you withdraw from the Contract, we shall reimburse to you all payments received from you, including the costs of delivery (with the exception of the supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us), but less any cost of collection referred to above, without undue delay and in any event not later than 14 days from the day on which we are informed about your decision to withdraw from the Contract.

We will carry out such reimbursement using the same means of payment as you used for the initial

transaction, unless we have expressly agreed in writing with you otherwise; in any event, you will not incur any fees as a result of such reimbursement. We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, in their original condition, (including any packaging) to any one of our normal places of business or to Hope Cement, Hope Valley, Derbyshire, S33 6RP. Please bring or send your original sale documentation with the goods.

We cannot accept the return of goods which have become inseparable from other items or are no longer identifiable as the same as the goods delivered.

You will remain liable for the costs of the diminished value of the goods (including their packaging) resulting from your handling. In the case of the provision of any services which you requested us to begin, you shall pay us an amount which is in proportion to the services provided up to the point when you communicated to us your withdrawal from the Contract.

**WITHDRAWAL FORM**

(Complete and return this form only if you wish to withdraw from the Contract)

By pre-paid post to: Hope Cement Limited, FAO: The Legal Department, Hope Cement, Hope Valley, Derbyshire, S33 6RP, or by e-mail to [enquiries@breedongroup.com](mailto:enquiries@breedongroup.com), FAO: The Legal Department.

— I/We hereby give notice that I/We withdraw from my/our contract for the purchase of the following goods and associated services:

[Describe goods and services]

.....

[Give date]

Ordered on /received on .....

Name of consumer(s), —

.....

Address of consumer(s), —

.....

Signature of consumer(s)

.....

Date

.....