

## ROYDALE LIMITED - STANDARD TERMS AND CONDITIONS OF SALE

### 1. Application of terms and conditions

- 1.1. Unless otherwise agreed in writing, these terms and conditions of sale ("**Conditions**") apply exclusively to each transaction ("**Contract**") for the sale and supply of ready-mixed concrete ("**Concrete**"), screed ("**Screed**") (and each, as appropriate the "**Goods**"), and any associated service ("**Service(s)**") by Roydale Limited, Roydale Ltd, a company registered in England & Wales (Company No. 4244335) with its registered office at Station Road, Shipley, BD18 2JL ("**Company**") to a buyer ("**Customer**").
- 1.2. The Company shall supply and the Customer shall purchase the Goods and/or Services in accordance with the Order Confirmation which shall be subject to these Conditions.
- 1.3. The Contract shall be to the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted, or any order is made or purported to be made, by the Customer. No terms and conditions or contractual provisions specified or stipulated by the Customer at any time, whether prior to or after the Conditions have been brought to the attention of the Customer, shall be binding on the Company.
- 1.4. These Conditions are for incorporation into the Company's business to business arrangements and as such the Customer warrants that it is a commercial buyer and is not a 'consumer' as defined by the Consumer Rights Act 2015. The Company uses separate terms and conditions for arrangements with consumers, so by entering into the Contract the Customer is warranting that it does so in the course of its business trade or profession. Whenever reference is made in these Conditions to an authorised representative of the Company, such authorised representative shall be a director of the Company or a person duly authorised by a director of the Company.

### 2. Basis of sale

- 2.1. The Company accepts enquiries for the sale and supply of Goods and Services via telephone, internet, or face to face, with a view to obtaining a quotation ("**Quotation**") and placing an order ("**Order**") should the Customer wish to proceed.
- 2.2. When requesting a Quotation, the Customer will be asked to set out, in detail, the Goods and/or Services required, the required specification or information allowing the requisite Specification to be selected ("**Specification**") (all options available on the Company's website ("**Website**") at <https://www.aire-concrete.com> or the Company can make appropriate suggestions by request), all and any relevant measurements, and volumes required. Such information is vitally important, and the Customer takes full responsibility and liability for its accuracy. It will be used to inform the Quotation and on this basis shall form part of the Contract. See further below at Clause 3.

- 2.3. The Quotation can be given by the Company to the Customer verbally or in writing but shall at all times be subject to the Conditions which are available on the Website. No quotation given by the Company to the Customer shall amount to an offer capable of being accepted but shall constitute an invitation to treat. The Customer shall be entitled to accept or reject the Quotation including the Conditions verbally or in writing. In the event that the Quotation including the Conditions is accepted, this shall constitute an offer by the Customer to the Company, and if the Company chooses to accept, it shall issue an order confirmation ("**Order Confirmation**") which shall be issued to the Customer in writing (via text or email) at which point the Contract shall be deemed to come into existence and to incorporate these Conditions.
- 2.4. PLEASE NOTE- in the case of a Screed order, the Contract shall be conditional and expressly "subject to survey". In normal circumstances the Company aims to carry out the survey ('**Survey**') within 14 days of the Contract being accepted by the Company. Sometimes this might have to be extended to accommodate unforeseeable eventualities but in any event the Company undertakes to carry the Survey out as soon as reasonably possible. Where the Customer's property is not suitable for survey, for example where it is yet to be constructed, the Company shall schedule the Survey accordingly and reserves its rights with regard to subsequent confirmation/withdrawal accordingly. The Customer acknowledges and agrees that the Company will have a right to confirm or withdraw from the Contract based on the outcome of the survey. The Survey can only be carried out by the Company and will determine the final Specification and volumes. The Customer must facilitate the Survey and must be present for the Survey to agree on items including, but not limited to, installation and access.
- 2.5. If following the Survey, the Company determines acting reasonably that the Specification or any other material aspect of the Contract is impossible or impractical to integrate, perform or achieve, such outcome will be communicated in writing to the Customer as soon as reasonably possible thereafter. If the Company decides the Contract cannot be performed as above any deposit paid will be returned to the Customer within 5 working days.
- 2.6. The Goods will only be supplied in the minimum units stated in the Company's sale documentation or in multiples of those units, rounded up to the nearest 0.25 M<sup>3</sup>. Orders received for quantities other than these will be adjusted accordingly.
- 2.7. The Company's employees or agents are not authorised to make any representations concerning the Goods and/or Services outside the normal course of their duties unless confirmed in writing by an authorised representative of the Company.
- 2.8. Unless otherwise stated in these Conditions, no variation to these Conditions or the Contract shall be binding unless agreed in writing between the authorised representatives of the Company and the Customer.
- 2.9. Sales literature, price lists and other documents issued by the Company in relation to the Concrete do not constitute offers to sell the Concrete which are capable of acceptance.

2.10. Any typographical or other accidental errors or omissions in any sales literature, quotation, price list, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

2.11. Illustrations, photographs or descriptions whether in catalogues, price lists or other documents issued by the Company are intended as a guide only and shall not be binding on the Company.

### **3. Quality of Goods & Specification**

3.1. The Company warrants that as at the date of delivery the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for the purpose expressly held out by the Company. This is subject to the other limitations, exclusions, and restrictions relating thereto in these Conditions including (but not limited to) Clause 8. This warranty shall remain extant and actionable for a period of 60 days from the date of delivery of the Goods. For the avoidance of doubt, no further and/or additional liability or responsibility is accepted.

3.2. The Specification is dependent on information supplied by the Customer, and the Customer warrants such information is complete and accurate, and the Company shall bear no liability to the Customer and/or the Customer shall be precluded from receiving any refund or reimbursement from the Company in the event that the Goods fail to meet the Customer's requirements as a consequence of any deficiency or inaccuracy in such information.

3.3. It shall be strictly the responsibility of the Customer to advise the Company in writing prior to the formation of the Contract of any special requirements as regards the Specification or make-up of the Goods, and the Customer must advise the Company immediately of any change made in such requirements. The Customer shall not be entitled to rely upon a delivery reaching a particular strength unless such special requirements are set out or referred to in the Order Confirmation.

3.4. The Company reserves the right to make any changes in the Specification which are required to conform with any applicable safety or other statutory or regulatory requirements or which do not materially affect their quality or performance.

### **4. Standard of Services**

4.1. The Services shall be provided exercising reasonable care and skill and in accordance with acceptable industry standards.

### **5. Price**

5.1. The price of the Goods is the Company's quoted price exclusive of VAT included in the Order Confirmation and, unless otherwise stated in the Order Confirmation, includes carriage and delivery (testing, if required, will be priced for and described separately). The price is based on the Customer's estimate of the quantity of Goods it requires, and as a consequence:

(a) an additional cost will be levied and payable where further volumes are required in order to

fulfil the Customer's actual requirements; or

- (b) a discount will be applied where lesser volumes are required in order to fulfill the Customer's actual requirements (taking account of consequential increase in price per M<sup>3</sup>).

5.2. Volumes will be rounded up to the nearest 0.25 M<sup>3</sup>.

5.3. All payments shall be made to the Company in the manner indicated on the invoice issued by it.

5.4. The Company reserves the right to make:

5.4.1. an additional charge for the time during which a vehicle making a delivery is held on site in excess of a period of thirty minutes; and

5.4.2. a charge equal to the reasonable additional costs incurred as a result of its making deliveries outside its normal working hours (which are: Monday – Friday 07.00am – 5.00pm, Saturday 7.00am – 12.00pm).

5.5. The Company reserves the right by giving written notice to the Customer to increase the price of the Goods to reflect (i) any increase in the cost to the Company, which is due to any factor beyond its control, (ii) any change in delivery dates, quantities or specifications for the Goods which are requested by the Customer, or (iii) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

5.6. Should an Order be accepted by the Company, assumed authorisation is given by the Customer to charge the value of the Goods and/or Services against any payment card details previously supplied to the Company by the Customer, unless any written objection thereto is made by the Customer, within 72 hours after the delivery time / date.

## **6. Delivery**

6.1. Delivery of the Goods shall be made by the Company conveying the Goods to the nearest public kerbside at the place specified in the Contract or, if no place of delivery is specified, to the address that the Customer gave the Company prior to the Contract being formed.

6.2. In the case of the delivery of Concrete, delivery will be deemed completed once the Goods have been brought to the destination and made available for discharge. The Customer will provide all necessary labour and equipment to ensure that the Concrete is promptly and properly barrowed or otherwise removed from the point of delivery to the intended site. The Company shall take no responsibility for this. In the event that Company operatives are able to informally assist, they shall do so under a complete and absolute waiver of liability, and under no circumstances shall such informal assistance be deemed a Service.

6.3. In the case of the delivery of Screed, the Company will deliver to site, pump to the installation point, and carry out and complete the laying of such.

- 6.4. The delivery date given by the Company is approximate only, and time for delivery shall not be of the essence.
- 6.5. Where the Goods are to be delivered in batches, failure by the Company to deliver any one or more of the batches in accordance with these Conditions shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.6. In respect of each delivery, the Customer shall ensure that an authorised person is present to sign the delivery tablet readout for the Goods. The signature will confirm:
  - 6.6.1. that the Customer acknowledges that the Specification depicted on the delivery tablet readout describes correctly the Specification required by the Customer;
  - 6.6.2. that the Customer authorises any additions to the Goods of water or of any other materials considered suitable at the time of delivery; and
  - 6.6.3. the time of the vehicle's arrival on site, the time that the Goods discharge commences, the time of the completion of the Goods discharge and the time that the vehicle leaves the site.
- 6.7. If the Customer fails or is unable to take delivery of the Goods or any part of it on the delivery date, the Company shall be entitled to use and deliver the Goods to another customer, and the Customer will be liable to the Company for the costs and expenses arising from the aborted delivery. To avoid the necessity of an investigation into such cost and expense which in itself would increase the amount claimed, the Customer accepts the Company's genuine pre-estimate of that loss as £120 (plus VAT) and this sum shall be invoiced to the Customer for immediate payment. A further delivery to the Customer will be subject to acceptance and payment by the Customer of that invoice.
- 6.8. It shall be strictly the responsibility of the Customer to advise the Company in writing prior to the formation of the Contract of any special requirements applying at the location to which the Goods are to be delivered, and in the case of Screed, installed, (including without limitation any requirements as to the time of delivery, access, and vehicle size or weight limits), and the Customer must advise the Company immediately of any change in such requirements. The Customer shall indemnify the Company (and any person operating the vehicle making a delivery) against damage or loss which may result from a failure to advise of such requirements or where the route for delivery advised by the Customer or the access points are not as described and results in damage to the delivery vehicle or to third party property or in the vehicle requiring recovery assistance or in any fine or penalty being imposed on the Company.
- 6.9. The Company's operatives are experienced in assessing the safety and practicality of delivery locations and will refuse to deliver in the event that the location is unsafe or impractical in their opinion. This will be without liability or responsibility on the part of the Company. In such circumstances the Customer must nominate a more suitable location to be agreed by the

operative, failing which the delivery will be cancelled at the Customers expense (see Clause 6.7).

- 6.10. The Customer accepts full responsibility for the complete clean down of the working & parking areas along with all public areas once the Company's vehicles have finished dispensing the Goods and have left site. This includes any sand, stone, oil or cement / binder residue left in any public or private areas. The Customer shall indemnify the Company (and any person operating the vehicle making a delivery) against damage or loss which may result from a failure to do so including but not limited to a full indemnity in respect of any fine or penalty imposed on the Company.

## **7. Inspection and shortages**

- 7.1. The Customer is under a duty to inspect the Goods on delivery and will be deemed to have inspected the Goods where a person who ostensibly is representing the Customer at the site or location at which the Goods are being delivered accepts the Goods.
- 7.2. In the specific case of Screed, the Customer will be requested to inspect and sign off on the installation.
- 7.3. The Company shall be under no liability for any shortages that would be apparent on reasonable careful inspection if the provisions of this Clause 7 are not complied with and, in any event, will be under no liability if a written complaint is not delivered to the Company within 24 hours of delivery detailing the alleged shortage.
- 7.4. In all cases where shortages are complained of, the Company shall be under no liability unless:
- 7.4.1. the shortage in question exceeds 5% (whether by weight, quantity, or volume) of the Goods delivered; and
  - 7.4.2. an opportunity to verify the shortage is given to the Company before any use is made of the Goods or any alteration or modification is made to it by the Customer.
- 7.5. Subject to Clauses 7.3 and 7.4, the Company shall make good any shortage in the Goods as soon as it is reasonable to do so, but otherwise shall be under no liability whatsoever arising from such shortage.

## **8. Defective Goods**

- 8.1. If on delivery the Goods are defective in any material respect and either the Customer lawfully refuses delivery of the defective Goods or, if it is signed for on delivery as "condition and contents unknown", the Customer gives written notice of such defect to the Company within 24 hours of such delivery, and provided that the Customer has then given the Company prompt access to the Goods as delivered in order to test the Goods and assess what defects (if any) are present, the Company shall at its option:
- 8.1.1. break out and remove the defective Goods; and/or

- 8.1.2. replace the defective Goods as soon as reasonably practicable; and/or
- 8.1.3. refund or credit to the Customer the price for the defective Goods (or part, as appropriate); and/or
- 8.1.4. any other suitable action deemed appropriate by the Company;

but the Company shall have no further liability to the Customer, and the Customer may not reject the Goods if delivery is not refused or if notice is not given by the Customer as set out above.

8.2. In the event that:

- (a) the Company is requested to investigate a potential defect in the Goods; and
- (b) the Company undertakes necessary exploratory work including, for example, opening up; and
- (c) subsequent testing or enquiries reveal that the Goods on the balance of probabilities complied with the warranty given at Clause 3.1 above;

then the costs thereof will be invoiced to and payable by the Customer.

- 8.3. Goods may not be returned to the Company without the prior agreement in writing of an authorised representative of the Company.
- 8.4. The Company shall be under no liability in respect of any defect in the Goods arising from abnormal working conditions, fair wear and tear, unsatisfactory working practices (e.g. failure to comply with BS 8110 (British Standard for laying concrete)), wilful damage, negligence, the failure to protect the Goods properly, failure to follow the Company's instructions (whether given orally or in writing), misuse or alteration of the Goods without the Company's prior approval, or any other act or omission on the part of the Customer, its employees, agents, sub-contractors or any third party.
- 8.5. Subject as expressly provided in these Conditions, all warranties, conditions, or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.6. The Customer shall be responsible for ensuring that any use of the Goods by the Customer (including the Customer's employees, agents or sub-contractors) is in compliance with all applicable statutory requirements and that the handling of the Concrete by the Customer (and the Customer's employees, agents or sub-contractors) is carried out in accordance with directions given by the Company (including instructions contained in the safety data sheet supplied to the Customer at or prior to delivery of Concrete) or any competent governmental or regulatory authority (including the wearing of appropriate protective clothing), and the Customer will indemnify the Company against any liability loss or damage which the Company might suffer as a result a failure to comply with this Condition.
- 8.7. The warranty given by the Company as to satisfactory quality and fitness for purpose shall remain extant and actionable for a period of 60 days from the date of delivery of the Goods. No additional

or further liability will be accepted.

## **9. Risk and retention of title**

- 9.1. All risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, at the time when the Company has tendered delivery of the Goods.
- 9.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, legal and beneficial title of the Goods shall not pass to the Customer until the Company has received in cleared funds payment in full of the price of the Goods together with any additional sums to cover VAT, and the Company reserves the right to repossess any Goods in which it retains title without notice.
- 9.3. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remains the property of the Company, but, if the Customer does so, all money owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

## **10. Customer's default**

- 10.1. If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
  - 10.1.1. cancel the order or suspend any further deliveries to the Customer; and/or
  - 10.1.2. levy interest and other charges to which it is entitled on all unpaid amounts under Late Payment of Commercial Debts (Interest) Act 1998 (as amended); and/or
  - 10.1.3. withdraw all credit facilities extended and require immediate payment of all outstanding invoices issued whether or not they were due for payment.
- 10.2. If:
  - 10.2.1. the Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or
  - 10.2.2. the Customer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or becomes bankrupt or goes into liquidation or is subject to similar legislation in any other jurisdiction; or
  - 10.2.3. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
  - 10.2.4. the Customer ceases, or threatens to cease, to carry on business; or



10.2.5. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly,

then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and, if the Goods have been delivered but not paid for, the price of the Goods (including VAT) shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **11. Limitation of liability**

11.1. The following provisions set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents, and sub-contractors) to the Customer in respect of:

11.1.1. any breach of these Conditions or the Contract;

11.1.2. any use made by the Customer of the Goods;

11.1.3. the provision of Services; and

11.1.4. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.3. Nothing in these Conditions excludes or limits the liability of the Company:

11.3.1. for death or personal injury caused by the Company's negligence;

11.3.2. for any matter where it would be illegal for the Company to exclude or attempt to exclude its liability; or

11.3.3. for fraud or fraudulent misrepresentation.

11.4. Subject to Conditions 11.2 and 11.3:

11.4.1. the Company's total liability in contract, tort, misrepresentation, restitution or otherwise, arising in connection with the Contract shall be limited to the price of the Goods;

11.4.2. the Company shall not be liable to the Customer howsoever arising for any direct or consequential loss or damage sustained by the Customer (including without limitation loss of profit or indirect or special loss), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its servants or agents or otherwise) which arise out of or in connection with the supply of

the Goods and/or Services or any use thereof by the Customer; and

11.4.3. the Company shall have no liability to any end-user other than as may be imposed under applicable health and safety laws.

## **12. Confidentiality**

12.1. The Customer will regard as confidential the Contract and will not use or disclose to any third party the terms of the Contract without the Company's prior written consent, provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Customer's default.

12.2. The Customer will not use, or permit the use of, any name, trademark, emblem, or symbol which the Company owns or is licensed to use upon any premises, advertisement, note paper or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Company.

12.3. The Customer will use its reasonable endeavours to ensure compliance with this Condition 12 by its employees, servants, and agents.

12.4. The provisions of this Condition 12 shall survive the termination of the Contract.

## **13. Communications**

13.1. All notices under these Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the party giving the notice.

13.2. Notices shall be deemed to have been duly given:

13.2.1. when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or

13.2.2. on the second business day following mailing, if mailed by national ordinary mail, postage prepaid; or

13.2.3. on the seventh business day following mailing, if mailed by airmail, postage prepaid.

13.3. All notices under the Contract shall be addressed to the most recent address notified to the other party.

13.4. Email is not permissible as a means of giving a notice under the Contract.

## **14. Force majeure**

14.1. Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial

action, civil unrest, fire, abnormal weather conditions, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

## **15. Waiver**

15.1. The parties agree that no failure by either party to enforce the performance of any provision in these Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

## **16. Severance**

16.1. The parties agree that, in the event that one or more of the provisions of these Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, the provision in question shall be deemed severed from the remainder of these Conditions (and, by extension, the Contract). The remainder of these Conditions and the Contract shall be valid and enforceable.

## **17. Assignment**

17.1. The Company may assign the Contract or any part of it to any person, firm, or company without the prior consent of the Customer.

17.2. Unless otherwise provided for in the Contract, the Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## **18. Third party rights**

18.1. Save where otherwise stated in these Conditions, the parties agree that a person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **19. Data Protection**

19.1 The Company only uses personal data as set out in our Privacy and Data Protection Notice available at <https://www.aire-concrete.com/privacy-and-data-protection-notice>.

## **20. Disputes**

20.1. In the event of any dispute arising between the parties, the matter will be referred to a director of each of the Company and the Customer who shall endeavour to resolve the dispute in good faith within 28 days of one party having given notice to the other party that a dispute has arisen.

20.2. Any dispute which cannot be resolved in accordance with Condition 20.1 shall be submitted to mediation pursuant to the mediation rules of the ADR Group (<https://www.adrgroup.co.uk>).

20.3. In the case of the non-payment by the Customer of any part of the price of the Goods (including VAT), the Company may elect at its discretion to take appropriate recovery action without first raising the matter as a dispute.

## **21. Law and jurisdiction**

21.1. These Conditions and the Contract (including any non-contractual matters and obligations) shall be governed by, and construed in accordance with, the laws of England and Wales.

21.2. Any dispute or claim between the parties (including any non-contractual claim) which has not been capable of resolution under Clause 20 shall fall within the exclusive jurisdiction of the courts of England and Wales.