

## **Carlisle Construction Materials Ltd – Terms and Conditions**

### **1. Definitions**

- 1.1 Seller: Carlisle Construction Materials Limited
- 1.2 Buyer: The counter party of the Seller under the Terms and Conditions
- 1.3 Terms and Conditions: these terms and conditions of supply.
- 1.4 Invoice: means any invoice supplied hereunder by the Seller to the Buyer
- 1.5 Order Confirmation: means the order confirmation supplied hereunder by the Seller to the Buyer

### **2. Agreement**

- 2.1 The Terms and Conditions shall together with the Invoice and Order Confirmation form the entire agreement between the Seller and the Buyer ("the Agreement") and no change to the Agreement shall be permitted unless agreed in writing by both parties.
- 2.2 Any terms and conditions, contracts or otherwise provided by the Buyer that may in any way affect the Agreement shall only be incorporated into the Agreement by express acceptance of such by the Seller.

### **3. Prices**

- 3.1 Unless a binding price has been otherwise agreed, the prices shown in Seller's price list shall apply on the date of delivery. The sales prices are exclusive of VAT, other taxes and charges, transport costs and insurance costs.
- 3.2 The Seller has the right to pass on any increase in factors affecting the cost price.

### **4. Delivery**

- 4.1 Delivery always takes place ex warehouse/ex works at the Seller. All risks in respect of the delivered items are always borne by the Buyer after delivery.
- 4.2 The delivery times/dates are never deadlines whose non-observance constitutes a default. The Seller always has the right to deliver in batches.
- 4.3 The Seller will not be held liable for any costs whatsoever that the Buyer may incur caused by any delay in the delivery. These circumstances are entirely beyond the Seller's control.

### **5. Force majeure**

- 5.1 Force majeure refers to any shortcoming that cannot be assigned to the Seller on the basis of fault, nor according to the law, legal action or general opinion.
- 5.2 Force majeure includes without limitation: war, war risk, call-up, fire, loss of theft of tools/materials etc., factory disturbance, strike, blockades, import or trade restrictions, shut-out, traffic disruption, disruption to the delivery of raw materials/semi-manufactured goods, staff illness, late or non-compliance of sub-suppliers/contractors with their obligations.
- 5.3 In case of force majeure, the Seller is entitled without intervention by the courts to suspend compliance with or (partially) dissolve the Agreement or any part thereof, without becoming liable for compensation.

### **6. Security**

- 6.1 The Seller is at all times entitled to demand additional/extra security from the Buyer in order to comply with existing or future obligations. If the Buyer refuses or fails to provide such security within the period set by the Seller, the Seller has the right to immediately terminate the Agreement, without becoming liable for compensation.
- 6.2 In the event of any such termination under clause 6.1 and if the Seller has already delivered items to the Buyer, the Buyer shall return these to the Seller no later than 2 working days after being requested to do so.

### **7. Payment**

- 7.1 All Invoices must be paid within the stated terms of the Invoice.
- 7.2 The Buyer will be charged interest on late payments at a rate equivalent to 8% per month on the full amount of the invoice from the moment that payment falls into arrears.
- 7.3 If the Seller initiates collection proceedings, the Buyer is required to reimburse all out-of-court costs incurred due to the collection fee, subject to a minimum amount of £150.00 excluding VAT. The Buyer is also required to reimburse the costs of judicial collection, such as the costs of confiscation and the costs of a bankruptcy petition.
- 7.4 If the Buyer is late in complying with any payment obligation in respect of the Seller, the Buyer shall be in default in respect of all claims, including those that are not yet claimable. In this case, the Seller shall also have the right to part with the claims that are not yet claimable.
- 7.5 In case of liquidation, bankruptcy, suspension of payment or application of the statutory debt collection scheme, all obligations of the Buyer shall be claimable with immediate effect.
- 7.6 In the event that the Buyer is a limited company, the directors of such shall be personally liable on a joint and several basis for all amounts due to the Seller under the Agreement.

### **8 Retention of title**

- 8.1 All items delivered by the Seller shall remain the property of the Seller until such time as the Buyer has complied with all its obligations in respect of the Seller. Ownership shall transfer to the Buyer only when the retention of title lapses due to the Buyer having complied with all obligations, in particular with all payment obligations.
- 8.2 The Buyer undertakes to keep all items delivered by the Seller apart and separate from other items and to store and keep them identifiable as delivered by the Seller, so as to avoid any mixing and so that the Seller can exercise its retention of title at all times.
- 8.3 The Buyer shall treat the delivered items as a good caretaker/guardian. The Buyer shall insure items against all disasters on the basis of the invoiced value. The Buyer shall furnish the Seller with the names and addresses of the insurers and copies of the policies on demand. Furthermore, the Buyer shall, on demand, secure a silent line to the claims arising against the insurer to the benefit of the Seller.

### **9. Quality and complaints**

- 9.1 The Buyer shall do everything necessary upon delivery to ascertain that what has been delivered agrees with what was ordered by the Buyer. Items that are put into use are deemed to fulfil the Agreement. Counter proof lies expressly with the Buyer.
- 9.2 Complaints about quantities, dimensions, weights, quality and other faults must be submitted to the Seller in writing within 14 days of delivery of the items.
- 9.3 If a delivered item appears to have an invisible fault that cannot be easily ascertained within 6 months of delivery, a complaint about the fault must be submitted in writing within 14 days of the fault being discovered.
- 9.4 The Buyer must accept an industry-standard tolerance on the scope of delivery or any other agreed tolerance.
- 9.5 Items can only be returned to the Seller if the Seller is in agreement and has approved the shipping method. The items remain at the risk of the Buyer.
- 9.6 Complaints can never be used to suspend the payment obligations of the Buyer.

### **10. Return of goods**

- 10.1 In the event that the Buyer returns delivered items to the Seller, the Seller shall pay to the Buyer at the point of return a restocking and administration fee of 30% of the invoice value for the relevant items, save in the event that such a return is made due to faulty items

### **11. Limitation of liability/product liability risk**

- 11.1 The Seller is not required to compensate the Buyer beyond repairing or replacing the delivered items or reimbursing the invoiced amount exclusive of VAT.
- 11.2 Except in case of malice or deliberate recklessness, the Seller is not liable for the damage, consequential damage, business damage or intangible damage suffered directly or indirectly by the Buyer or by third parties, damage caused by unskilled assistants and/or subcontractors – even if due to their negligence and/or gross fault – or damage caused by the use of resources.
- 11.3 The Seller's liability is in any event limited to the invoiced amount of the delivered items exclusive of VAT or, where coverage is provided by the Seller's insurer, to the amount that the insurer pays out in the case in question.
- 11.4 If the Buyer resells the delivered items or forms new items from the items delivered by the Seller and resells these, the Buyer is required to take out adequate insurance against the product liability. A copy of the relevant policy will be sent on demand.
- 11.5 All further liability is expressly ruled out. The Buyer shall also protect the Seller from all claims brought by third parties.

### **12. Infringement of third party rights**

- 12.1 If the Seller produces items under the agreement in accordance with instructions or drawings or with the help of moulds or forms of the Buyer, the Buyer guarantees that there shall be no infringement of the intellectual property Rights of third parties in doing so. Any infringement shall entitle the Seller to dissolve the Agreement immediately.
- 12.2 The Buyer shall at all times protect the Seller against all claims of third-party right holders in connection with any such infringement.

### **13. Special items**

- 13.1 Unless expressly agreed otherwise, the Seller is also entitled to produce special items, which are made for the Buyer, for third parties.
- 13.2 The Buyer must approve samples of special items within 14 days of dispatch. If the Seller does not receive a rejection report after 14 days, the samples will be deemed approved.
- 13.3 Unless expressly agreed otherwise, all models, moulds, samples, forms, drawings and all other equipment and instructions involved with the making of special items are and shall remain the property of the Seller.
- 13.4 The Buyer is responsible for the costs of replacement, repairs and maintenance of the moulds.
- 13.5 Drawings, know-how and designs which the Seller places at the disposal of the Buyer may not be copied or passed to third parties for inspection or made public knowledge without the written consent of the Seller. They must be immediately returned to the Seller after use. If any of these terms and conditions is infringed, the Buyer shall pay the Seller an immediately collectable penalty of £50,000.00 per instance and £5,000.00 for each day that the infringement continues.
- 13.6 The Seller has the right to destroy moulds regardless of whether they are the property of the Seller or the Buyer if they have not been used for a period of 2 years. The Seller shall notify the Buyer of its intention to destroy such materials 3 months prior to expiry of the 2 year period.

### **14. Applicable law**

- 14.1 English law shall apply to all disputes that arise between the Seller and the Buyer.
- 14.2 The parties hereunder submit to the exclusive jurisdiction of the English courts in any dispute arising under this Agreement.